

AMENDED IN SENATE JUNE 14, 2016

AMENDED IN ASSEMBLY MAY 14, 2015

AMENDED IN ASSEMBLY APRIL 6, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1066**

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**Introduced by Assembly Member Gonzalez**

February 26, 2015

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~~An act to amend Sections 45103 and 88003 of the Education Code, relating to classified employees.~~ *An act to amend Section 554 of, and to add Chapter 6 (commencing with Section 857) to Part 2 of Division 2 of, the Labor Code, relating to employment.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1066, as amended, Gonzalez. ~~Classified employees: short-term employees.~~ *Agricultural workers: wages, hours, and working conditions.*

*Existing law sets wage, hour, meal break requirements, and other working conditions for employees and requires an employer to pay overtime wages as specified to an employee who works in excess of a workday or workweek, as defined, and imposes criminal penalties for the violation of these requirements. Existing law exempts agricultural employees from these requirements. Under existing law, the function of the Department of Industrial Relations is to, among other things, foster, promote, and develop the welfare of the wage earners of California, to improve their working conditions, and to advance their opportunities for profitable employment.*

*This bill would remove the exemption for agricultural employees regarding hours, meal breaks, and other working conditions, including specified wage requirements, and would create a schedule that would*

*phase in overtime requirements for agricultural workers, as defined, over the course of 4 years, from 2019 to 2022, inclusive. Beginning January 1, 2022, the bill would require any work performed by a person, employed in an agricultural occupation, in excess of 12 hours in one day to be compensated at the rate of no less than twice the employee's regular rate of pay. The bill would authorize the Governor to delay the implementation of these overtime pay provisions if the Governor also suspends the implementation of a scheduled state minimum wage increase, as specified. The bill would require the Department of Industrial Relations to update a specified wage order for consistency with these provisions.*

*The bill would create a state-mandated local program by including agricultural employees as a class of employees protected by criminal penalties under existing law.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

~~(1) Existing law requires school districts and community college districts to employ persons for positions not requiring certification qualifications and to classify, as defined, these persons. These employees are generally known as classified employees. Existing law provides that substitute and short-term employees, as defined, employed and paid for less than 75% of a school year or college year, shall not be part of the classified service.~~

~~This bill would revise the definition of "short-term employee" to require that a short-term employee position not continue on a year-after-year basis.~~

~~To the extent that this bill would impose new duties on school districts and community college districts, it would constitute a state-mandated local program.~~

~~(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

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

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

1 SECTION 1. Section 554 of the Labor Code is amended to  
2 read:

3 554. (a) Sections 551 and 552 ~~shall do not apply to any cases~~  
4 of emergency ~~nor~~ or to work performed in the protection of life  
5 or property from loss or destruction, ~~nor~~ or to any common carrier  
6 engaged in or connected with the movement of trains. ~~This chapter,~~  
7 ~~with the exception of Section 558, shall not apply to any person~~  
8 ~~employed in an agricultural occupation, as defined in Order No.~~  
9 ~~14-80 (operative January 1, 1998) of the Industrial Welfare~~  
10 ~~Commission.~~ Nothing in this chapter shall be construed to prevent  
11 an accumulation of days of rest when the nature of the employment  
12 reasonably requires that the employee work seven or more  
13 consecutive days, if in each calendar month the employee receives  
14 days of rest equivalent to one day’s rest in seven. The requirement  
15 respecting the equivalent of one day’s rest in seven shall apply,  
16 notwithstanding the other provisions of this chapter relating to  
17 collective bargaining agreements, where the employer and a labor  
18 organization representing employees of the employer have entered  
19 into a valid collective bargaining agreement respecting the hours  
20 of work of the employees, unless the agreement expressly provides  
21 otherwise.

22 (b) In addition to the exceptions specified in subdivision (a),  
23 the Chief of the Division of Labor Standards Enforcement may,  
24 when in his or her judgment hardship will result, exempt any  
25 employer or employees from the provisions of Sections 551 and  
26 552.

27 SEC. 2. Chapter 6 (commencing with Section 857) is added to  
28 Part 2 of Division 2 of the Labor Code, to read:

29

30 CHAPTER 6. AGRICULTURE

31

32 857. This chapter shall be known and may be cited as the  
33 Phase-In Overtime for Agricultural Workers Act of 2016.

34 858. The Legislature finds and declares all of the following:

1 (a) *Agricultural employees engage in back-breaking work every*  
2 *day.*

3 (b) *Few occupations in today's America are as physically*  
4 *demanding and exhausting as agricultural work.*

5 (c) *In 1938, the United States Congress enacted the federal Fair*  
6 *Labor Standards Act of 1938 (29 U.S.C. Sec. 201 et seq.), which*  
7 *excluded agricultural workers from wage protections and overtime*  
8 *compensation requirements.*

9 (d) *It is the intent of the Legislature to enact the Phase-In*  
10 *Overtime for Agricultural Workers Act of 2016 to provide any*  
11 *person employed in an agricultural occupation in California, as*  
12 *defined in Order No. 14-2001 of the Industrial Welfare Commission*  
13 *(revised 07-2014) with an opportunity to earn overtime*  
14 *compensation under the same standards as millions of other*  
15 *Californians.*

16 859. *For purposes of this chapter, "employed in an agricultural*  
17 *occupation" has the same meaning as in Order No.14-2001 of the*  
18 *Industrial Welfare Commission (revised 07-2014).*

19 860. *Notwithstanding any other provision of law, including*  
20 *Chapter 1 (commencing with Section 500):*

21 (a) *Commencing January 1, 2019, any person employed in an*  
22 *agricultural occupation shall not be employed more than nine and*  
23 *one-half hours in any one workday or work in excess of 55 hours*  
24 *in any one workweek, unless the employee receives one and*  
25 *one-half times that employee's regular rate of pay for all hours*  
26 *worked over nine and one-half hours in any workday or over 55*  
27 *hours in any workweek.*

28 (b) *Commencing January 1, 2020, any person employed in an*  
29 *agricultural occupation shall not be employed more than nine*  
30 *hours in any one workday or work in excess of 50 hours in any*  
31 *one workweek, unless the employee receives one and one-half*  
32 *times that employee's regular rate of pay for all hours worked*  
33 *over nine hours in any workday or over 50 hours in any workweek.*

34 (c) *Commencing January 1, 2021, any person employed in an*  
35 *agricultural occupation shall not be employed more than eight*  
36 *and one-half hours in any one workday or work in excess of 45*  
37 *hours in any one workweek, unless the employee receives one and*  
38 *one-half times that employee's regular rate of pay for all hours*  
39 *worked over eight and one-half hours in any workday or over 45*  
40 *hours in any workweek.*

1 (d) Commencing January 1, 2022, any person employed in an  
2 agricultural occupation shall not be employed more than eight  
3 hours in any one workday or work in excess of 40 hours in any  
4 one workweek, unless the employee receives one and one-half  
5 times that employee's regular rate of pay for all hours worked  
6 over eight hours in any workday or over 40 hours in any workweek.

7 861. Except as set forth in Section 860 and subdivision (a) of  
8 Section 862, all other provisions of Chapter 1 (commencing with  
9 Section 500) regarding compensation for overtime work shall  
10 apply to workers in an agricultural occupation commencing  
11 January 1, 2017.

12 862. (a) Beginning January 1, 2022, and consistent with  
13 Section 510, any work performed by a person, employed in an  
14 agricultural occupation, in excess of 12 hours in one day shall be  
15 compensated at the rate of no less than twice the employee's  
16 regular rate of pay.

17 (b) Consistent with Section 861, notwithstanding subdivision  
18 (a) or Section 863, the other provisions of Section 510 shall be  
19 applicable to workers in an agricultural occupation commencing  
20 January 1, 2019.

21 863. (a) Notwithstanding Section 860 or 862, the Governor  
22 may temporarily suspend scheduled phase in overtime requirements  
23 set forth in Section 860, or subdivision (a) of Section 862 only if  
24 the Governor suspends scheduled minimum wage increases  
25 pursuant to clause (i) of subparagraph (A) of, and subparagraph  
26 (B) of, paragraph (3) of subdivision (d) of Section 1182.12.

27 (b) If the Governor makes a final determination to temporarily  
28 suspend scheduled phase in overtime requirements set forth in  
29 Section 860 or subdivision (a) of Section 862 for the following  
30 year, all implementation dates applicable to Section 860 and  
31 subdivision (a) of Section 862 that are suspended subsequent to  
32 the September 1 final determination date, consistent with clause  
33 (i) of subparagraph (A) of, and subparagraph (B) of, paragraph  
34 (3) of subdivision (d) of Section 1182.12, shall be postponed by  
35 an additional year, but the full implementation of the overtime  
36 requirements set forth in Section 860 or subdivision (a) of Section  
37 862 shall in no event be later than January 1, 2022. The  
38 Governor's temporary suspension under this section shall be by  
39 proclamation.

1 (c) *The Governor’s authority to suspend the scheduled overtime*  
 2 *requirements under this section shall end upon the phase in of the*  
 3 *overtime requirements contained in subdivision (d) of Section 860*  
 4 *or the phase in of the overtime requirements contained in*  
 5 *subdivision (a) of Section 862.*

6 864. *The Department of Industrial Relations shall update Wage*  
 7 *Order No. 14-2001 to be consistent with this chapter, except that*  
 8 *the Wage Order 14-2001 provision for payment of double the*  
 9 *employee’s regular rate of pay for all hours worked over eight*  
 10 *hours on the seventh day of work in the workweek shall continue*  
 11 *to apply.*

12 SEC. 3. *No reimbursement is required by this act pursuant to*  
 13 *Section 6 of Article XIII B of the California Constitution because*  
 14 *the only costs that may be incurred by a local agency or school*  
 15 *district will be incurred because this act creates a new crime or*  
 16 *infraction, eliminates a crime or infraction, or changes the penalty*  
 17 *for a crime or infraction, within the meaning of Section 17556 of*  
 18 *the Government Code, or changes the definition of a crime within*  
 19 *the meaning of Section 6 of Article XIII B of the California*  
 20 *Constitution.*

21 SECTION 1. ~~Section 45103 of the Education Code is amended~~  
 22 ~~to read:~~

23 ~~45103. (a) The governing board of a school district shall~~  
 24 ~~employ persons for positions not requiring certification~~  
 25 ~~qualifications. The governing board of a school district shall, except~~  
 26 ~~where Article 6 (commencing with Section 45240) or Section~~  
 27 ~~45318 applies, classify all of these employees and positions. The~~  
 28 ~~employees and positions shall be known as the classified service.~~

29 ~~(b) (1) Substitute and short-term employees, employed and~~  
 30 ~~paid for less than 75 percent of a school year, shall not be a part~~  
 31 ~~of the classified service.~~

32 ~~(2) Apprentices and professional experts employed on a~~  
 33 ~~temporary basis for a specific project, regardless of length of~~  
 34 ~~employment, shall not be a part of the classified service.~~

35 ~~(3) Full-time students employed part time, and part-time students~~  
 36 ~~employed part time in any college workstudy program, or in a~~  
 37 ~~work experience education program conducted by a community~~  
 38 ~~college district pursuant to Article 7 (commencing with Section~~  
 39 ~~51760) of Chapter 5 of Part 28 and that is financed by state or~~  
 40 ~~federal funds, shall not be a part of the classified service.~~

1 ~~(4) Part-time playground positions shall not be a part of the~~  
2 ~~classified service, where the employee is not otherwise employed~~  
3 ~~in a classified position. Part-time playground positions shall be~~  
4 ~~considered a part of the classified service when the employee in~~  
5 ~~the position also works in the same school district in a classified~~  
6 ~~position.~~

7 ~~(e) Unless otherwise permitted, a person whose position does~~  
8 ~~not require certification qualifications shall not be employed by~~  
9 ~~the governing board of a school district, except as authorized by~~  
10 ~~this section.~~

11 ~~(d) As used in this section:~~

12 ~~(1) “Seventy-five percent of a school year” means 195 working~~  
13 ~~days, including holidays, sick leave, vacation, and other leaves of~~  
14 ~~absence, irrespective of the number of hours worked per day.~~

15 ~~(2) “Short-term employee” means any person who is employed~~  
16 ~~to perform a service for the school district, upon the completion~~  
17 ~~of which the service required or similar services will not be~~  
18 ~~extended or needed on a continuing basis. Before employing a~~  
19 ~~short-term employee, the governing board of a school district, at~~  
20 ~~a regularly scheduled board meeting, shall specify the service~~  
21 ~~required to be performed by the employee pursuant to the definition~~  
22 ~~of “classification” in subdivision (a) of Section 45101, and shall~~  
23 ~~certify the ending date of the service. The ending date may be~~  
24 ~~shortened or extended by the governing board of the school district,~~  
25 ~~but shall not extend beyond 75 percent of a school year. A~~  
26 ~~short-term employee position shall not continue on a year-after-year~~  
27 ~~basis.~~

28 ~~(3) “Substitute employee” means any person employed to~~  
29 ~~replace any classified employee who is temporarily absent from~~  
30 ~~duty. In addition, if the school district is then engaged in a~~  
31 ~~procedure to hire a permanent employee to fill a vacancy in any~~  
32 ~~classified position, the governing board of the school district may~~  
33 ~~fill the vacancy through the employment, for not more than 60~~  
34 ~~calendar days, of one or more substitute employees, except to the~~  
35 ~~extent that a collective bargaining agreement then in effect provides~~  
36 ~~for a different period of time.~~

37 ~~(e) Employment of either full-time or part-time students in any~~  
38 ~~college workstudy program, or in a work experience education~~  
39 ~~program, shall not result in the displacement of classified personnel~~  
40 ~~or impair existing contracts for services.~~

1 ~~(f) This section shall apply only to school districts not~~  
2 ~~incorporating the merit system as outlined in Article 6~~  
3 ~~(commencing with Section 45240).~~

4 SEC. 2. ~~Section 88003 of the Education Code is amended to~~  
5 ~~read:~~

6 ~~88003. (a) The governing board of a community college district~~  
7 ~~shall employ persons for positions that are not academic positions.~~  
8 ~~The governing board, except where Article 3 (commencing with~~  
9 ~~Section 88060) or Section 88137 applies, shall classify all those~~  
10 ~~employees and positions. The employees and positions shall be~~  
11 ~~known as the classified service. Substitute and short-term~~  
12 ~~employees, employed and paid for less than 75 percent of a college~~  
13 ~~year, shall not be a part of the classified service. Part-time~~  
14 ~~playground positions, apprentices, and professional experts~~  
15 ~~employed on a temporary basis for a specific project, irrespective~~  
16 ~~of length of employment, shall not be a part of the classified~~  
17 ~~service. Full-time students employed part time, and part-time~~  
18 ~~students employed part time in any college work-study program,~~  
19 ~~or in a work experience education program conducted by a~~  
20 ~~community college district and that is financed by state or federal~~  
21 ~~funds, shall not be a part of the classified service. Unless otherwise~~  
22 ~~permitted, a person whose position does not require certification~~  
23 ~~qualifications shall not be employed by a governing board, except~~  
24 ~~as authorized by this section.~~

25 ~~(b) As used in this section:~~

26 ~~(1) “Seventy-five percent of a college year” means 195 working~~  
27 ~~days, including holidays, sick leave, vacation, and other leaves of~~  
28 ~~absences, irrespective of the number of hours worked per day.~~

29 ~~(2) “Short-term employee” means any person who is employed~~  
30 ~~to perform a service for the community college district, upon the~~  
31 ~~completion of which the service required or similar services will~~  
32 ~~not be extended or needed on a continuing basis. Before employing~~  
33 ~~a short-term employee, the governing board, at a regularly~~  
34 ~~scheduled board meeting, shall specify the service required to be~~  
35 ~~performed by the employee pursuant to the definition of~~  
36 ~~“classification” in subdivision (a) of Section 88001, and shall~~  
37 ~~certify the ending date of the service. The ending date may be~~  
38 ~~shortened or extended by the governing board, but shall not extend~~  
39 ~~beyond 75 percent of a college year. A short-term employee~~  
40 ~~position shall not continue on a year-after-year basis.~~

1 ~~(3) “Substitute employee” means any person employed to~~  
2 ~~replace any classified employee who is temporarily absent from~~  
3 ~~duty. In addition, if the community college district is then engaged~~  
4 ~~in a procedure to hire a permanent employee to fill a vacancy in~~  
5 ~~any classified position, the governing board may fill the vacancy~~  
6 ~~through the employment, for not more than 60 calendar days, of~~  
7 ~~one or more substitute employees, except to the extent that a~~  
8 ~~collective bargaining agreement then in effect provides for a~~  
9 ~~different period of time.~~

10 ~~(e) Employment of either full-time or part-time students in any~~  
11 ~~college work-study program, or in a work experience education~~  
12 ~~program, shall not result in the displacement of classified personnel~~  
13 ~~or impair existing contracts for services.~~

14 ~~(d) This section shall apply only to community college districts~~  
15 ~~not incorporating the merit system as outlined in Article 3~~  
16 ~~(commencing with Section 88060).~~

17 ~~SEC. 3. If the Commission on State Mandates determines that~~  
18 ~~this act contains costs mandated by the state, reimbursement to~~  
19 ~~local agencies and school districts for those costs shall be made~~  
20 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~  
21 ~~4 of Title 2 of the Government Code.~~