ASSEMBLY BILL No. 244

Introduced by Assembly Member Maze

February 3, 2003

An act to amend Sections 510, 554, 556, and 1182.1 of, to add Section 1183.5 to, and to repeal Sections 500, 511, 513, 514, 515.5, 515.6, and 517 of, the Labor Code, relating to wages.

LEGISLATIVE COUNSEL'S DIGEST

AB 244, as introduced, Maze. Wages: overtime.

Existing law provides that, except for an employee working an alternative workweek schedule and for certain occupations, hours worked in excess of 8 hours a day, in excess of 40 hours a week, and the first 8 hours worked on a 7th day of work are to be compensated at a rate at least $1^1/_2$ times the regular rate of pay, and hours worked in excess of 12 hours a day and in excess of 8 hours on the 7th day of work are to be compensated at a rate at least twice the regular rate of pay. Employers are subject to civil penalties for violating these requirements. The Labor Commissioner is authorized to issue citations for violations.

This bill would provide that parties may agree as to the number of hours that constitute a day's work. It would remove the requirement that work in excess of 8 hours a day, in excess of 40 hours a week, and the first 8 hours on the 7th day of work are to be compensated at no less than $1^1/_2$ times the regular rate of pay, and hours worked in excess of 12 hours a day and in excess of 8 hours on the 7th day of work are to be compensated at no less than twice the regular rate of pay. The bill would also provide that any employer who intends to use a flexible scheduling technique, as permitted by an order of the Industrial Welfare

Commission, is required to make full written disclosure to all employees.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 500 of the Labor Code is repealed.

~~500. For purposes of this chapter, the following terms shall have the following meanings:~~

~~(a) "Workday" and "day" mean any consecutive 24-hour period commencing at the same time each calendar day.~~

~~(b) "Workweek" and "week" mean any seven consecutive days, starting with the same calendar day each week. "Workweek" is a fixed and regularly recurring period of 168 hours, seven consecutive 24-hour periods.~~

~~(c) "Alternative workweek schedule" means any regularly scheduled workweek requiring an employee to work more than eight hours in a 24-hour period.~~

SEC. 2. Section 510 of the Labor Code is amended to read:

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

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

~~(2) An alternative workweek schedule adopted pursuant to a collective bargaining agreement pursuant to Section 514.~~

~~(3) An alternative workweek schedule to which this chapter is inapplicable pursuant to Section 554.~~

~~(b)~~ *unless it is otherwise expressly stipulated by the parties to a contract.* Time spent commuting to and from the first place at which an employee's presence is required by the employer shall not be considered to be a part of a day's work, when the employee commutes in a vehicle that is owned, leased, or subsidized by the employer and is used for the purpose of ridesharing, as defined in Section 522 of the Vehicle Code.

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

SEC. 3. Section 511 of the Labor Code is repealed.

~~511. (a) Upon the proposal of an employer, the employees of an employer may adopt a regularly scheduled alternative workweek that authorizes work by the affected employees for no longer than 10 hours per day within a 40-hour workweek without the payment to the affected employees of an overtime rate of compensation pursuant to this section. A proposal to adopt an alternative workweek schedule shall be deemed adopted only if it receives approval in a secret ballot election by at least two-thirds of affected employees in a work unit. The regularly scheduled alternative workweek proposed by an employer for adoption by employees may be a single work schedule that would become the standard schedule for workers in the work unit, or a menu of work schedule options, from which each employee in the unit would be entitled to choose.~~

~~(b) An affected employee working longer than eight hours but not more than 12 hours in a day pursuant to an alternative workweek schedule adopted pursuant to this section shall be paid an overtime rate of compensation of no less than one and one-half times the regular rate of pay of the employee for any work in excess of the regularly scheduled hours established by the alternative workweek agreement and for any work in excess of 40 hours per week. An overtime rate of compensation of no less than double the regular rate of pay of the employee shall be paid for any work in excess of 12 hours per day and for any work in excess of eight hours on those days worked beyond the regularly scheduled workdays established by the alternative workweek agreement. Nothing in this section requires an employer to combine more than~~

~~one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.~~

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

~~(d) An employer shall make a reasonable effort to find a work schedule not to exceed eight hours in a workday, in order to accommodate any affected employee who was eligible to vote in an election authorized by this section and who is unable to work the alternative schedule hours established as the result of that election. An employer shall be permitted to provide a work schedule not to exceed eight hours in a workday to accommodate any employee who was hired after the date of the election and who is unable to work the alternative schedule established as the result of that election. An employer shall explore any available reasonable alternative means of accommodating the religious belief or observance of an affected employee that conflicts with an adopted alternative workweek schedule, in the manner provided by subdivision (j) of Section 12940 of the Government Code.~~

~~(e) The results of any election conducted pursuant to this section shall be reported by an employer to the Division of Labor Statistics and Research within 30 days after the results are final.~~

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

~~(g) Notwithstanding subdivision (f), an alternative workweek schedule in the health care industry adopted by a two-thirds vote of affected employees in a secret ballot election pursuant to Wage Orders 4 and 5 in effect prior to 1998 that provided for workdays exceeding 10 hours but not exceeding 12 hours in a day without the payment of overtime compensation shall be valid until July 1,~~

~~2000. An employer in the health care industry shall make a reasonable effort to accommodate any employee in the health care industry who is unable to work the alternative schedule established as the result of a valid election held in accordance with provisions of Wage Orders 4 or 5 that were in effect prior to 1998.~~

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

SEC. 4. Section 512 of the Labor Code is repealed.

~~512. (a) An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ 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, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.~~

~~(b) Notwithstanding subdivision (a), the Industrial Welfare Commission may adopt a working condition order permitting a meal period to commence after six hours of work if the commission determines that the order is consistent with the health and welfare of the affected employees.~~

SEC. 5. Section 513 of the Labor Code is repealed.

~~513. If an employer approves a written request of an employee to make up work time that is or would be lost as a result of a personal obligation of the employee, the hours of that makeup work time, if performed in the same workweek in which the work time was lost, may not be counted towards computing the total number of hours worked in a day for purposes of the overtime requirements specified in Section 510 or 511, except for hours in excess of 11 hours of work in one day or 40 hours in one~~

~~workweek. An employee shall provide a signed written request for each occasion that the employee makes a request to make up work time pursuant to this section. An employer is prohibited from encouraging or otherwise soliciting an employee to request the employer's approval to take personal time off and make up the work hours within the same week pursuant to this section.~~

SEC. 6. Section 514 of the Labor Code is repealed.

~~514. Sections 510 and 511 do not apply to an employee covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work, and working conditions of the employees, and if the agreement provides premium wage rates for all overtime hours worked and a regular hourly rate of pay for those employees of not less than 30 percent more than the state minimum wage.~~

SEC. 7. Section 515.5 of the Labor Code is repealed.

~~515.5. (a) Except as provided in subdivision (b), an employee in the computer software field shall be exempt from the requirement that an overtime rate of compensation be paid pursuant to Section 510 if all of the following apply:~~

~~(1) The employee is primarily engaged in work that is intellectual or creative and that requires the exercise of discretion and independent judgment, and the employee is primarily engaged in duties that consist of one or more of the following:~~

~~(A) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications.~~

~~(B) The design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to, user or system design specifications.~~

~~(C) The documentation, testing, creation, or modification of computer programs related to the design of software or hardware for computer operating systems.~~

~~(2) The employee is highly skilled and is proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming, and software engineering. A job title shall not be determinative of the applicability of this exemption.~~

~~(3) The employee's hourly rate of pay is not less than forty-one dollars ($41.00). The Division of Labor Statistics and Research~~

~~shall adjust this pay rate on October 1 of each year to be effective on January 1 of the following year by an amount equal to the percentage increase in the California Consumer Price Index for Urban Wage Earners and Clerical Workers.~~

~~(b) The exemption provided in subdivision (a) does not apply to an employee if any of the following apply:~~

~~(1) The employee is a trainee or employee in an entry-level position who is learning to become proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming, and software engineering.~~

~~(2) The employee is in a computer-related occupation but has not attained the level of skill and expertise necessary to work independently and without close supervision.~~

~~(3) The employee is engaged in the operation of computers or in the manufacture, repair, or maintenance of computer hardware and related equipment.~~

~~(4) The employee is an engineer, drafter, machinist, or other professional whose work is highly dependent upon or facilitated by the use of computers and computer software programs and who is skilled in computer-aided design software, including CAD/CAM, but who is not in a computer systems analysis or programming occupation.~~

~~(5) The employee is a writer engaged in writing material, including box labels, product descriptions, documentation, promotional material, setup and installation instructions, and other similar written information, either for print or for onscreen media or who writes or provides content material intended to be read by customers, subscribers, or visitors to computer-related media such as the World Wide Web or CD-Roms.~~

~~(6) The employee is engaged in any of the activities set forth in subdivision (a) for the purpose of creating imagery for effects used in the motion picture, television, or theatrical industry.~~

SEC. 8. Section 515.6 of the Labor Code is repealed.

~~515.6. (a) Section 510 shall not apply to any employee who is a licensed physician or surgeon, whose primary duties require licensure pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, and whose hourly rate of pay is equal to or greater than fifty-five dollars ($55.00). The Division of Labor Statistics and Research shall~~

~~adjust this threshold rate of pay each October 1, to be effective the following January 1, by an amount equal to the percentage increase in the California Consumer Price Index for Urban Wage Earners and Clerical Workers.~~

~~(b) The exemption provided in subdivision (a) shall not apply to an employee employed in a medical internship or resident program or to a physician employee covered by a valid collective bargaining agreement pursuant to Section 514.~~

SEC. 9. Section 517 of the Labor Code is repealed.

~~517. (a) The Industrial Welfare Commission shall, at a public hearing to be concluded by July 1, 2000, adopt wage, hours, and working conditions orders consistent with this chapter without convening wage boards, which orders shall be final and conclusive for all purposes. These orders shall include regulations necessary to provide assurances of fairness regarding the conduct of employee workweek elections, procedures for employees to petition for and obtain elections to repeal alternative workweek schedules, procedures for implementation of those schedules, conditions under which an adopted alternative workweek schedule can be repealed by the employer, employee disclosures, designations of work, and processing of workweek election petitions pursuant to Parts 2 and 4 of this division and in any wage order of the commission and such other regulations as may be needed to fulfill the duties of the commission pursuant to this part.~~

~~(b) Prior to July 1, 2000, the Industrial Welfare Commission shall conduct a review of wages, hours, and working conditions in the ski industry, commercial fishing industry, and health care industry, and for stable employees in the horseracing industry. Notwithstanding subdivision (a) and Sections 510 and 511, and consistent with its duty to protect the health, safety, and welfare of workers pursuant to Section 1173, the commission may, based upon this review, convene a public hearing to adopt or modify regulations at that hearing pertaining to the industries herein, without convening wage boards. Any hearing conducted pursuant to this subdivision shall be concluded not later than July 1, 2000.~~

~~(c) Notwithstanding subdivision (a) of Section 515, prior to July 1, 2000, the commission shall conduct a review of wages, hours, and working conditions of licensed pharmacists. The commission may, based upon this review, convene a public hearing to adopt or modify regulations at that hearing pertaining~~

~~to licensed pharmacists without convening wage boards. Any hearing conducted pursuant to this subdivision shall be concluded not later than July 1, 2000.~~

~~(d) Notwithstanding sections 1171 and subdivision (a) of Section 515, the Industrial Welfare Commission shall conduct a review of wages, hours, and working conditions of outside salespersons. The commission may, based upon this review, convene a public hearing to adopt or modify regulations at that hearing pertaining to outside salespersons without convening wage boards. Any hearing conducted pursuant to this subdivision shall be concluded not later than July 1, 2000.~~

~~(e) Nothing in this section is intended to restrict the Industrial Welfare Commission in its continuing duties pursuant to Section 1173.~~

~~(f) No action taken by the Industrial Welfare Commission pursuant to this section is subject to the requirements of Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code.~~

~~(g) All wage orders and other regulations issued or adopted pursuant to this section shall be published in accordance with Section 1182.1.~~

SEC. 10. Section 554 of the Labor Code is amended to read:

554. (a) ~~Sections 551 and 552~~ *This chapter* shall not apply to any cases of emergency nor to work performed in the *necessary care of animals, crops, or agricultural lands, nor to work performed in the* protection of life or property from loss or destruction, nor to any common carrier engaged in or connected with the movement of trains. ~~This chapter, with the exception of Section 558, shall not apply to any person employed in an agricultural occupation, as defined in Order No. 14-80 (operative January 1, 1998) of the Industrial Welfare Commission.~~ *Nor shall the provisions of this chapter apply when the employer and a labor organization representing employees of the employer have entered into a valid collective bargaining agreement respecting the hours of work of the employees.* Nothing in this chapter shall be construed to prevent an accumulation of days of rest when the nature of the employment reasonably requires that the employee work seven or more consecutive days, if in each calendar month the employee receives days of rest equivalent to one day's rest in seven. The requirement respecting the equivalent of one day's rest

in seven shall apply, notwithstanding the other provisions of this chapter relating to collective bargaining agreements, where the employer and a labor organization representing employees of the employer have entered into a valid collective bargaining agreement respecting the hours of work of the employees, unless the agreement expressly provides otherwise.

(b) In addition to the exceptions specified in subdivision (a), the Chief of the Division of Labor Standards Enforcement may, when in his or her judgment hardship will result, exempt any employer or employees from the provisions of ~~Sections 551 and 552~~ *this chapter. Nothing contained herein shall affect contracts in existence on the effective date of this amendment*.

SEC. 11. Section 556 of the Labor Code is amended to read:

556. ~~Sections 551 and 552~~ *This chapter* shall not apply to any employer or employee when the total hours of employment do not exceed 30 hours in any week or six hours in any one day thereof.

SEC. 12. Section 1182.1 of the Labor Code is amended to read:

1182.1. Any action taken by the commission pursuant to ~~Sections 517 and 1182~~ *Section 1182* shall be published in at least one newspaper in each of the Cities of Los Angeles, Sacramento, Oakland, San Jose, Fresno, San Diego, and San Francisco. A summary of the action taken and notice of where the complete text of the new or amended order may be obtained may be published in lieu of the complete text when the commission determines ~~such~~ summary and notice will adequately inform the public. The statement as to the basis of the order need not be published.

SEC. 13. Section 1183.5 is added to the Labor Code, to read:

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

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

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

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