

AMENDED IN ASSEMBLY JUNE 2, 2016

AMENDED IN ASSEMBLY JUNE 1, 2016

AMENDED IN ASSEMBLY MARCH 30, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2757**

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**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

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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~~, ~~2019 to 2022~~, inclusive. Beginning January 1, ~~2020~~, ~~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. ~~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

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

10 (b) In addition to the exceptions specified in subdivision (a),  
11 the Chief of the Division of Labor Standards Enforcement may,  
12 when in his or her judgment hardship will result, exempt any  
13 employer or employees from the provisions of Sections 551 and  
14 552.

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

17  
18 CHAPTER 6. AGRICULTURE  
19

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

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

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

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

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

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

38 859. For purposes of this chapter, "employed in an agricultural  
39 occupation" has the same meaning as in Order No.14-2001 of the  
40 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), January 1, 2019, any person employed in an~~  
5 agricultural occupation shall not be employed more than nine and  
6 one-half hours in any one workday or work in excess of 55 hours  
7 in any one workweek, unless the employee receives one and  
8 one-half times that employee's regular rate of pay for all hours  
9 worked over nine and one-half hours in any workday or over 55  
10 hours in any workweek.

11 ~~(2) This subdivision shall apply to an employer who employs~~  
12 ~~25 or fewer employees commencing January 1, 2019.~~

13 ~~(b) (1) Commencing January 1, 2018, except as provided in~~  
14 ~~paragraph (2), January 1, 2020, any person employed in an~~  
15 agricultural occupation shall not be employed more than nine hours  
16 in any one workday or work in excess of 50 hours in any one  
17 workweek, unless the employee receives one and one-half times  
18 that employee's regular rate of pay for all hours worked over nine  
19 hours in any workday or over 50 hours in any workweek.

20 ~~(2) This subdivision shall apply to an employer who employs~~  
21 ~~25 or fewer employees commencing January 1, 2020.~~

22 ~~(c) (1) Commencing January 1, 2019, except as provided in~~  
23 ~~paragraph (2), January 1, 2021, any person employed in an~~  
24 agricultural occupation shall not be employed more than eight and  
25 one-half hours in any one workday or work in excess of 45 hours  
26 in any one workweek, unless the employee receives one and  
27 one-half times that employee's regular rate of pay for all hours  
28 worked over eight and one-half hours in any workday or over 45  
29 hours in any workweek.

30 ~~(2) This subdivision shall apply to an employer who employs~~  
31 ~~25 or fewer employees commencing January 1, 2021.~~

32 ~~(d) (1) Commencing January 1, 2020, except as provided in~~  
33 ~~paragraph (2), January 1, 2022, any person employed in an~~  
34 agricultural occupation shall not be employed more than eight  
35 hours in any one workday or work in excess of 40 hours in any  
36 one workweek, unless the employee receives one and one-half  
37 times that employee's regular rate of pay for all hours worked over  
38 eight hours in any workday or over 40 hours in any workweek.

39 ~~(2) This subdivision shall apply to an employer who employs~~  
40 ~~25 or fewer employees commencing January 1, 2022.~~

1 861. Except as set forth in Section 860 and subdivision (a) of  
2 Section 862, all other provisions of Chapter 1 (commencing with  
3 Section 500) regarding compensation for overtime work shall apply  
4 to workers in an agricultural occupation commencing January 1,  
5 2017.

6 862. (a) ~~Beginning January 1, 2020, except as provided in~~  
7 ~~subdivision (e), January 1, 2022,~~ and consistent with Section 510,  
8 any work performed by a person, employed in an agricultural  
9 occupation, in excess of 12 hours in one day shall be compensated  
10 at the rate of no less than twice the employee's regular rate of pay.

11 (b) Consistent with Section 861, notwithstanding subdivision  
12 (a) or Section 863, the other provisions of Section 510 shall be  
13 applicable to workers in an agricultural occupation commencing  
14 January 1, ~~2017~~ 2019.

15 ~~(c) Subdivision (a) shall apply to an employer who employs 25~~  
16 ~~or fewer employees commencing January 1, 2022.~~

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

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

38 (c) The Governor's authority to suspend the scheduled overtime  
39 requirements under this section shall end upon the phase in of the  
40 overtime requirements contained in subdivision (d) of Section ~~860~~;

1 860 or the phase in of the overtime requirements contained in  
2 subdivision (e) of Section 862, or on January 1, 2022, whichever  
3 comes first. (a) of Section 862.

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

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