

Senate Concurrent Resolution No. 54

RESOLUTION CHAPTER 108

Senate Concurrent Resolution No. 54—Relative to employment compensation.

[Filed with Secretary of State September 12, 1997.]

LEGISLATIVE COUNSEL'S DIGEST

SCR 54, Lockyer. Employment: overtime compensation.

Existing law establishes the Industrial Welfare Commission and authorizes the commission to adopt rules, orders, and regulations governing the hours and conditions of employment in the various occupations, trades, and industries in which employees are employed in California. Existing law also provides that 8 hours of labor constitutes a day's work, as specified.

This measure would declare that the action of the commission in amending certain wage orders to eliminate the requirement to pay overtime compensation for work in excess of 8 hours per day is in conflict with the intent of the Legislature, exceeds the commission's authority, eliminates certain employee protections, and reduces the number of employees subject to other specified provisions of law.

WHEREAS, In 1995, Governor Wilson sponsored Assembly Bill 398 (AB 398) which proposed to eliminate the requirement of state law that an overtime rate of compensation be paid to an employee for work in excess of eight hours per day and proposed instead to conform California's overtime compensation standard to the standard of the federal Fair Labor Standards Act of 1938, which requires an overtime rate of compensation to be paid to an employee only for work in excess of 40 hours per week; and

WHEREAS, AB 398, as proposed by Governor Wilson, was not enacted by the Legislature; and

WHEREAS, At the request of Governor Wilson, the Industrial Welfare Commission on April 11, 1997, amended Wage Orders Nos. 7-80, 1-89, 4-89, 5-89, and 9-90 to eliminate the daily overtime standard and instead to conform the overtime standard of those orders to the overtime standard of the federal Fair Labor Standards Act of 1938; and

WHEREAS, The Legislature, in adopting Sections 1182.5, 1182.6, 1182.7, 1182.9, and 1183.5 of the Labor Code, only approved limited exceptions to the eight-hour-day standard of Section 510 of the Labor Code contained in Wage Orders Nos. 7-80, 1-89, 4-89, 5-89, and 9-90, as previously adopted by the Industrial Welfare Commission, and



afforded additional statutory protection for employees subject to those exceptions; and

WHEREAS, On June 27, 1997, the Superior Court for the City and County of San Francisco determined that the actions of the Industrial Welfare Commission were valid, and stated that, “The Legislative history indicates to this court that there is no basis to conclude that I.W.C. was not free under Californial law to modify its Wage Order even if the modification renders certain statutes unnecessary”; and

WHEREAS, The Legislature enacts statutes in recognition of the time-honored rule of law that no administrative agency may impair or eliminate the scope of statutory provisions; and

WHEREAS, The Legislature specifically deleted the amount of \$274,000 from the Budget Act of 1996, which had been proposed for use by the Industrial Welfare Commission to amend its wage orders to eliminate daily overtime and to require overtime to be paid only when the total hours worked per week exceeds 40 hours; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Industrial Welfare Commission acted contrary to the intent of the Legislature and in excess of the authority of the Industrial Welfare Commission in eliminating daily overtime from Wage Orders Nos. 7-80, 1-89, 4-89, 5-89, and 9-90, eliminating the protection afforded employees under Section 1182.5 and subdivision (b) of Section 1183.5 of the Labor Code, and reducing the number of employees afforded protection under the other provisions of Section 1183.5 of the Labor Code; and be it further

Resolved, That the Secretary of the Senate transmit a copy of this resolution to the Industrial Welfare Commission.

