

Introduced by Senator Berryhill

February 22, 2013

An act to amend Section 510 of, and to add Section 511.5 to, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 607, as introduced, Berryhill. Employment: working hours.

Existing law, with certain exceptions, establishes 8 hours as a day's work and a 40-hour workweek, and requires payment of prescribed overtime compensation for additional hours worked. Existing law authorizes the adoption by $\frac{2}{3}$ of employees in a work unit of alternative workweek schedules providing for workdays no longer than 10 hours within a 40-hour workweek. Under existing law, any person who violates the provisions regulating work hours is guilty of a misdemeanor.

This bill would permit an individual nonexempt employee to request an employee-selected flexible work schedule providing for workdays up to 10 hours per day within a 40-hour workweek, and would allow the employer to implement this schedule without the obligation to pay overtime compensation for those additional hours in a workday. The bill would require the Division of Labor Standards Enforcement in the Department of Industrial Relations to enforce this provision and adopt regulations.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. This act shall be known and may be cited as the
- 2 California Workplace Flexibility Act of 2013.

1 SEC. 2. The Legislature finds and declares all of the following:

2 (a) California businesses and their workers suffer from outdated
3 and inefficient workplace and overtime rules that do not allow for
4 sufficient flexibility for employers and workers to schedule their
5 hours of work for mutual benefit.

6 (b) California overtime laws, which are unique in the country,
7 make it difficult for most employers to reach an agreement with
8 an individual worker that would allow a flexible work schedule.

9 (c) Existing law does not permit a California employer to allow
10 an individual worker to choose a flexible work schedule of four
11 10-hour days per week without overtime being paid.

12 (d) As a consequence, large, small, and micro-employers do not
13 have the flexibility to offer their employees the opportunity to take
14 advantage of a flexible work schedule that would benefit the
15 workers and their families.

16 (e) Permitting employees to elect to work four 10-hour days per
17 week without the payment of overtime would allow those
18 employees to spend much-needed time with their families, lessen
19 traffic congestion on our crowded roads and highways, allow
20 workers to spend one day a week on personal matters, such as
21 volunteering at a child’s school, scheduling medical appointments,
22 and attending to other important family matters that often are
23 difficult to schedule with a five-day-per-week, eight-hour-per-day
24 schedule.

25 (f) It is the intent of the Legislature in enacting the California
26 Workplace Flexibility Act of 2013 to protect workers as follows:

27 (1) An employee may not be forced to work more than eight
28 hours in a day without receiving overtime, but, instead, he or she
29 may request a flexible work schedule of up to four 10-hour days
30 per week and the employer may agree to this schedule without
31 having to pay overtime for the ninth and 10th hours worked per
32 day in that schedule.

33 (2) The employer will be required to pay overtime rates after
34 10 work hours in a day for workers who have chosen a flexible
35 schedule pursuant to this act.

36 (3) The employer will be required to pay double normal pay
37 after 12 work hours in a day for a worker who has chosen a flexible
38 schedule under this act.

1 (4) The worker, including one who chooses a flexible schedule
2 under this act, will receive overtime for any hours worked over 40
3 hours in a single week.

4 (g) Workplaces that are unionized already allow workers to
5 choose to work four 10-hour days; however, it is virtually
6 impossible for workers of nonunionized workplaces to enjoy this
7 benefit.

8 SEC. 3. Section 510 of the Labor Code is amended to read:

9 510. (a) Eight hours of labor constitutes a day's work. Any
10 work in excess of eight hours in one workday and any work in
11 excess of 40 hours in any one workweek and the first eight hours
12 worked on the seventh day of work in any one workweek shall be
13 compensated at the rate of no less than one and one-half times the
14 regular rate of pay for an employee. Any work in excess of 12
15 hours in one day shall be compensated at the rate of no less than
16 twice the regular rate of pay for an employee. In addition, any
17 work in excess of eight hours on any seventh day of a workweek
18 shall be compensated at the rate of no less than twice the regular
19 rate of pay of an employee. Nothing in this section requires an
20 employer to combine more than one rate of overtime compensation
21 in order to calculate the amount to be paid to an employee for any
22 hour of overtime work. The requirements of this section do not
23 apply to the payment of overtime compensation to an employee
24 working pursuant to any of the following:

25 (1) An alternative workweek schedule adopted pursuant to
26 Section 511.

27 (2) *An employee-selected flexible work schedule adopted*
28 *pursuant to Section 511.5.*

29 ~~(2)~~

30 (3) An alternative workweek schedule adopted pursuant to a
31 collective bargaining agreement pursuant to Section 514.

32 ~~(3)~~

33 (4) An alternative workweek schedule to which this chapter is
34 inapplicable pursuant to Section 554.

35 (b) Time spent commuting to and from the first place at which
36 an employee's presence is required by the employer shall not be
37 considered to be a part of a day's work, when the employee
38 commutes in a vehicle that is owned, leased, or subsidized by the
39 employer and is used for the purpose of ridesharing, as defined in
40 Section 522 of the Vehicle Code.

1 (c) This section does not affect, change, or limit an employer's
2 liability under the workers' compensation law.

3 SEC. 4. Section 511.5 is added to the Labor Code, to read:

4 511.5. (a) Notwithstanding Section 511 or any other law or
5 order of the Industrial Welfare Commission, an individual
6 nonexempt employee may work up to 10 hours per workday
7 without any obligation on the part of the employer to pay an
8 overtime rate of compensation, except as provided in subdivision
9 (b), if the employee requests this schedule in writing and the
10 employer approves the request. This shall be referred to as an
11 overtime exemption for an employee-selected flexible work
12 schedule.

13 (b) If an employee-selected flexible work schedule is adopted
14 pursuant to subdivision (a), the employer shall pay overtime at
15 one and one-half times the employee's regular rate of pay for all
16 hours worked over 40 hours in a workweek or over 10 hours in a
17 workday, whichever is the greater number of hours. All work
18 performed in excess of 12 hours per workday and in excess of
19 eight hours on a fifth, sixth, or seventh day in the workweek shall
20 be paid at double the employee's regular rate of pay.

21 (c) The employer may inform its employees that it is willing to
22 consider an employee request to work an employee-selected
23 flexible work schedule, but shall not induce a request by promising
24 an employment benefit or threatening an employment detriment.

25 (d) The employee or employer may discontinue the
26 employee-selected flexible work schedule at any time by giving
27 written notice to the other party. The request will be effective the
28 first day of the next pay period or the fifth day after notice is given
29 if there are fewer than five days before the start of the next pay
30 period, unless otherwise agreed to by the employer and the
31 employee.

32 (e) This section does not apply to any employee covered by a
33 valid collective bargaining agreement or employed by the state, a
34 city, county, city and county, district, municipality, or other public,
35 quasi-public, or municipal corporation, or any political subdivision
36 of this state.

37 (f) This section shall be liberally construed to accomplish its
38 purposes.

1 (g) (1) The Division of Labor Standards Enforcement shall
2 enforce this section and shall adopt or revise regulations in a
3 manner necessary to conform and implement this section.

4 (2) This section shall prevail over any inconsistent provisions
5 in any wage order of the Industrial Welfare Commission.

6 SEC. 5. The provisions of this act are severable. If any
7 provision of this act or its application is held invalid, that invalidity
8 shall not affect other provisions or applications that can be given
9 effect without the invalid provision or application.

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