

Introduced by Senators Cox and Dutton
(Coauthors: Senators Aanestad, Cogdill, Denham, Harman, Huff,
Runner, and Wyland)
(Coauthors: Assembly Members Niello and Smyth)

February 19, 2010

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 1335, as introduced, Cox. Employment: working hours.

Existing law, with certain exceptions, establishes 8 hours as a day's work and a 40-hour 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 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, and would allow an employer to implement this schedule without any obligation to pay overtime compensation. 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 Workplace Flexibility Act of 2009.

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

4 (a) Small businesses and their workers suffer from outdated and
5 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 an employer to allow an
12 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, millions of California workers do not
15 have the opportunity to take advantage of a flexible work schedule
16 that would benefit the workers and their families.

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

25 (f) It is the intent of the Legislature in enacting the Workplace
26 Flexibility Act of 2009 to protect workers as follows:

27 (1) A worker may not be forced to work more than eight hours
28 in a day without receiving overtime, but, instead, he or she may
29 request a flexible work schedule of up to four 10-hour days per
30 week and an employer may agree to this schedule without having
31 to pay overtime for the ninth and tenth hours worked per day in
32 that schedule.

33 (2) An employer will be required to pay overtime rates after 10
34 work hours in a day for workers who have chosen a flexible
35 schedule pursuant to this act.

36 (3) An employer will be required to pay double normal pay after
37 12 work hours in a day for a worker who has chosen a flexible
38 schedule under this act.

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

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

(h) No compelling public policy reason exists for this discrepancy in the flexibility of work schedules between unionized and nonunionized workers.

SEC. 3. 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 employee-selected flexible work schedule adopted pursuant to Section 511.5.*

~~(2)~~

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

~~(3)~~

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

(b) 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

1 commutes in a vehicle that is owned, leased, or subsidized by the
2 employer and is used for the purpose of ridesharing, as defined in
3 Section 522 of the Vehicle Code.

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

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

7 511.5. (a) Notwithstanding Section 511 or any other law or
8 order of the Industrial Welfare Commission, an individual
9 nonexempt employee may work up to 10 hours per workday
10 without any obligation on the part of the employer to pay an
11 overtime rate of compensation, except as provided in subdivision
12 (b), if the employee requests this schedule in writing and the
13 employer approves the request. This shall be referred to as an
14 overtime exemption for an employee-selected flexible work
15 schedule.

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

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

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

35 (e) This section does not apply to any employee covered by a
36 valid collective bargaining agreement or employed by the state, a
37 city, county, city and county, district, municipality, or other public,
38 quasi-public, or municipal corporation, or any political subdivision
39 of this state.

1 (f) This section shall be liberally construed to accomplish its
2 purposes.

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

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

8 SEC. 5. The provisions of this act are severable. If any
9 provision of this act or its application is held invalid, that invalidity
10 shall not affect other provisions or applications that can be given
11 effect without the invalid provision or application.