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**Introduced by Senator Berryhill**

February 10, 2016

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An act to amend Section 511 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 985, as introduced, Berryhill. Alternative workweek schedule.

Existing law authorizes an employer to propose a regularly scheduled alternative workweek, as specified, that will be adopted if it receives approval in a secret ballot election by at least  $\frac{2}{3}$  of affected employees in a work unit.

This bill would make nonsubstantive changes to those 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 511 of the Labor Code is amended to  
2     read:  
3     511. (a) Upon the proposal of an employer, the employees of  
4     an employer may adopt a regularly scheduled alternative workweek  
5     that authorizes work by the affected employees for no longer than  
6     10 hours per day within a 40-hour workweek without the payment  
7     to the affected employees of an overtime rate of compensation  
8     pursuant to this section. A proposal to adopt an alternative  
9     workweek schedule shall be deemed adopted only if it receives  
10    approval in a secret ballot election by at least two-thirds of affected  
11    employees in a readily identifiable work unit. The regularly  
12    scheduled alternative workweek proposed by an employer for

1 adoption by employees may be a single work schedule that would  
2 become the standard schedule for workers in the work unit, or a  
3 menu of work schedule options, from which each employee in the  
4 unit would be entitled to choose. Notwithstanding subdivision (c)  
5 of Section 500, the menu of work schedule options may include a  
6 regular schedule of eight-hour days that are compensated in  
7 accordance with subdivision (a) of Section 510. Employees who  
8 adopt a menu of work schedule options may, with employer  
9 consent, move from one schedule option to another on a weekly  
10 basis.

11 (b) An affected employee working longer than eight ~~hours~~ *hours*,  
12 but not more than 12 hours in a ~~day~~ *day*, pursuant to an alternative  
13 workweek schedule adopted pursuant to this section shall be paid  
14 an overtime rate of compensation of no less than one and one-half  
15 times the regular rate of pay of the employee for any work in excess  
16 of the regularly scheduled hours established by the alternative  
17 workweek agreement and for any work in excess of 40 hours per  
18 week. An overtime rate of compensation of no less than double  
19 the regular rate of pay of the employee shall be paid for any work  
20 in excess of 12 hours per day and for any work in excess of eight  
21 hours on those days worked beyond the regularly scheduled  
22 workdays established by the alternative workweek agreement.  
23 Nothing in this section requires an employer to combine more than  
24 one rate of overtime compensation in order to calculate the amount  
25 to be paid to an employee for any hour of overtime work.

26 (c) An employer shall not reduce an employee's regular rate of  
27 hourly pay as a result of the adoption, repeal, or nullification of  
28 an alternative workweek schedule.

29 (d) An employer shall make a reasonable effort to find a work  
30 schedule not to exceed eight hours in a workday, in order to  
31 accommodate any affected employee who was eligible to vote in  
32 an election authorized by this section and ~~who~~ is unable to work  
33 the alternative schedule hours established as the result of that  
34 election. An employer shall be permitted to provide a work  
35 schedule not to exceed eight hours in a workday to accommodate  
36 any employee who was hired after the date of the election and who  
37 is unable to work the alternative schedule established as the result  
38 of that election. An employer shall explore any available reasonable  
39 alternative means of accommodating the religious belief or  
40 observance of an affected employee that conflicts with an adopted

1 alternative workweek schedule, in the manner provided by  
2 subdivision (j) of Section 12940 of the Government Code.

3 (e) The results of any election conducted pursuant to this section  
4 shall be reported by an employer to the Division of Labor Standards  
5 Enforcement within 30 days after the results are final.

6 (f) Any type of alternative workweek schedule that is authorized  
7 by this code and that was in effect on January 1, 2000, may be  
8 repealed by the affected employees pursuant to this section. Any  
9 alternative workweek schedule that was adopted pursuant to Wage  
10 Order Number 1, 4, 5, 7, or 9 of the Industrial Welfare Commission  
11 is null and void, except for an alternative workweek providing for  
12 a regular schedule of no more than 10 hours' work in a workday  
13 that was adopted by a two-thirds vote of affected employees in a  
14 secret ballot election pursuant to wage orders of the Industrial  
15 Welfare Commission in effect prior to 1998. This subdivision does  
16 not apply to exemptions authorized pursuant to Section 515.

17 (g) Notwithstanding subdivision (f), an alternative workweek  
18 schedule in the health care industry adopted by a two-thirds vote  
19 of affected employees in a secret ballot election pursuant to Wage  
20 Order Numbers 4 and 5 in effect prior to ~~1998~~ 1998, that provided  
21 for workdays exceeding 10 hours but not exceeding 12 hours in a  
22 day without the payment of overtime ~~compensation~~ compensation,  
23 shall be valid until July 1, 2000. An employer in the health care  
24 industry shall make a reasonable effort to accommodate any  
25 employee in the health care industry who is unable to work the  
26 alternative schedule established as the result of a valid election  
27 held in accordance with provisions of Wage Order Number 4 or  
28 5 that were in effect prior to 1998.

29 (h) Notwithstanding subdivision (f), if an employee is  
30 voluntarily working an alternative workweek schedule providing  
31 for a regular work schedule of not more than 10 hours' work in a  
32 workday as of July 1, 1999, an employee may continue to work  
33 that alternative workweek schedule without the entitlement of the  
34 payment of daily overtime compensation for the hours provided  
35 in that schedule if the employer approves a written request of the  
36 employee to work that schedule.

37 (i) For purposes of this section, "work unit" includes a division,  
38 a department, a job classification, a shift, a separate physical  
39 location, or a recognized subdivision thereof. A work unit may

- 1 consist of an individual employee as long as the criteria for an
- 2 identifiable work unit in this section is met.

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