

ASSEMBLY BILL

No. 1038

**Introduced by Assembly Member Jones
(Principal coauthor: Assembly Member Baker)**

(Principal coauthor: Senator Huff)

**(Coauthors: Assembly Members Chang, Lackey, Olsen, Patterson,
and Wilk)**

(Coauthors: Senators Bates and Berryhill)

February 26, 2015

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1038, as introduced, Jones. Employment: flexible work schedules.

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.

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 an employer to implement this schedule without the obligation to pay overtime compensation for those additional hours in a workday, except as specified. The bill would require that the flexible work schedule contain specified information and the employer's and the employee's original signature. The bill would also 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 Workplace Flexibility Act of 2015.
- 3 SEC. 2. The Legislature finds and declares all of the following:
- 4 (a) Small businesses and their workers suffer from outdated and
- 5 inefficient workplace and overtime rules that do not allow for
- 6 sufficient flexibility for employers and workers to schedule their
- 7 hours of work for mutual benefit.
- 8 (b) California overtime laws, which are unique in the country,
- 9 make it difficult for most employers to reach an agreement with
- 10 an individual worker that would allow a flexible work schedule.
- 11 (c) Existing law does not permit an employer to allow an
- 12 individual worker to choose a flexible work schedule of four
- 13 10-hour days per week without overtime being paid.
- 14 (d) As a consequence, millions of California workers do not
- 15 have the opportunity to take advantage of a flexible work schedule
- 16 that would benefit the workers and their families.
- 17 (e) Permitting workers to elect to work four 10-hour days per
- 18 week without the payment of overtime would allow them to spend
- 19 much-needed time with their families, lessen traffic congestion on
- 20 our crowded roads and highways, and would allow workers to
- 21 spend one day a week on personal matters, such as volunteering
- 22 at a child’s school, scheduling medical appointments, and attending
- 23 to other important family matters that often are difficult to schedule
- 24 with a five-day-per-week, eight-hour-per-day schedule.
- 25 (f) It is the intent of the Legislature in enacting the Workplace
- 26 Flexibility Act of 2015 to protect workers as follows:
- 27 (1) A worker may not be forced to work more than eight hours
- 28 in a day without receiving overtime, but, instead, he or she may
- 29 request a flexible work schedule of up to four 10-hour days per
- 30 week and an employer may agree to this schedule without having
- 31 to pay overtime for the 9th and 10th hours worked per day in that
- 32 schedule.

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

4 (3) An employer will be required to pay double normal pay after
5 12 work hours in a day for a worker who has chosen a flexible
6 schedule under this act.

7 (4) Any worker, including one who chooses a flexible schedule
8 under this act, will receive overtime for any hours worked over 40
9 hours in a single week.

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

14 (h) No compelling public policy reason exists for this
15 discrepancy in the flexibility of work schedules between unionized
16 and nonunionized workers.

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

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

34 (1) An alternative workweek schedule adopted pursuant to
35 Section 511.

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

38 ~~(2)~~

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

1 ~~(3)~~

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

4 (b) Time spent commuting to and from the first place at which
5 an employee’s presence is required by the employer shall not be
6 considered to be a part of a day’s work, when the employee
7 commutes in a vehicle that is owned, leased, or subsidized by the
8 employer and is used for the purpose of ridesharing, as defined in
9 Section 522 of the Vehicle Code.

10 (c) This section does not affect, change, or limit an employer’s
11 liability under the workers’ compensation law.

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

13 511.5. (a) Notwithstanding Section 510 or any other law or
14 order of the Industrial Welfare Commission, an individual
15 nonexempt employee may work up to 10 hours per workday
16 without any obligation on the part of the employer to pay an
17 overtime rate of compensation, except as provided in subdivision
18 (b), if the employee requests this schedule in writing and the
19 employer approves the request. This shall be referred to as an
20 overtime exemption for an employee-selected flexible work
21 schedule. The flexible work schedule shall include all of the
22 following:

23 (1) A statement that the employer and employee participating
24 in the flexible work hour plan understand that work performed in
25 excess of 10 hours in a day or in excess of 40 hours in a week is
26 required to be compensated at the rate of one and one-half times
27 the regular rate of pay.

28 (2) A description of the flexible work hour plan.

29 (3) A statement that the flexible work hour plan has not been
30 made a condition of employment and that participation in the plan
31 is voluntary.

32 (4) The original signature of the employee and the employer or
33 authorized representative.

34 (b) If an employee-selected flexible work schedule is adopted,
35 the employer shall pay overtime at one and one-half times the
36 employee’s regular rate of pay for all hours worked over 40 hours
37 in a workweek or over 10 hours in a workday, whichever is the
38 greater number of hours. All work performed in excess of 12 hours
39 per workday and in excess of eight hours on a fifth, sixth, or

1 seventh day in the workweek shall be paid at double the employee's
2 regular rate of pay.

3 (c) An employer may inform its employees that it is willing to
4 consider employee requests to work an employee-selected flexible
5 work schedule, but shall not induce a request by promising an
6 employment benefit or threatening an employment detriment.

7 (d) An employee or employer may discontinue an
8 employee-selected flexible work schedule at any time by giving
9 written notice to the other party. The request will be effective the
10 first day of the next pay period or the fifth day after notice is given
11 if there are fewer than five days before the start of the next pay
12 period, unless otherwise agreed to by the employer and the
13 employee.

14 (e) This section does not apply to any employee covered by a
15 valid collective bargaining agreement or employed by the state, a
16 city, county, city and county, district, municipality, or other public,
17 quasi-public, or municipal corporation, or any political subdivision
18 of this state.

19 (f) This section shall be liberally construed to accomplish its
20 purposes.

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

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

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