

ASSEMBLY BILL

No. 2418

Introduced by Assembly Member Jones

February 19, 2016

An act to amend Section 204.3 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2418, as introduced, Jones. Compensating time off.

Existing law authorizes an employee to receive compensating time off in lieu of overtime pay under specified conditions, including, but not limited to, that the compensating time off is provided pursuant to a collective bargaining agreement, or other written agreement.

This bill would make technical, nonsubstantive changes to these provisions.

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

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

1 SECTION 1. Section 204.3 of the Labor Code is amended to
2 read:
3 204.3. (a) An employee may receive, in lieu of overtime
4 compensation, compensating time off at a rate of not less than one
5 and one-half hours for each hour of employment for which
6 overtime compensation is required by law. If an hour of
7 employment would otherwise be compensable at a rate of more
8 than one and one-half times the employee's regular rate of

1 compensation, then the employee may receive compensating time
2 off commensurate with the higher rate.

3 (b) An employer may provide compensating time off under
4 subdivision (a) if the following four conditions are met:

5 (1) The compensating time off is provided pursuant to applicable
6 provisions of a collective bargaining agreement, memorandum of
7 understanding, or other written agreement between the employer
8 and the duly authorized representative of the employer's
9 employees; or, in the case of employees not covered by the
10 aforementioned agreement or memorandum of understanding,
11 pursuant to a written agreement entered into between the employer
12 and employee before the performance of the work.

13 (2) The employee has not accrued compensating time in excess
14 of the limit prescribed by subdivision (c).

15 (3) The employee has requested, in writing, compensating time
16 off in lieu of overtime compensation.

17 (4) The employee is regularly scheduled to work ~~no less~~ *fewer*
18 than 40 hours in a workweek.

19 (c) (1) An employee may not accrue more than 240 hours of
20 compensating time off. ~~Any~~ *An* employee who has accrued 240
21 hours of compensating time off shall, for any additional overtime
22 hours of work, be paid overtime compensation.

23 (2) If compensation is paid to an employee for accrued
24 compensating time off, the compensation shall be paid at the
25 regular rate earned by the employee at the time the employee
26 receives payment.

27 (d) An employee who has accrued compensating time off
28 authorized to be provided under subdivision (a) shall, upon
29 termination of employment, be paid for the unused compensating
30 time at a rate of compensation not less than the average regular
31 rate received by the employee during the last three years of the
32 employee's employment, or the final regular rate received by the
33 employee, whichever is higher.

34 (e) (1) An employee who has accrued compensating time off
35 authorized to be provided under subdivision (a), and who has
36 requested the use of that compensating time, shall be permitted by
37 the employee's employer to use the time within a reasonable period
38 after making the request, if the use of the compensating time does
39 not unduly disrupt the operations of the employer.

1 (2) Upon the request of an employee, the employer shall pay
2 overtime compensation in cash in lieu of compensating time off
3 for any compensating time off that has accrued for at least two pay
4 periods.

5 (3) For purposes of determining whether a request to use
6 compensating time has been granted within a reasonable period,
7 the following factors shall be relevant:

8 (A) The normal schedule of work.

9 (B) Anticipated peak workloads based on past experience.

10 (C) Emergency requirements for staff and services.

11 (D) The availability of qualified substitute staff.

12 (f) Every employer shall keep records that accurately reflect
13 compensating time earned and used.

14 (g) For purposes of this section, the terms “compensating time”
15 and “compensating time off” mean hours during which an
16 employee is not working, which are not counted as hours worked
17 during the applicable workweek or other work period for purposes
18 of overtime compensation, and for which the employee is
19 compensated at the employee’s regular rate.

20 (h) This section shall not apply to any employee exempt from
21 the overtime provisions of the California wage orders.

22 (i) This section shall not apply to any employee who is subject
23 to the following wage orders of the Industrial Welfare Commission:
24 Orders No. 8-80, 13-80, and 14-80 (affecting industries handling
25 products after harvest, industries preparing agricultural products
26 for market on the farm, and agricultural occupations), Order No.
27 3-80 (affecting the canning, freezing, and preserving industry),
28 Orders No. 5-89 and 10-89 (affecting the public housekeeping and
29 amusement and recreation industries), and Order No. 1-89
30 (affecting the manufacturing industry).