

AMENDED IN SENATE JANUARY 4, 2016

AMENDED IN SENATE APRIL 16, 2015

SENATE BILL

No. 368

Introduced by Senator Berryhill

February 24, 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

SB 368, as amended, Berryhill. Employment: work hours.

Existing law, with certain exceptions, establishes 8 hours as a day's work and a 40-hour ~~workweek~~, *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 enact the California Workplace Flexibility Act of ~~2015~~: 2016. The 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~~, *workweek* and would allow the employer to implement this schedule without the obligation to pay overtime compensation for those additional hours in a workday. The bill would prescribe a method for calculating the payment of overtime for hours worked in excess of the permitted amounts and would establish requirements for termination of these agreements. The bill would except from its provisions employees covered by collective bargaining and public employees, as specified. The bill would 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 California Workplace Flexibility Act of ~~2015~~ 2016.

3 SEC. 2. The Legislature finds and declares all of the following:

4 (a) California businesses and their workers suffer from outdated
5 and 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 a California employer to allow
12 an 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, large, small, and micro-employers do not
15 have the flexibility to offer their employees the opportunity to take
16 advantage of a flexible work schedule that would benefit the
17 workers and their families.

18 (e) Permitting employees to elect to work four 10-hour days per
19 week without the payment of overtime would allow those
20 employees to spend much-needed time with their families, lessen
21 traffic congestion on our crowded roads and highways, allow
22 workers to spend one day a week on personal matters, such as
23 volunteering at a child’s school, scheduling medical appointments,
24 and attending to other important family matters that often are
25 difficult to schedule with a five-days-per-week, eight-hours-per-day
26 schedule.

27 (f) It is the intent of the Legislature in enacting the California
28 Workplace Flexibility Act of ~~2015~~ 2016 to protect workers as
29 follows:

30 (1) An employee may not be forced to work more than eight
31 hours in a day without receiving overtime, but, instead, he or she
32 may request a flexible work schedule of up to four 10-hour days
33 per week and the employer may agree to this schedule without

1 having to pay overtime for the 9th and 10th hours worked per day
2 in that schedule.

3 (2) The employer will be required to pay overtime rates after
4 10 work hours in a day for workers who have chosen a flexible
5 schedule pursuant to this act.

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

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

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

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

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

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

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

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

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

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

7 (c) This section does not affect, change, or limit an employer's
8 liability under the workers' compensation law.

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

10 511.5. (a) Notwithstanding Section 511 or any other law or
11 order of the Industrial Welfare Commission, an individual
12 nonexempt employee may work up to 10 hours per workday
13 without any obligation on the part of the employer to pay an
14 overtime rate of compensation, except as provided in subdivision
15 (b), if the employee requests this schedule in writing and the
16 employer approves the request. This shall be referred to as an
17 overtime exemption for an employee-selected flexible work
18 schedule.

19 (b) If an employee-selected flexible work schedule is adopted
20 pursuant to subdivision (a), the employer shall pay overtime at
21 one and one-half times the employee's regular rate of pay for all
22 hours worked over 40 hours in a workweek or over 10 hours in a
23 workday, whichever is the greater number of hours. All work
24 performed in excess of 12 hours per workday and in excess of
25 eight hours on a fifth, sixth, or seventh day in the workweek shall
26 be paid at double the employee's regular rate of pay.

27 (c) The employer may inform its employees that it is willing to
28 consider an employee request to work an employee-selected
29 flexible work schedule, but shall not induce a request by promising
30 an employment benefit or threatening an employment detriment.

31 (d) The employee or employer may discontinue the
32 employee-selected flexible work schedule at any time by giving
33 written notice to the other party. The request will be effective the
34 first day of the next pay period or the fifth day after notice is given
35 if there are fewer than five days before the start of the next pay
36 period, unless otherwise agreed to by the employer and the
37 employee.

38 (e) This section does not apply to any employee covered by a
39 valid collective bargaining agreement or employed by the state, a
40 city, county, city and county, district, municipality, or other public,

1 quasi-public, or municipal corporation, or any political subdivision
2 of this state.

3 (f) This section shall be liberally construed to accomplish its
4 purposes.

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

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

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