

ASSEMBLY BILL

No. 60

Introduced by Assembly Member Knox

December 7, 1998

An act to amend Section 510 of, to add Sections 511, 512, 513, 514, and 557 to, and to repeal Section 1183.5 of, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 60, as introduced, Knox. Employment: overtime.

Existing law provides that 8 hours of labor constitute a day's work unless it is otherwise expressly stipulated by the parties to a contract.

This bill would delete the authority of parties to a contract to otherwise expressly stipulate the number of hours that constitute a day's work. The bill would provide that, except for an employee working pursuant to an alternative workweek schedule, hours worked in excess of 8 hours in one day are to be compensated at the rate of 1 and $\frac{1}{2}$ times the regular rate of pay of an employee, and hours worked in excess of 12 hours in one day are to be compensated at the rate of twice the regular rate of pay of an employee.

This bill would make an employer, or other person acting on behalf of an employer, subject to prescribed civil penalties for the payment of a wage to an employee that is in violation of the requirement to pay for overtime work established by the bill. The bill would authorize the Labor Commissioner to issue citations for violations of the bill's provisions and would

prescribe a procedure by which the cited employer or other person may contest the proposed assessment of a civil penalty.

Under an existing statute, any employer who intends to use a flexible scheduling technique, as permitted by wage order of the commission, is required to make full written disclosure to the affected employees concerning certain matters of the flexible schedule, as specified. Existing wage orders of the commission specify the rate of overtime compensation required to be paid to an employee for work in excess of 40 hours per week. Other existing provisions of those wage orders provide that no employer is in violation of those overtime provisions if the employees of the employer have adopted a voluntary written agreement that satisfies specified criteria.

This bill would repeal that statute and instead codify the authority of the employees of an employer to adopt an alternative workweek schedule that permits work by affected employees for 10 hours per day without the payment to the affected employees of an overtime rate of compensation. The bill would provide that an employee working pursuant to an alternative workweek schedule is required to be paid an overtime rate of compensation of 1 and $\frac{1}{2}$ the regular rate of pay of the employee for work in excess of 10 hours per day and an overtime rate of compensation of double the regular rate of pay of the employee for any work in excess of 12 hours per day.

The bill would specify the procedures for the submission to the employees by the employer of the proposal to adopt the alternative workweek schedule. The bill also would authorize the affected employees to vote to repeal an adopted or existing alternative workweek schedule. The bill would establish the procedures for conducting a secret ballot election to adopt or repeal an alternative workweek schedule.

Existing wage orders of the commission prohibit an employer from employing an employee for a work period of more than 5 hours per day without providing the employee with a meal period of not less than 30 minutes, with the exception that if the total work period per day of the employee is no more than 6 hours, the meal period may be



waived by mutual consent of both the employer and employee.

This bill would codify that prohibition and also would further prohibit an employer from employing an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.

The bill would provide that, if an employer approves the written request of an employee to make up work time that is lost as a result of a personal obligation of the employee, the first 4 hours of that makeup work, if performed in the same workweek in which the time was lost, may not be counted towards computing the total number of hours worked in a day for purposes of specified overtime requirements.

Existing wage orders of the commission provide that no person employed in an administrative, executive, or professional capacity is required by those wage orders to be compensated for overtime work. Those existing wage orders define an employee as employed in an administrative, executive, or professional capacity if, among other things, the employee is engaged in work that is primarily intellectual, managerial, or creative, and which requires exercise of discretion and independent judgment and the employee receives compensation of not less than a specified amount per month.

This bill would increase the monthly compensation amount that an employee would be required to receive in order to qualify as an administrative, executive, or professional and would codify that exception from the overtime requirements.

Since violation of these provisions would, under existing law, constitute a misdemeanor, the bill would impose a state-mandated local program.

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. This act shall be known and may be cited
2 as the “Eight-Hour-Day Preservation and Workplace
3 Flexibility Act of 1999.”

4 SEC. 2. The Legislature hereby finds and declares all
5 of the following:

6 (a) The eight-hour workday is the mainstay of
7 protection for California’s working people, and has been
8 for over 80 years.

9 (b) In 1911, California enacted the first daily overtime
10 law setting the eight-hour daily standard, long before the
11 federal government enacted overtime protections for
12 workers.

13 (c) Without the eight-hour limitation, many
14 employers would lengthen the workday to 12 or more
15 hours, resulting in extreme fatigue and stress to workers.

16 (d) Ending daily overtime would result in a substantial
17 pay cut for California workers who currently receive
18 daily overtime.

19 (e) Numerous studies have linked long work hours to
20 increased rates of accident and injury.

21 (f) Family life suffers when either or both parents are
22 kept away from home for an extended period of time on
23 a daily basis.

24 (g) In 1998 the Industrial Welfare Commission
25 adopted wage orders that deleted the requirement to pay
26 premium wages after eight hours of work a day.

27 (h) Therefore, the Legislature affirms the importance
28 of the eight-hour workday, declares that it should be
29 protected, and reaffirms the state’s unwavering
30 commitment to upholding the eight-hour workday as a
31 fundamental protection for working people.

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

34 510. (a) Eight hours of labor constitutes a day’s work;
35 ~~unless it is otherwise expressly stipulated by the parties to~~
36 ~~a contract. Time and hours worked in excess of eight~~
37 ~~hours in one day shall be compensated at the rate of one~~
38 ~~and one-half times the regular rate of pay of an employee,~~



1 *and hours worked in excess of 12 hours in one day shall be*
2 *compensated at the rate of twice the regular rate of pay*
3 *of an employee. The requirements of this subdivision do*
4 *not apply to the payment of overtime compensation to an*
5 *employee working pursuant to an alternative workweek*
6 *schedule adopted pursuant to Section 511.*

7 (b) Time spent commuting to and from the first place
8 at which an employee's presence is required by the
9 employer shall not be considered to be a part of a day's
10 work, when the employee commutes in a vehicle *that is*
11 owned, leased, or subsidized by the employer *and is used*
12 for the purpose of ridesharing, as defined in Section 522
13 of the Vehicle Code. ~~Nothing in this~~

14 (c) ~~This section shall be construed to~~ *does not* affect,
15 change, or limit an employer's liability under the
16 workers' compensation law.

17 SEC. 4. Section 511 is added to the Labor Code, to
18 read:

19 511. (a) The employees of an employer may adopt an
20 alternative workweek schedule that authorizes work by
21 the affected employees for 10 hours per day without the
22 payment to the affected employees of an overtime rate
23 of compensation pursuant to this section. An affected
24 employee working pursuant to an alternative workweek
25 schedule adopted pursuant to this section shall be paid an
26 overtime rate of compensation of one and one-half times
27 the regular rate of pay of the employee for any work in
28 excess of 10 hours per day and an overtime rate of
29 compensation of double the regular rate of pay of the
30 employee for any work in excess of 12 hours per day.

31 (b) (1) An employer may submit a proposal seeking
32 the adoption of an alternative workweek schedule no
33 more than once every 12 months to the same group of
34 affected employees. At least 10 days prior to the election
35 on the proposal, the employer shall provide each affected
36 employee with a written disclosure of the effects of the
37 adoption of the proposal on the wages, hours, and benefits
38 of the employee, and on the right of employees to repeal
39 the proposal. This written disclosure shall be distributed
40 at a meeting held during the regular work hours and at



1 the jobsite of the affected employees. An employer shall
2 provide that disclosure in a non-English language, as well
3 as in English, if at least 5 percent of the affected
4 employees primarily speak that non-English language.
5 The failure by the employer to distribute this written
6 disclosure at the meeting renders the adoption of the
7 proposal null and void. A proposal to adopt an alternative
8 workweek schedule shall receive approval by at least
9 two-thirds of the affected employees in order to be
10 deemed adopted.

11 (2) Upon the submission to the employer of a petition
12 signed by at least one-third of all affected employees
13 requesting an election to repeal an alternative workweek
14 schedule, the employer shall schedule an election to
15 permit the affected employees to vote on the proposal to
16 repeal the alternative workweek schedule. The election
17 shall be held not less than 12 months after the date that
18 the same group of employees voted in an election held to
19 adopt or repeal an alternative workweek schedule. The
20 election to repeal an alternative workweek schedule shall
21 be held not more than 30 days after the petition is
22 submitted to the employer. A proposal to repeal an
23 alternative workweek schedule shall receive approval by
24 at least a majority of the affected employees in order to
25 be deemed repealed.

26 (3) Only secret ballots may be cast by affected
27 employees at any election held pursuant to this section.
28 Upon the written request by an employee to his or her
29 employer, or to the Labor Commissioner, made no later
30 than 10 days prior to the date set for the election, the
31 employer shall cause the election to be conducted by a
32 neutral third party who has experience in conducting
33 employee elections. Any written request made by an
34 employee to the commissioner is confidential and may
35 not be disclosed to the employer. The commissioner shall
36 notify the employer not less than five days prior to the
37 date of the election that the election is required to be
38 conducted by a neutral third party. Any election held
39 pursuant to this section shall be held during the regular
40 work hours and at the jobsite of the affected employees.



1 The employer shall bear the costs of conducting any
2 election held pursuant to this section.

3 (4) Employees affected by a change in work hours
4 resulting from the adoption or repeal of an alternative
5 workweek schedule may not be required to work those
6 new work hours for at least 45 days after the
7 announcement of the final results of the election.

8 (5) For purposes of this section, “affected employees”
9 includes all employees in a readily identifiable work unit,
10 such as a division, department, job classification, shift,
11 jobsite, or recognized subdivision thereof, who will be
12 required to work the hours established by the adoption or
13 repeal of an alternative workweek schedule. No work
14 unit may be established by an employer solely for
15 purposes of adopting or repealing an alternative
16 workweek schedule. The Labor Commissioner shall
17 review and approve or reject the designation of any work
18 unit of affected employees by an employer if a written
19 request is made to the commissioner by an employee of
20 the employer at least 15 days prior to the date of the
21 election held on the proposed adoption or repeal of an
22 alternative workweek schedule.

23 (c) An employer shall make a reasonable effort to find
24 an alternative work assignment for any affected
25 employee who voted in an election authorized by this
26 section and is unable to work the hours established as the
27 result of the election. An employer is not required to
28 make a reasonable effort to find an alternative work
29 assignment for any employee who was hired after the
30 date of the election. An employer shall explore any
31 available reasonable alternative means of
32 accommodating the religious belief or observance of an
33 affected employee that conflicts with an adopted
34 alternative workweek schedule, in the manner provided
35 by subdivision (j) of Section 12940 of the Government
36 Code.

37 (d) An employer may permanently repeal an
38 alternative workweek schedule at any time due to a
39 business necessity. An alternative workweek schedule
40 may not be adopted for at least 12 months after it has been



1 repealed by an employer. An alternative workweek
2 schedule may not temporarily be suspended.

3 (e) The results of any election conducted pursuant to
4 this section shall be reported by an employer to the
5 Division of Labor Standards Enforcement within 30 days
6 after the results are final. The division, annually, shall
7 prepare and issue a report by March 1, to the Legislature
8 that documents the total number of employers by
9 industry who implemented an alternative workweek
10 schedule, and the total number of affected employees
11 who adopted or repealed an alternative workweek
12 schedule, pursuant to this section during the previous
13 calendar year.

14 (f) Any type of alternative workweek schedule that is
15 authorized by this code and that was in effect on January
16 1, 1999, may be repealed by the affected employees
17 pursuant to this section.

18 SEC. 5. Section 512 is added to the Labor Code, to
19 read:

20 512. An employer may not employ an employee for a
21 work period of more than five hours per day without
22 providing the employee with a meal period of not less
23 than 30 minutes, except that if the total work period per
24 day of the employee is no more than six hours, the meal
25 period may be waived by mutual consent of both the
26 employer and employee. An employer may not employ
27 an employee for a work period of more than 10 hours per
28 day without providing the employee with a second meal
29 period of not less than 30 minutes.

30 SEC. 6. Section 513 is added to the Labor Code, to
31 read:

32 513. If an employer approves the written request of
33 an employee to make up work time that is lost as a result
34 of a personal obligation of the employee, the first four
35 hours of that makeup work, if performed in the same
36 workweek in which the work time was lost, may not be
37 counted towards computing the total number of hours
38 worked in a day for purposes of the overtime
39 requirements specified in subdivision (a) of Section 510.



1 SEC. 7. Section 514 is added to the Labor Code, to
2 read:

3 514. (a) A person employed in an administrative,
4 executive, or professional capacity is not required under
5 state law to be compensated for overtime work.

6 (b) For purposes of this section, a person is defined to
7 be employed in an administrative, executive, or
8 professional capacity only if either of the following
9 criteria apply:

10 (1) The employee is engaged in work that is primarily
11 intellectual, managerial, or creative, and which requires
12 the exercise of discretion and independent judgment and
13 the employee receives compensation of not less than two
14 thousand dollars (\$2,000) per month.

15 (2) The employee is licensed or certified by the State
16 of California to engage in either one of the following types
17 of work:

18 (A) Law, medicine, dentistry, pharmacy, optometry,
19 architecture, engineering, teaching, or accounting.

20 (B) Work commonly recognized as being performed
21 by a person in a learned or artistic profession.

22 (c) A person employed as a registered nurse does not
23 qualify as being employed in an administrative,
24 executive, or professional capacity pursuant to paragraph
25 (2) of subdivision (b). However, a person employed as a
26 registered nurse may qualify as being employed in an
27 administrative, executive, or professional capacity if he or
28 she otherwise meets the criteria specified in paragraph
29 (1) of subdivision (a).

30 SEC. 8. Section 557 is added to the Labor Code, to
31 read:

32 557. (a) Any employer or other person acting on
33 behalf of an employer who pays or causes to be paid to any
34 employee a wage for overtime work in violation of
35 subdivision (a) of Section 510 or subdivision (a) of Section
36 511 shall be subject to a civil penalty as follows:

37 (1) For any initial violation, fifty dollars (\$50) for each
38 underpaid employee for each pay period for which the
39 employee was underpaid.



1 (2) For each subsequent violation, one hundred
2 dollars (\$100) for each underpaid employee for each pay
3 period for which the employee was underpaid.

4 (b) If upon inspection or investigation, the Labor
5 Commissioner determines that a person had paid or
6 caused to be paid a wage for overtime work in violation
7 of subdivision (a) of Section 510 or subdivision (a) of
8 Section 511, the Labor Commissioner may issue a citation
9 to the person. The citation may be served personally or
10 by registered mail in accordance with subdivision (c) of
11 Section 11505 of the Government Code. Each citation
12 shall be in writing and shall describe the nature of the
13 violation, including reference to the statutory provision
14 or provisions alleged to have been violated.

15 (c) If a person desires to contest a citation or the
16 proposed assessment of a civil penalty therefor, the
17 person shall, within 15 business days after service of the
18 citation, notify the office of the Labor Commissioner
19 which appears on the citation of his or her request for
20 informal hearing. The Labor Commissioner or his or her
21 deputy or agent shall, within 30 days, hold a hearing at the
22 conclusion of which the citation or proposed assessment
23 of a civil penalty shall be affirmed, modified, or dismissed.
24 If the person receiving the citation does not request a
25 hearing with the Labor Commissioner within the
26 prescribed time, the proposed civil penalty shall be
27 deemed a final order of the Labor Commissioner and shall
28 not be subject to further administrative review. The
29 determination of the Labor Commissioner after the
30 conclusion of the hearing shall be deemed the final order
31 of the Labor Commissioner and shall not be subject to
32 further administrative review.

33 The Labor Commissioner shall promptly take all
34 appropriate action to enforce the citation and recover the
35 civil penalty prescribed thereon or found to be due after
36 a hearing. The Labor Commissioner may maintain an
37 action in any court of competent jurisdiction to recover
38 the amount of civil penalties found to be due.

39 A person to whom a citation has been issued may, in lieu
40 of contesting a citation pursuant to this section, transmit



1 to the office of the Labor Commissioner designated on
2 the citation the amount specified for the violation within
3 15 business days after issuance of the citation.

4 (d) The civil penalties provided for in this section are
5 in addition to any other civil or criminal penalty provided
6 by law.

7 SEC. 9. Section 1183.5 of the Labor Code is repealed.

8 ~~1183.5. (a) Any employer who intends to use a
9 flexible scheduling technique, as permitted by an order
10 of the Industrial Welfare Commission, requiring a vote of
11 the affected employees shall make a full disclosure in
12 writing to each of the affected employees. The notice
13 shall include the effects of the proposed scheduling,
14 including the employees' wages, hours, and benefits. The
15 employer shall not be required to distribute the notice to
16 employees on a leave of absence for any cause.~~

17 ~~(b) Within the health care industry, the disclosure
18 shall include meetings, duly noticed, for the specific
19 purpose of discussing the effects of flexible scheduling.~~

20 ~~(c) Failure to comply with this section shall make the
21 election null and void.~~

22 SEC. 10. The Division of Labor Standards
23 Enforcement shall implement the provisions of this act
24 within its existing budget.

25 SEC. 11. No reimbursement is required by this act
26 pursuant to Section 6 of Article XIII B of the California
27 Constitution because the only costs that may be incurred
28 by a local agency or school district will be incurred
29 because this act creates a new crime or infraction,
30 eliminates a crime or infraction, or changes the penalty
31 for a crime or infraction, within the meaning of Section
32 17556 of the Government Code, or changes the definition
33 of a crime within the meaning of Section 6 of Article
34 XIII B of the California Constitution.

35 Notwithstanding Section 17580 of the Government
36 Code, unless otherwise specified, the provisions of this act
37 shall become operative on the same date that the act
38 takes effect pursuant to the California Constitution.

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