

AMENDED IN ASSEMBLY JUNE 1, 2016

AMENDED IN ASSEMBLY MARCH 30, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2757

**Introduced by Assembly Members Gonzalez, Bonta,
Cristina Garcia, and Roger Hernández**

(Principal coauthor: Senator Hall)

**(Coauthors: Assembly Members Burke, Calderon, Campos, Chiu,
Chu, Gipson, Jones-Sawyer, Lopez, McCarty, Medina, Santiago,
Mark Stone, Thurmond, and Ting)**

(Coauthors: Senators *Allen*, Beall, Block, Hancock, Lara, Leno, Liu,
and Mitchell)

February 19, 2016

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 2757, as amended, Gonzalez. 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 2017 to 2020, inclusive. Beginning January 1, 2020, 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. *Under the bill, these overtime pay provisions would be phased in from 2019 to 2022, inclusive, for employers who employ 25 or fewer employees. 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.

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 do not apply to cases of
- 4 emergency or to work performed in the protection of life or
- 5 property from loss or destruction, or to any common carrier
- 6 engaged in or connected with the movement of trains. Nothing in
- 7 this chapter shall be construed to prevent an accumulation of days
- 8 of rest when the nature of the employment reasonably requires
- 9 that the employee work seven or more consecutive days, if in each

1 calendar month the employee receives days of rest equivalent to
2 one day's rest in seven. The requirement respecting the equivalent
3 of one day's rest in seven shall apply, notwithstanding the other
4 provisions of this chapter relating to collective bargaining
5 agreements, where the employer and a labor organization
6 representing employees of the employer have entered into a valid
7 collective bargaining agreement respecting the hours of work of
8 the employees, unless the agreement expressly provides otherwise.

9 (b) In addition to the exceptions specified in subdivision (a),
10 the Chief of the Division of Labor Standards Enforcement may,
11 when in his or her judgment hardship will result, exempt any
12 employer or employees from the provisions of Sections 551 and
13 552.

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

16
17 CHAPTER 6. AGRICULTURE
18

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

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

22 (a) Agricultural employees engage in back-breaking work every
23 day.

24 (b) Few occupations in today's America are as physically
25 demanding and exhausting as agricultural work.

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

30 (d) It is the intent of the Legislature to enact the Phase-In
31 Overtime for Agricultural Workers Act of 2016 to provide any
32 person employed in an agricultural occupation in California, as
33 defined in Order No. 14-2001 of the Industrial Welfare
34 Commission (revised 07-2014) with an opportunity to earn
35 overtime compensation under the same standards as millions of
36 other Californians.

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

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

3 (a) (1) Commencing July 1, 2017, *except as provided in*
4 *paragraph (2)*, any person employed in an agricultural occupation
5 shall not be employed more than nine and one-half hours in any
6 one workday or work in excess of 55 hours in any one workweek,
7 unless the employee receives one and one-half times that
8 employee's regular rate of pay for all hours worked over nine and
9 one-half hours in any workday or over 55 hours in any workweek.

10 (2) *This subdivision shall apply to an employer who employs*
11 *25 or fewer employees commencing January 1, 2019.*

12 (b) (1) Commencing January 1, 2018, *except as provided in*
13 *paragraph (2)*, any person employed in an agricultural occupation
14 shall not be employed more than nine hours in any one workday
15 or work in excess of 50 hours in any one workweek, unless the
16 employee receives one and one-half times that employee's regular
17 rate of pay for all hours worked over nine hours in any workday
18 or over 50 hours in any workweek.

19 (2) *This subdivision shall apply to an employer who employs*
20 *25 or fewer employees commencing January 1, 2020.*

21 (c) (1) Commencing January 1, 2019, *except as provided in*
22 *paragraph (2)*, any person employed in an agricultural occupation
23 shall not be employed more than eight and one-half hours in any
24 one workday or work in excess of 45 hours in any one workweek,
25 unless the employee receives one and one-half times that
26 employee's regular rate of pay for all hours worked over eight and
27 one-half hours in any workday or over 45 hours in any workweek.

28 (2) *This subdivision shall apply to an employer who employs*
29 *25 or fewer employees commencing January 1, 2021.*

30 (d) (1) Commencing January 1, 2020, *except as provided in*
31 *paragraph (2)*, any person employed in an agricultural occupation
32 shall not be employed more than eight hours in any one workday
33 or work in excess of 40 hours in any one workweek, unless the
34 employee receives one and one-half times that employee's regular
35 rate of pay for all hours worked over eight hours in any workday
36 or over 40 hours in any workweek.

37 (2) *This subdivision shall apply to an employer who employs*
38 *25 or fewer employees commencing January 1, 2022.*

39 861. Except as set forth in Section 860 and subdivision (a) of
40 Section 862, all other provisions of Chapter 1 (commencing with

1 Section 500) regarding compensation for overtime work shall apply
2 to workers in an agricultural occupation commencing January 1,
3 2017.

4 862. (a) Beginning January 1, 2020, *except as provided in*
5 *subdivision (c)*, and consistent with Section 510, any work
6 performed by a person, employed in an agricultural occupation,
7 in excess of 12 hours in one day shall be compensated at the rate
8 of no less than twice the employee's regular rate of pay.

9 (b) Consistent with Section 861, notwithstanding subdivision
10 ~~(a)~~, (a) or Section 863, the other provisions of Section 510 shall
11 be applicable to workers in an agricultural occupation commencing
12 January 1, 2017.

13 (c) *Subdivision (a) shall apply to an employer who employs 25*
14 *or fewer employees commencing January 1, 2022.*

15 863. (a) *Notwithstanding Section 860 or 862, the Governor*
16 *may temporarily suspend scheduled phase in overtime requirements*
17 *set forth in subdivision (b), (c), or (d) of Section 860, or subdivision*
18 *(a) or (c) of Section 862 only if the Governor suspends scheduled*
19 *minimum wage increases pursuant to clause (i) of subparagraph*
20 *(A) of, and subparagraph (B) of, paragraph (3) of subdivision (d)*
21 *of Section 1182.12.*

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

35 (c) *The Governor's authority to suspend the scheduled overtime*
36 *requirements under this section shall end upon the phase in of the*
37 *overtime requirements contained in subdivision (d) of Section 860,*
38 *the phase in of the overtime requirements contained in subdivision*
39 *(c) of Section 862, or on January 1, 2022, whichever comes first.*

1 ~~863.~~

2 864. The Department of Industrial Relations shall update Wage
3 Order No. 14-2001 to be consistent with this chapter.

4 SEC. 3. No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 the only costs that may be incurred by a local agency or school
7 district will be incurred because this act creates a new crime or
8 infraction, eliminates a crime or infraction, or changes the penalty
9 for a crime or infraction, within the meaning of Section 17556 of
10 the Government Code, or changes the definition of a crime within
11 the meaning of Section 6 of Article XIII B of the California
12 Constitution.