

No. S243805

Supreme Court
OF THE
State of California

AMANDA FRLEKIN, ET AL.,
Plaintiffs, Appellants, and Petitioners,

v.

APPLE, INC.,
Defendant and Respondent.

SUPREME COURT
FILED

DEC 19 2017

Jorge Navarrete Clerk

Deputy

On a Certified Question from the United States
Court of Appeals for the Ninth Circuit
Case No. 15-17382

**Motion for Judicial Notice; Memorandum in
Support; Declaration in Support; Proposed
Order [Cal. Rules of Ct., rule 8.252(a)]**

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MOTION FOR JUDICIAL NOTICE; MEMORANDUM IN SUPPORT

Pursuant to Evidence Code section 459 and California Rule of Court 8.520(g) and 8.252(a), petitioners Amanda Frlekin et al. respectfully ask the Court to take judicial notice of the following documents, true and correct copies of which are attached hereto:

- Exhibit 1: Wage Order 5 Amended (Mercantile Industry) (April 22, 1919, eff. Jun. 21, 1919)
- Exhibit 2: Wage Order 5 Amended 1920 (Mercantile Industry) (Jun. 1, 1920, eff. Jul. 31, 1920)
- Exhibit 3: Wage Order 5a (Mercantile Industry) (Dec. 29, 1922, eff. Apr. 8, 1923)
- Exhibit 4: Wage Order 7 NS (Mercantile Industry) (Apr. 5, 1943, eff. Jun. 21, 1943)
- Exhibit 5: Wage Order 7 R (Mercantile Industry) (Feb. 8, 1947, eff. Jun. 1, 1947)
- Exhibit 6: Wage Order 1-52 (May 16, 1952, eff. Aug. 1, 1952)
- Exhibit 7: California Office of Administrative Law, Letter Upholding Determination No. 11, Docket No. 89-018, Determination Dated July 31, 1990 (Sept. 7, 1990)
- Exhibit 8: California Office of Administrative Law Determination No. 11, Docket No. 89-018 (July 31, 1990)
- Exhibit 9: Appellant's Opening Brief, *Alcantar v. Hobart Service*, No. 13-55400 (9th Cir. Aug. 19, 2013) (relevant excerpts, cover and pp. 1, 2, 36-44)
- Exhibit 10: Appellant's Reply Brief, *Alcantar v. Hobart Service*, No. 13-55400 (9th Cir. Jan. 2, 2014) (relevant excerpts, cover and pp. 21-25)

Exhibit 11: Order, *Frlekin, et al. v. Apple, Inc.*, No. 15-17382 (9th Cir. Jun. 16, 2017)

For the following reasons, each of these exhibits is the proper subject of judicial notice by this Court:

A. Historical Versions of IWC Wage Orders

Exhibits 1-6 are historical versions of the IWC's Wage Orders for the mercantile industry, predecessors to current wage Order 7-2001 (8 Cal. Code Regs. §11070), at issue in this case. *See* Declaration of Kimberly A. Kralowec ("Kralowec Decl."), below, ¶2.

This Court regularly takes judicial notice of historical versions of the IWC's Wage Orders when construing the current Orders. *See, e.g., Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1026-32, 1034-39, 1041-49 (2012) (extensively considering language of historical Wage Orders in construing meal period and rest break provisions); *Martinez v. Combs*, 49 Cal.4th 35, 59-60 (2010) (considering Wage Orders' amendment history dating back to 1947); *Reynolds v. Bement*, 36 Cal.4th 1075, 1083 n.3 (2005) (granting judicial notice of six historical Wage Orders); *Morillion v. Royal Packing Co.*, 22 Cal.4th 575, 591-93 & n.1 (2000) (considering historical changes in Wage Orders' definition of "hours worked" and quoting Wage Order 1 NS (1947)).

In this case, the historical wage orders are relevant to the question this Court accepted for review, which involves the proper interpretation of the definition of "hours worked" in Wage Order 7-2001. 8 Cal. Code Regs. §11070, ¶2(G).

B. Other Official Records and Acts of the DIR and OAL

Exhibits 7 and 8 are documents related to Official Determination No. 11, Docket No. 89-018, of the California Office of Administrative Law ("OAL"), maintained as part of the official records of the California Department of Industrial Relations ("DIR"). *See* Kralowec Decl., ¶3.

These records constitute official acts of the OAL and are part of the official records of the DIR. Pursuant to Evidence Code section 452, subdivision (c), the

Court may take judicial notice of official acts of the executive branch of this state and of the “records, reports and orders of [state] administrative agencies.” *Ordlock v. Franchies Tax Board*, 38 Cal.4th 897, 911 n.8 (2006); *see also White v. Davis*, 30 Cal.4th 528, 553 n.11 (2003).

The documents are relevant because they address the reasons for the IWC’s 1947 amendment to the definition of “hours worked.”

C. Official Records of the Ninth Circuit

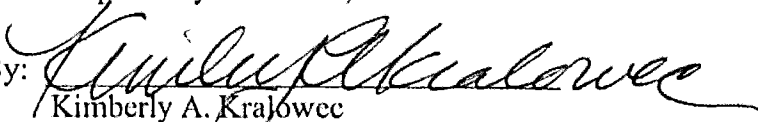
Exhibits 9 and 10 are true and correct copies of relevant portions of two briefs filed in *Alcantar v. Hobart Service*, No. 13-55400 (9th Cir.), and Exhibit 11 is an Order of the Ninth Circuit in this case. *See Kralowec Decl.*, ¶¶4-5.

Official records of the federal courts, including the Ninth Circuit, are subject to judicial notice pursuant to Evidence Code section 452, subdivision (d). The briefs are relevant because they establish that the meaning of the term “hours worked” was not a contested issue on appeal in *Alcantar v. Hobart Service*, 800 F.3d 1047 (9th Cir. 2015). *See Fairbanks v. Superior Court*, 46 Cal.4th 56, 64 (2009) (a “judicial decision is not authority for a point that was not actually raised and resolved”).

For all of these reasons, the Court is respectfully asked to grant the motion for judicial notice in full.

Dated: December 18, 2017

Respectfully submitted,

By: 

Kimberly A. Kralowec
THE KRALOWEC LAW GROUP

Lee A. Shalov
MCLAUGHLIN & STERN, LLP

Attorneys for Plaintiffs, Appellants, and
Petitioners

**DECLARATION OF KIMBERLY A. KRALOWEC IN SUPPORT OF
MOTION FOR JUDICIAL NOTICE**

I, Kimberly A. Kralowec, declare as follows:

1. I am an attorney licensed to practice law in the State of California. I am appellate counsel of record for petitioners Amanda Frlekin et al. in the above-referenced proceeding. I have personal knowledge of the matters stated below, and if called upon to testify, would do so competently as to them.

2. In 2009, I personally visited the archive maintained by the California Department of Industrial Relations at its facility in San Francisco. Exhibits 1-6 attached hereto are true and correct copies of documents that I reviewed at the archive, and which were scanned at my direction.

3. In 2016, I personally visited the archive maintained by the California Department of Industrial Relations at its facility in Oakland. Exhibits 7 and 8 attached hereto are true and correct copies of documents that I reviewed at the archive, and which were scanned at my direction.

4. Exhibits 9 and 10 attached hereto are true and correct copies of relevant excerpts of the following briefs filed with the Ninth Circuit in *Alcantar v. Hobart Service*, No. 13-55400 (9th Cir. 2013), which were downloaded from the PACER website at my direction.

5. On motion by petitioners, the Ninth Circuit granted judicial notice of Exhibits 4-5 and 9-10 in this case. A true and correct copy of the Ninth Circuit's order granting judicial notice is attached hereto as Exhibit 11.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on December 18, 2017 at San Francisco, California.


Kimberly A. Kralowec

No. S243805

Supreme Court
OF THE
State of California

AMANDA FRLEKIN, ET AL.,
Plaintiffs, Appellants, and Petitioners,

v.

APPLE, INC.,
Defendant and Respondent.

On a Certified Question from the United States
Court of Appeals for the Ninth Circuit
Case No. 15-17382

[Proposed]
Order Granting Motion for Judicial Notice

Pursuant to Evidence Code sections 452, 453, and 459, and Rule of Court 8.252(a), the motion for judicial notice of petitioners Amanda Frlekin et al. is hereby granted in full.

Justice

INDUSTRIAL WELFARE COMMISSION

STATE OF CALIFORNIA

525 Market Street, San Francisco

To Whom it May Concern:

TAKE NOTICE: That pursuant to and by virtue of the authority vested in it by the Statutes of California, 1913, Chapter 324, and amendments thereto, and after public hearing duly had in the City and County of San Francisco on Friday, December 6, 1918,

THE INDUSTRIAL WELFARE COMMISSION OF THE STATE OF CALIFORNIA does hereby order that:
EXPERIENCED WORKERS

1. No person, firm or corporation shall employ or suffer or permit an experienced woman or minor to be employed in the mercantile industry in California at a rate of wages less than \$13.50 per week (\$58.50 per month), except as otherwise provided in Section 9 of this Order.

LEARNERS

2. The wages of learners may be less than the minimum rate prescribed for experienced workers, provided:
 (a) **MINOR LEARNERS.** That learners, male or female, entering employment under eighteen years of age, be paid not less than the following scale:

SCHEDULE OF APPRENTICESHIP FOR MINORS

BEGINNING AGE	WAGE FIRST SIX MONTHS	WAGE SECOND SIX MONTHS	WAGE THIRD SIX MONTHS	WAGE FOURTH SIX MONTHS	WAGE FIFTH SIX MONTHS	WAGE SIXTH SIX MONTHS	THEREAFTER NOT LESS THAN	LENGTH OF APPRENTICESHIP
14 years	\$8.00 a week \$34.67 a month	\$8.50 a week \$36.83 a month	\$9.00 a week \$39.00 a month	\$10.00 a week \$43.33 a month	\$11.00 a week \$47.67 a month	\$12.00 a week \$52.00 a month	\$13.50 a week \$58.50 a month	3 years
15 years	\$8.00 a week \$34.67 a month	\$8.50 a week \$36.83 a month	\$9.00 a week \$39.00 a month	\$10.00 a week \$43.33 a month	\$11.00 a week \$47.67 a month	\$12.00 a week \$52.00 a month	\$13.50 a week \$58.50 a month	3 years
16 years	\$8.00 a week \$34.67 a month	\$8.50 a week \$36.83 a month	\$9.00 a week \$39.00 a month	\$10.00 a week \$43.33 a month	\$11.00 a week \$47.67 a month	\$12.00 a week \$52.00 a month	\$13.50 a week \$58.50 a month	3 years
17 years	\$8.00 a week \$34.67 a month	\$8.50 a week \$36.83 a month	\$9.00 a week \$39.00 a month	\$10.00 a week \$43.33 a month	\$11.00 a week \$47.67 a month	\$12.00 a week \$52.00 a month	\$13.50 a week \$58.50 a month	.

*NOTE.—When a minor girl who starts at the age of 17 years attains the age of 18 years, she shall be paid not less than the beginning wage for adult learners.

(b) **ADULT LEARNERS BEGINNING EIGHTEEN YEARS OF AGE AND UNDER TWENTY YEARS OF AGE.** That female learners entering employment 18 years of age and under 20 years of age, be paid not less than the following scale:

SCHEDULE OF APPRENTICESHIP FOR ADULTS BEGINNING OVER EIGHTEEN AND UNDER TWENTY YEARS OF AGE

BEGINNING AGE	WAGE FIRST SIX MONTHS	WAGE SECOND SIX MONTHS	WAGE THIRD SIX MONTHS	WAGE FOURTH SIX MONTHS	THEREAFTER NOT LESS THAN	LENGTH OF APPRENTICESHIP
18 years	\$9.00 a week \$39.00 a month	\$10.00 a week \$43.33 a month	\$11.00 a week \$47.67 a month	\$12.00 a week \$52.00 a month	\$13.50 a week \$58.50 a month	2 years
19 years	\$9.00 a week \$39.00 a month	\$10.00 a week \$43.33 a month	\$11.00 a week \$47.67 a month	\$12.00 a week \$52.00 a month	\$13.50 a week \$58.50 a month	2 years

(c) **ADULT LEARNERS BEGINNING TWENTY YEARS OF AGE AND OVER.** That female learners entering employment 20 years of age and over be paid not less than the following scale:

SCHEDULE OF APPRENTICESHIP FOR ADULTS BEGINNING TWENTY YEARS OF AGE AND OVER

BEGINNING AGE	WAGE FIRST SIX MONTHS	WAGE SECOND SIX MONTHS	WAGE THIRD SIX MONTHS	THEREAFTER NOT LESS THAN	LENGTH OF APPRENTICESHIP
20 years and over	\$10.00 a week \$43.33 a month	\$11.00 a week \$47.67 a month	\$12.00 a week \$52.00 a month	\$13.50 a week \$58.50 a month	1½ years

(d) That all learners shall be registered with the Commission. Application for the registration of learners shall be made by the employer not later than two weeks from the date of starting employment. Pending issuance of certificates of registration, the learner shall be paid not less than the minimum rate for the wage group in which she belongs.

(e) The total number of female learners in any establishment shall not exceed 33½% of the total number of females employed, and the total number of male learners shall not exceed 33½% of the total number of males employed. In computing the total number of employees, special and part-time workers shall not be included.

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PART-TIME WORKERS

3. (a) All adult part-time workers and experienced minor part-time workers, except waitresses,* shall be paid not less than \$0.35 per hour.

(b) All inexperienced minor male and female part-time workers, except waitresses, shall be paid not less than \$0.25 per hour.

(c) All adult and minor part-time workers shall be registered with the Commission. Application for the registration of part-time workers must be made by the employer, and pending the issuance of certificates, such workers must be paid in accordance with the rates specified in Sections 3 (a) and 3 (b).

(d) The total number of adult and minor female part-time workers in any establishment shall not exceed 5% of the total number of females employed.

SPECIAL WORKERS

4. (a) ADULT SPECIAL WORKERS. All adult special workers shall be paid not less than \$2.25 per day.

(b) MINOR EXPERIENCED SPECIAL WORKERS. All minor experienced special workers shall be paid not less than \$2.25 per day.

(c) MINOR INEXPERIENCED SPECIAL WORKERS. All minor inexperienced special workers shall be paid not less than \$1.50 per day.

5. All women and minors now employed in the mercantile industry must be rated and paid in accordance with their periods of employment, as specified in Sections 1 and 2.

6. Where payment of wages is made upon a commission, bonus or piece-rate basis, the earnings shall not be less than the minimum time rate for the wage group in which the worker belongs.

7. Every person, firm or corporation employing women or minors in the mercantile industry shall keep a record of the names and addresses, the hours worked and the amounts earned by such women and minors. Such records shall be kept in a form and manner approved by the Industrial Welfare Commission. Minor employees must be marked "Minor" on the pay roll.

8. No person, firm or corporation shall employ, or suffer or permit any woman or minor to work in any mercantile establishment more than eight (8) hours in any one day, or more than forty-eight (48) hours in any one week, or more than six (6) days in any one week.

INFIRM WORKERS

9. A permit may be issued by the Commission to a woman physically disabled by age or otherwise, authorizing the employment of such licensee for a wage less than the legal minimum wage; and the Commission shall fix a special minimum for such a woman.

10. Every person, firm or corporation employing women or minors in the mercantile industry shall furnish to the Commission, at its request, any and all reports or information which the Commission may require to carry out the purposes of the Act creating the Commission; such reports and information to be verified by the oath of the person, member of the firm, or the president, secretary or manager of the corporation furnishing the same, if and when so requested by the Commission.

Every person, firm or corporation shall allow any member of the Commission, or any of its duly authorized representatives, free access to the place of business of such person, firm or corporation, for the purpose of making inspection of, or excerpts from, all books, reports, contracts, pay rolls, documents or papers of such person, firm or corporation relating to the employment of labor and payment therefor by such person, firm, or corporation; or for the purpose of making any investigation authorized by the Act creating the Commission.

11. Every person, firm or corporation employing women or minors in the mercantile industry shall post a copy of this order in a conspicuous place in the general work room and in the women's dressing rooms.

12. The Commission shall exercise exclusive jurisdiction over the questions arising as to the administration and interpretation of this Order.

DEFINITIONS

A learner is a woman or minor to whom the Industrial Welfare Commission issues a permit to work for a person, firm or corporation for less than the legal minimum wage in consideration of such person being provided by his or her employer with reasonable facilities for learning the mercantile industry. Learners' permits will be withheld by the Commission where there is evidence of attempted evasion of the law by firms which make a practice of dismissing learners when they reach their promotional periods.

A special worker is one who works less than 6 days a week.

A part-time worker is one who is employed for less than eight hours in one day.

Students attending accredited vocational, continuation or co-operative schools may be employed at part-time work on special permits from the Commission, and at rates to be determined by the Commission.

For the purpose of this Act, a minor is defined to be a person of either sex under the age of eighteen years.

THIS ORDER SHALL BECOME EFFECTIVE SIXTY (60) DAYS FROM THE DATE HEREOF.

Dated at San Francisco, California, this twenty-second day of April, 1919.

Order No. 5 of the Industrial Welfare Commission, dated July 6, 1917, is hereby rescinded as and of the date when this Order becomes effective.

INDUSTRIAL WELFARE COMMISSION, STATE OF CALIFORNIA

FRANK J. MURASKY, *Chairman*

KATHERINE PHILIPS EDSON

A. B. C. DOHBMANN

ALEXANDER GOLDSTEIN

WALTER G. MATHEWSON

ATTEST: KATHERINE PHILIPS EDSON, *Executive Officer*.

NOTICE

NOTHING IN THIS ORDER PREVENTS EMPLOYERS FROM PAYING MORE THAN THE RATES FIXED BY THE COMMISSION AS THE MINIMUM OR LOWEST RATES. THIS ORDER APPLIES TO ALL WOMEN AND MINORS IN ANY MERCANTILE INDUSTRY.

*Special minimum rates for "part-time" work waitresses will be determined when the orders are made in the hotel and restaurant industry.

The Industrial Welfare Commission expects to review its Orders annually.

STATUTES OF CALIFORNIA, 1913, CHAPTER 324

"Every employer or other person who, either individually or as an officer, agent or employee of a corporation, or other persons, violates or refuses or neglects to comply with the provisions of this act, or any orders or rulings of this Commission, shall be guilty of a misdemeanor, and upon conviction thereof, be punished by a fine of not less than fifty dollars, or by imprisonment for not less than thirty days, or by both such fine and imprisonment."

CONSPICUOUS PLACE

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INDUSTRIAL WELFARE COMMISSION

STATE OF CALIFORNIA

328 FLOOD BUILDING, 870 MARKET STREET

SAN FRANCISCO

To Whom It May Concern:

TAKE NOTICE: That pursuant to and by virtue of the authority vested in it by the Statutes of California, 1913, Chapter 324, and amendments thereto, and after public hearing duly had on motion of the Commission at the City Hall in the City and County of San Francisco, on Wednesday, March 24, 1920, notice of said hearing having been duly given in the manner provided by law, and the Industrial Welfare Commission thereafter finding and determining that the least wage adequate to supply to women employed in industry the necessary cost of proper living is \$16.00 a week,

THE INDUSTRIAL WELFARE COMMISSION OF THE STATE OF CALIFORNIA does hereby order that:

EXPERIENCED WORKERS

Minimum (or least) rate for experienced women and experienced minors

1. No person, firm or corporation shall employ, or suffer or permit an experienced woman or experienced minor to be employed in the mercantile industry in California (except as otherwise provided in Section 13 of this Order) at a rate of wages less than \$16.00 a week (\$69.33 $\frac{1}{2}$ a month).

Experience defined, adult woman

An adult woman is deemed experienced when she has been employed one year in the mercantile industry.

Experience defined, minors

A minor is deemed experienced when he or she has been employed one year in the mercantile industry.

LEARNERS

Conditions of apprenticeship

2. No person, firm or corporation shall employ, or suffer or permit learners to be employed in the mercantile industry for less than the legal minimum wage of \$16.00 a week, except at the rates and under the conditions hereinafter set forth:

Number of Learners Limited

(a) No person, firm or corporation shall suffer or permit the employment of over 33 $\frac{1}{3}$ per cent of the total number of females (exclusive of the office force, the millinery workroom force, and the female workers regulated by Order No. 12) as learners, at less than the legal minimum wage of \$16.00 a week. In computing the total number of females, special and part-time workers shall not be included.

Minimum (or least) rates for inexperienced adult women

(b) Adult female learners shall be paid not less than the following rates:

SCHEDULE OF APPRENTICESHIP FOR ADULT WOMEN

Wage first 6 months	Wage second 6 months	Thereafter not less than	Length of apprenticeship
\$12.00 a week \$52.00 a month	\$14.00 a week \$60.66 $\frac{2}{3}$ a month	\$16.00 a week \$69.33 $\frac{1}{2}$ a month	12 months

Minimum (or least) rates for inexperienced minors

(c) Minor learners shall be paid not less than the following rates:

SCHEDULE OF APPRENTICESHIP FOR MINORS

Wage first 6 months	Wage second 6 months	Wage third 6 months	Thereafter not less than	Length of apprenticeship
\$10.00 a week \$43.33 $\frac{1}{3}$ a month	\$12.00 a week \$52.00 a month	\$14.00 a week \$60.66 $\frac{2}{3}$ a month	\$16.00 a week \$69.33 $\frac{1}{2}$ a month	18 months

NOTE: A minor girl who is still a learner upon reaching the age of eighteen years shall be paid not less than the rates specified for adult learners.

Registration of learners

(d) Every person, firm or corporation employing learners shall make application for the registration of such learners at the end of two weeks' employment, and pending the issuance of certificates of registration, shall pay to all learners not less than the minimum rate for the wage group in which they belong.

Penalty for failure to register learners

(e) All women and minor learners for whom applications for learners' certificates have not been made to the Industrial Welfare Commission at the end of two weeks' employment will be rated by the Commission as experienced workers, to be paid not less than \$16.00 a week.

Learner defined

A learner is a woman or minor whom the Industrial Welfare Commission permits to work for a person, firm or corporation for less than the legal minimum wage, in consideration of the provision, by such employer, of reasonable facilities for learning the mercantile industry.

Learners' permits will be withheld by the Commission where there is evidence of attempted evasion of the law by firms which make a practice of dismissing learners when they reach their promotional periods.

PART-TIME WORKERS

Minimum (or least) rates for part-time workers

3. No person, firm or corporation shall employ, or suffer or permit any woman or minor to be employed as a part-time worker (except waitresses*) at less than the following rates and under the following conditions:

Adult women and experienced minor part-time workers
 Inexperienced minor part-time workers

(a) ADULT FEMALE PART-TIME WORKERS AND EXPERIENCED MINOR PART-TIME WORKERS at not less than 40¢ an hour.

(b) INEXPERIENCED MINOR PART-TIME WORKERS at not less than 30¢ an hour.

Registration of part-time workers

(c) All adult and minor part-time workers shall be registered with the Commission. Registration of part-time workers is accomplished by sending to the Commission, at the end of two weeks' employment, the following information concerning each part-time worker: Name, age, address, hours to be worked a week, amount to be paid a week, and for minors under sixteen years of age, the kind of working permit.

Number of part-time workers limited

(d) The total number of adult and minor female part-time workers shall not exceed 10 per cent of the total number of females employed.

Students of accredited vocational, continuation or cooperative schools

(e) Any person, firm or corporation may employ students attending accredited vocational, continuation or cooperative schools at part-time work on special permits from the Commission, and at rates to be determined by the Commission.

Part-time worker defined

A part-time worker is one who is employed on an hourly basis for less than eight hours in one day.

SPECIAL WORKERS

Minimum (or least) rates for special workers

4. No person, firm or corporation shall employ, or suffer or permit any woman or minor to be employed as a SPECIAL WORKER at less than the following rates:

Adult special workers
 Minor special workers
 Special worker defined

(a) ADULT SPECIAL WORKERS at not less than \$2.66 $\frac{2}{3}$ a day.

(b) MINOR SPECIAL WORKERS at not less than \$2.00 a day.
 A special worker is one who is employed on a full day basis for less than six days a week.

OFFICE WORKERS

Office workers regulated by office order

5. (a) Every person, firm or corporation employing women or minors in the mercantile industry shall pay all OFFICE WORKERS in accordance with the provisions of the Industrial Welfare Commission Order No. 9 Amended 1920.

Selling experience granted to office workers

(b) A woman or minor who has been employed in the selling force of a mercantile establishment shall, when she enters the office force of that establishment, be granted one-third of her selling experience, to be applied on her office experience.

Office experience granted to saleswomen

(c) A woman or minor who has been employed as an office worker in a mercantile establishment shall, when she enters the selling force of that establishment, be granted one-third of her office experience, to be applied to her selling experience.

*The rates for part-time waitresses are regulated by Industrial Welfare Commission Order No. 12 Amended 1920.

THIS ORDER MUST BE POSTED

SEASONAL MILLINERY WORKROOM APPRENTICES

Minimum (or least) rates for seasonal millinery workroom apprentices

Number of seasonal millinery workroom apprentices limited

Minimum (or least) rates for seasonal millinery workroom apprentices

6. No person, firm or corporation shall employ, or suffer or permit the employment of seasonal millinery workroom apprentices for less than the legal minimum wage of \$16.00 a week, except at the rates and under the conditions hereinafter set forth:

(a) No person, firm or corporation shall suffer or permit the employment, in the millinery workroom of any mercantile establishment, of over 33 1/3 per cent of the total number of females employed in the millinery workroom, as apprentices, at less than the legal minimum wage of \$16.00 a week.

(b) Seasonal millinery apprentices shall be paid not less than the following scale:

SCHEDULE FOR MILLINERY WORKROOM APPRENTICES

FIRST SEASON	
First 4 weeks.....	\$8.00 a week
Second 4 weeks.....	9.00 a week
Third 4 weeks.....	10.00 a week
SECOND SEASON	
First 4 weeks.....	\$12.00 a week
Second 4 weeks.....	13.00 a week
Third 4 weeks.....	14.00 a week

and thereafter not less than \$16.00 a week.

Registration of seasonal millinery workroom apprentices

Seasonal millinery workroom experience granted to saleswomen

(c) Every person, firm or corporation employing seasonal millinery workroom apprentices shall make application to the Industrial Welfare Commission for the registration of such apprentices at the end of two weeks' employment.

(d) A woman or minor who has been employed as a seasonal millinery worker in a mercantile establishment shall, when she enters the selling force of that establishment, be granted one-third of her millinery workroom experience, to be applied on her selling experience.

FEMALE WORKERS IN FOOD-CATERING DEPARTMENTS

Employment of women in food-catering departments regulated by hotel and restaurant order
Combination woman defined

Women and minors to be paid in accordance with experience

No deduction from the minimum (or least) wage for cash shortage

Wages paid on commission, bonus or piece-rate basis must equal the minimum (or least) rate

Keeping of records

Failure to keep records a misdemeanor

Hours of women and minors limited

Permit issued for special minimum wage

Filing reports

Inspection

Posting of Order

7. Every person, firm or corporation employing women or minors in the mercantile industry shall pay all female workers (including combination women) in food-catering department in accordance with the provisions of Industrial Welfare Commission Order No. 12 Amended 1920.

A combination woman is one who acts both as waitress and saleswoman.

8. Every person, firm or corporation now employing women or minors in the mercantile industry shall rate and pay such women and minors in accordance with their periods of employment, as specified in Sections 1, 2 and 6 of this Order.

9. No person, firm or corporation shall make a deduction from the minimum wage of any woman or minor for a cash shortage, unless it be shown that the shortage is caused by the willful or dishonest act of the employee, notwithstanding any contract or arrangement to the contrary.

10. Every person, firm or corporation making payment of wages upon a commission, bonus or piece-rate basis shall guarantee to all women and minor employees not less than the minimum time rates for the wage groups in which they belong.

11. (a) Every person, firm or corporation employing women or minors in the mercantile industry shall keep, in a form and manner approved by the Industrial Welfare Commission, records of the names and addresses, the rates paid, the hours worked and the amounts earned by all women and minor employees, such records to be kept on file for at least one year. Male minors shall be marked "M" and female minors "F" on the pay roll.

(b) Every person, firm or corporation employing women or minors in the mercantile industry, failing to keep records as required in Section 11 (a) of this Order, SHALL BE GUILTY OF A MISDEMEANOR.

12. No person, firm or corporation shall employ, or suffer or permit any woman or minor to work in any mercantile establishment more than eight (8) hours in any one day or more than forty-eight (48) hours in any one week, or more than six (6) days in any one week. The hours of labor of women and minors employed in the food-catering departments of mercantile establishments are regulated by Industrial Welfare Commission Order No. 12 Amended 1920.

13. A permit may be issued by the Commission to a woman physically disabled by age or otherwise, authorizing the employment of such licensee for a wage less than the legal minimum wage; and the Commission shall fix a special minimum for such woman.

14. (a) Every person, firm or corporation employing women or minors in the mercantile industry shall furnish to the Commission, at its request, any and all reports or information which the Commission may require to carry out the purposes of the Act creating the Commission, such reports and information to be verified by the oath of the person, member of the firm or the president, secretary or manager of the corporation furnishing the same, if and when so requested by the Commission.

(b) Every person, firm or corporation shall allow any member of the Commission, or any of its duly authorized representatives, free access to the place of business of such person, firm or corporation, for the purpose of making inspection of, or excerpts from, all books, reports, contracts, pay rolls, documents or papers of such person, firm or corporation, relating to the employment of women and minors and payment therefor by such person, firm or corporation; or for the purpose of making any investigation authorized by the Act creating the Commission.

15. Every person, firm or corporation employing women or minors in the mercantile industry shall post a copy of this Order in the general workroom and one in the women's dressing room.

16. The Commission shall exercise exclusive jurisdiction over all questions arising as to the administration and interpretation of this Order.

THIS ORDER SHALL BECOME EFFECTIVE SIXTY (60) DAYS FROM THE DATE HEREOF, or July 31, 1920.

Dated at San Francisco, California, this first day of June, 1920.

Order No. 5 Amended, 1919, dated April 22, 1919, is hereby rescinded as and of the date when this Order becomes effective.

ATTEST: KATHERINE PHILIPS EDSON,
Executive Officer.

INDUSTRIAL WELFARE COMMISSION
STATE OF CALIFORNIA

A. B. C. DOHRMANN, Chairman
KATHERINE PHILIPS EDSON
ALEXANDER GOLDSTEIN
WALTER G. MATHEWSON

NOTICE

NOTHING IN THIS ORDER PREVENTS EMPLOYERS FROM PAYING MORE THAN THE RATES FIXED BY THE COMMISSION AS THE MINIMUM OR LEAST RATES. THIS ORDER APPLIES TO ALL WOMEN AND MINORS IN THE MERCANTILE INDUSTRY.

The Industrial Welfare Commission expects to review its Orders annually.

SOUTHERN CALIFORNIA OFFICE, 412 UNION LEAGUE BUILDING, LOS ANGELES

STATUTES OF CALIFORNIA, 1918, CHAPTER 324

"Every employer or other person who, either individually or as an officer, agent or employee of a corporation, or other persons, violates or refuses or neglects to comply with the provisions of this act, or any orders or rulings of this Commission, shall be guilty of a misdemeanor, and upon conviction thereof, be punished by a fine of not less than fifty dollars, or by imprisonment for not less than thirty days, or by both such fine and imprisonment."

"For the purpose of this act, a minor is defined to be a person of either sex under the age of eighteen years."

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D IN A CONSPICUOUS PLACE

INDUSTRIAL WELFARE COMMISSION
STATE OF CALIFORNIA
620 STATE BUILDING, CIVIC CENTER
SAN FRANCISCO

SOUTHERN CALIFORNIA OFFICE:

1019 ASSOCIATED REALTY BUILDING, LOS ANGELES

To Whom It May Concern:

TAKE NOTICE: That pursuant to and by virtue of the authority vested in it by the Statutes of California, 1913, Chapter 324, and amendments thereto, and after public hearing duly had on motion of the Commission at the City Hall in the City and County of San Francisco on Thursday, December 14, 1922, notice of said hearing having been duly given in the manner provided by law, and the Industrial Welfare Commission thereafter finding and determining that the least wage adequate to supply to women and minors employed in industry the necessary cost of proper living and to maintain their health and welfare is \$16 a week.

THE INDUSTRIAL WELFARE COMMISSION OF THE STATE OF CALIFORNIA DOES HEREBY ORDER THAT:

1. MINIMUM WAGE FOR EXPERIENCED WOMEN AND MINOR WORKERS.

(a) No employer shall pay or suffer or permit to be paid to any experienced woman or minor employed in any mercantile establishment in California less than \$16 for the standard week's work. An employer who furnishes to any employee less than the standard week's work shall pay to said employee for said week not less than the legal minimum wage of \$16.

The term "standard week" as herein used is defined to be the regularly established number of hours worked per week in the place of employment.

The term "minor" as used herein is defined to be a person of either sex under the age of eighteen years.

(b) **Experience Defined.** Adult women are deemed experienced workers in the mercantile industry when they have completed one year of work in said industry and minors are deemed experienced workers in the mercantile industry when they have completed two years of work in said industry, except that any minor whose learning period shall have commenced prior to the effective date of this order shall be deemed experienced when he or she has been employed one year and six months in the mercantile industry.

2. MINIMUM WAGE FOR INEXPERIENCED WOMEN AND MINOR WORKERS OR LEARNERS.

(a) **Learners Defined.** A learner is a woman or minor whom the Industrial Welfare Commission permits, through the issuance of a certificate of registration, to work for less than the legal minimum wage of \$16 a week in consideration of the provision by the employer of reasonable facilities for learning the industry. Learners' certificates of registration will be withheld by the Commission where there is evidence of attempted evasion of the law by employers who make a practice of dismissing learners when they reach their promotional periods.

The term "learner" as herein used is synonymous with the terms "inexperienced woman" or "inexperienced minor."

(b) **Limitation of Number of Learners.** The total number of female learners in any mercantile establishment (exclusive of the office force, the millinery workroom force, elevator operators and female workers in food catering departments) receiving less than the legal minimum wage of \$16 a week shall not exceed 33 $\frac{1}{3}$ % of the total number of female workers employed in said establishment (exclusive of the office force, the millinery workroom force, elevator operators and female workers in food catering departments). In computing the total number of females employed under this subdivision, special and part-time workers shall not be included.

(c) **Registration of Learners.** Each employer shall register each learner employed by him with the Industrial Welfare Commission three weeks from the commencement of the employment of said learner, and pending the issuance of certificates of registration by the Commission, he shall pay to all learners not less than the minimum rates as provided by paragraph 2, subdivisions (d) and (e). All women and minor workers not registered with the Industrial Welfare Commission at the end of three weeks employment shall be rated by the Commission as experienced workers to be paid not less than the legal minimum wage of \$16 a week.

(d) **Minimum Wage for Adult Female Learners.** No employer in the mercantile industry shall pay or suffer or permit to be paid to any adult female learner less than the following:

During First Six Months of the Learning Period in the Mercantile Industry—Not less than \$12 a week for the standard week's work. An employer who furnishes to any employee less than the standard week's work shall pay to said employee for said week not less than \$12.

During Second Six Months of the Learning Period in the Mercantile Industry—Not less than \$14 a week for the standard week's work. An employer who furnishes to any employee less than the standard week's work shall pay to said employee for said week not less than \$14.

(e) **Minimum Wage for Minor Learners.** No employer in the mercantile industry shall pay or suffer or permit to be paid to any minor learner less than the following:

During First Six Months of the Learning Period in the Mercantile Industry—Not less than \$10 a week for the standard week's work. An employer who furnishes to any employee less than the standard week's work shall pay to said employee for said week not less than \$10.

During Second Six Months of the Learning Period in the Mercantile Industry—Not less than \$11 a week for the standard week's work. An employer who furnishes to any employee less than the standard week's work shall pay to said employee for said week not less than \$11.

During Third Six Months of the Learning Period in the Mercantile Industry—Not less than \$12 a week for the standard week's work. An employer who furnishes to any employee less than the standard week's work shall pay to said employee for said week not less than \$12.

During Fourth Six Months of the Learning Period in the Mercantile Industry—Not less than \$14 a week for the standard week's work. An employer who furnishes to any employee less than the standard week's work shall pay to said employee for said week not less than \$14.

NOTE—A minor girl who is still a learner upon reaching the age of eighteen years shall be paid thereafter not less than the rates specified for adult learners.

3. MINIMUM WAGE FOR PART-TIME ADULT AND MINOR WORKERS.

(a) No employer shall pay or suffer or permit to be paid to any adult or minor part-time worker (except waitresses and errand boys) less than the following:

Adult Female Part-Time Workers—Not less than 40¢ an hour.

Minor Part-time Workers—Not less than 30¢ an hour.

(b) **Limitation of Number of Part-Time Workers.** The total number of adult and minor female part-time workers in any mercantile establishment shall not exceed 10% of the total number of female employees.

(c) Any employer may employ students attending accredited vocational, continuation or cooperative schools at part-time work on special permits from the Industrial Welfare Commission and at rates to be determined by the Commission.

(d) **Part-Time Worker Defined.** A part-time worker is a woman or minor who is employed on an hourly basis for less than eight hours in one day.

THIS ORDER MUST BE POSTED

4. MINIMUM WAGE FOR SPECIAL WORKERS.

(a) No employer shall pay or suffer or permit to be paid to any adult woman or minor special worker less than the following:

Adult Female Special Workers—Not less than \$2.66 $\frac{2}{3}$ a day.

Minor Special Workers—Not less than \$2.00 a day.

(b) **Special Worker Defined.** A special worker is a woman or minor who is employed on a full-day basis for three weeks or less.

5. MINIMUM WAGE FOR OFFICE WORKERS.

(a) Office workers are not included within the operation of this order but are covered by the provisions of the order of the Industrial Welfare Commission for general and professional offices.

(b) A woman or minor who has been employed in the selling force of a mercantile establishment shall, when she enters the office force of that establishment, be granted one-third of her selling experience, to be applied toward office experience.

(c) A woman or minor who has been employed as an office woman in a mercantile establishment shall, when she enters the selling force of that establishment, be granted one-third of her office experience, to be applied toward mercantile experience.

6. MINIMUM WAGE FOR WOMEN AND MINORS EMPLOYED IN THE FOOD CATERING DEPARTMENTS OF MERCANTILE ESTABLISHMENTS.

Women and minors employed in the food catering departments of mercantile establishments are not included within the operation of this order but are covered by the provisions of the order of the Industrial Welfare Commission for hotels and restaurants.

7. MINIMUM WAGE FOR ELEVATOR OPERATORS.

An employer employing women or minors as elevator operators shall pay to such women and minors not less than \$12 a week for the standard week's work during the first three weeks of employment and thereafter not less than \$16 a week for the standard week's work.

8. MINIMUM WAGE FOR MESSENGER AND ERRAND BOYS.

An employer employing minor boys regularly as messenger or errand boys shall pay to such minor boys not less than \$10.56 a week for the standard week's work during the first three weeks of their employment and thereafter not less than \$12 a week for the standard week's work. Part-time messenger or errand boys shall be paid not less than 25¢ an hour.

9. No employer shall make any deduction from the foregoing minimum rates for a cash shortage, unless it is shown that the shortage is caused by the wilful or dishonest act of the employee, notwithstanding any contract or arrangement to the contrary.

10. KEEPING OF RECORDS.

Every employer employing women or minors in the mercantile industry shall keep, in a form and manner approved by the Industrial Welfare Commission, records of the names and addresses, the number of hours worked and the amounts earned by all women and minor employees, such records to be kept on file for at least one year. Male minors shall be marked "M" and female minors "F" on the payroll.

Every employer employing women or minors in the mercantile industry, failing to keep records as required in Section 10 of this Order, SHALL BE GUILTY OF A MISDEMEANOR.

11. FILING REPORTS.

Every employer employing women or minors in the mercantile industry shall furnish to the Commission, at its request, any and all reports or information which the Commission may require to carry out the purposes of the Act creating the Commission, such reports and information to be verified by oath of the person furnishing the same, if and when so requested by the Commission.

12. INSPECTION.

Every employer employing women or minors in the mercantile industry shall allow any member of the Commission or any of its duly authorized representatives, free access to the place of business of such employer, for the purpose of making inspection of or excerpts from all books, reports, contracts, payrolls, documents or papers of such employer relating to the employment of women and minors and payment therefor by such employer, or for the purpose of making any investigation authorized by the Act creating the Commission.

13. HOURS OF LABOR.

No employer shall employ or suffer or permit any woman or minor to work in any mercantile establishment more than eight (8) hours in any one day, or more than forty-eight (48) hours in any one week, or more than six (6) days in any one week.

14. PERMIT FOR SPECIAL MINIMUM WAGE.

A permit may be issued upon joint application of worker and employer to a woman physically defective by age or otherwise authorizing her employment for a period of six (6) months or less, at a special minimum wage less than the legal minimum wage hereinabove established.

15. POSTING OF ORDERS.

Every employer shall post a copy of this Order in a conspicuous place where it can be read by the women and minor employees.

16. The Commission shall exercise exclusive jurisdiction over all questions arising as to the administration and interpretation of this Order.

DATED at San Francisco, California, this 29th day of December, 1922.

Order No. 5, amended 1920, dated June 7, 1920, is hereby rescinded as and of the date when this Order becomes effective.

INDUSTRIAL WELFARE COMMISSION
STATE OF CALIFORNIA

ATTEST: KATHERINE PHILIPS EDSON,
Executive Commissioner.

A. B. C. DOHRMANN, *Chairman*
KATHERINE PHILIPS EDSON
WALTER G. MATHEWSON
HENRY W. LOUIS
PAUL A. SINSHEIMER

NOTICE

NOTHING IN THIS ORDER PREVENTS EMPLOYERS FROM PAYING MORE THAN THE RATES FIXED BY THE COMMISSION AS THE MINIMUM OR LEAST RATES. THIS ORDER APPLIES TO ALL WOMEN AND MINORS IN THE MERCANTILE INDUSTRY.

The Industrial Welfare Commission expects to review its orders annually.

STATUTES OF CALIFORNIA, 1913, CHAPTER 324

"Every employer or other person who, either individually or as an officer, agent or employee of a corporation, or other persons, violates or refuses or neglects to comply with the provisions of this Act, or any orders or rulings of this Commission, shall be guilty of a misdemeanor, and upon conviction thereof, be punished by a fine of not less than fifty dollars, or by imprisonment for not less than thirty days, or by both such fine and imprisonment."

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STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF INDUSTRIAL WELFARE

515 VAN NESS AVENUE, SAN FRANCISCO (3)
208 STATE BUILDING, LOS ANGELES (12)
245 HOLLAND BUILDING, FRESNO
584 NEW CALIFORNIA BUILDING, SAN DIEGO (1)

To Whom It May Concern:

TAKE NOTICE: That pursuant to and by virtue of the authority vested in it by Sections 1171 to 1203, inclusive, Labor Code of the State of California, and after findings and recommendations of a wage board having been received and public hearing duly had on March 12, 1943, on motion of the Industrial Welfare Commission, notice of said hearing having been duly given in the manner provided by law, the Industrial Welfare Commission hereafter finding and determining that the minimum wage to be paid to women and minors in the mercantile industry is such wage as hereinafter set out, and the hours of work consistent with, and the standard conditions of labor demanded by the health and welfare of such women and minors are as set forth below,

THE INDUSTRIAL WELFARE COMMISSION OF THE STATE OF CALIFORNIA DOES HEREBY ORDER THAT:

1. APPLICABILITY OF ORDER

This Order shall apply to all women and minor employees employed in the mercantile industry, whether on a time, piece-rate, commission, or other basis of pay.

2. DEFINITIONS

- (a) "The Commission" means the Industrial Welfare Commission of the State of California.
- (b) "Mercantile industry" includes any industry or business operated for the purpose of:
 - 1. Selling, purchasing, or distributing merchandise to wholesalers, retailers, industrial or commercial users, or acting as agents, jobbers, or brokers in buying merchandise for or selling merchandise to such persons or companies, and rendering services incidental to such operations;
 - 2. Selling, purchasing, or distributing merchandise for personal or household consumption, and rendering services incidental to the sale of such goods; and
 - 3. Selling, purchasing, or distributing real estate, insurance or securities;

Except those functions of the industry performed by:

- (a) Employees covered by the Order for Professional, Technical, Clerical and Similar Occupations;
- (b) Employees covered by the Order for the Public Housekeeping Industry;
- (c) Employees covered by the Order for the Manufacturing Industry; and
- (d) Employees covered by the Order for the Personal-Service Industry.

(c) "Employ" means to engage, suffer, or permit to work.

(d) "Employee" means any woman or minor engaged, suffered or permitted to work, and includes employees who work under instructions which indicate participation in a mercantile organization engaged in selling, demonstrating, distributing, or advertising, and under conditions which indicate that the employer has reasonable control over the hours worked by the employee.

(e) "Employer" means any person, as defined in the California Labor Code, Section 18, who employs any woman or minor.

(f) "Hours employed" includes all time during which:

- 1. A woman or minor is required to be on the employer's premises ready to work, or to be on duty, or to be at a prescribed work place.
- 2. A woman or minor is suffered or permitted to work, whether or not required to do so. Such time includes, but shall not be limited to, time when the employee is required to wait on the premises while no work is provided by the employer and time when an employee is required or instructed to travel on the employer's business after the beginning and before the end of her work day.

(g) A "Work Day" or "Day" means the twenty-four (24) hour period from 6:00 a.m. of one day to 6:00 a.m. of the following day.

(h) "Split Shift" means a schedule of daily hours in which the hours of work are not consecutive, except that interruption of working hours for meal or rest periods of one hour or less does not constitute a split shift.

(i) "Experienced Employee": All employees covered by this Order shall be deemed experienced, except as provided in subsection (j) of this section.

(j) "Learner" is a woman or minor whom the Commission permits, upon registration, to work for less than the legal minimum wage provided for experienced employees in consideration of the provision by the employer of reasonable facilities for learning the industry.

(k) "Handicapped Employee" means a woman or minor employee whose earning capacity is impaired by age or physical or mental deficiency or injury and whom the Commission may permit to be employed at a special minimum wage. Such permits shall be granted only upon joint application of employer and employee and after investigation and finding of disability by the Division of Industrial Welfare.

(l) "Wages" means compensation to an employee, and the minimum wages provided herein shall be an unconditional payment in cash or check negotiable at par, without deduction, except such deductions as are required by law, and except such deductions as are permitted by law and voluntarily requested in writing by the employee.

3. HOURS

(a) No employer shall employ any person under the age of eighteen (18) years for more than eight (8) hours in any one day, or more than forty-eight (48) hours in any one week, or more than six (6) days in any one week, or after the hour of 10 p.m. or before the hour of 6 a.m.

(b) No employer shall employ any female in any establishment or industry covered by this Order more than eight (8) hours in any one day of twenty-four (24) hours, or more than forty-eight (48) hours in any one week, or more than six (6) days in any one week. Said eight (8) hours of employment must be performed in a period not to exceed thirteen (13) hours.

(c) Every woman and minor shall have one day's rest in seven. Sunday shall be considered the established day of rest for all women and minors unless a different arrangement is made by the employer for the purpose of providing another day of the week as the day of rest.

THIS ORD