S241655

In The Supreme Court of the State of California

JAZMINA GERARD, KRISTIANE McELROY AND JEFFREY CARL
Plaintiffs and Appellants,

v.

ORANGE COAST MEMORIAL MEDICAL CENTER
Defendant and Respondent.

On Review From The Court Of Appeal For the Fourth Appellate District, Division Three
4th Civil No. G048039

After An Appeal From the Superior Court of Orange County
Honorable Nancy Wieben Stock, Judge
Case Number 30-2008-00096591

COMPILATION OF EXHIBITS FOR RESPONDENT ORANGE COAST MEMORIAL MEDICAL CENTER'S MOTION FOR JUDICIAL NOTICE

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INDEX TO EXHIBITS

EXHIBIT	DESCRIPTION	PAGES
Exhibit A	June 30, 1993 Notice from the Industrial Welfare Commission (IWC) regarding IWC Orders 4-89 and 5-89, Amendments to IWC Order No. 5-89 and Statement as to the Basis of Amendments to Sections 2, 3, and 11 of IWC Order No. 5-89	1-9
Exhibit B	Assembly Bill No. 60 (1999-2000 Reg. Sess.) **http://www.leginfo.ca.gov/pub/99-00/bill/asm/ab_0051-0100/ab_60_bill_19990721_chaptered.html**	10-24
Exhibit C	Minutes of Public Meeting of the IWC between October 1, 1999 and June 30, 2000. **https://www.dir.ca.gov/iwc/Minutes100199.html** **https://www.dir.ca.gov/iwc/Minutes11899.html** **https://www.dir.ca.gov/iwc/Minutes111599.html** **https://www.dir.ca.gov/iwc/Minutes121599.html** **https://www.dir.ca.gov/iwc/Minutes12800.html** **https://www.dir.ca.gov/iwc/Minutes22500.html** **https://www.dir.ca.gov/iwc/Minutes33100.html** **https://www.dir.ca.gov/iwc/Minutes41400.html** **https://www.dir.ca.gov/iwc/Minutes05052000.htm** **https://www.dir.ca.gov/iwc/Minutes52600.html** **https://www.dir.ca.gov/iwc/Minutes63000.htm**	25-60
Exhibit D	Division of Labor Standard Enforcement's (DLSE) December 23, 1999 memorandum titled: "Understanding AB 60: An In-Depth Look at the Provisions of the 'Eight Hour Day Restoration and Workplace Flexibility Act of 1999.'" **https://www.dir.ca.gov/dlse/AB60update.htm**	61-70
Exhibit E	Section 45.2 of the DLSE's Enforcement Policies and Interpretations Manual **http://www.dir.ca.gov/dlse/DLSEManual/dlse_enfcmanual.pdf**	71-73
Exhibit F	IWC Wage Order No. 5-2001 and Statement as to the Basis **https://www.dir.ca.gov/iwc/StatementBasis.htm**	74-102

EXHIBIT A

Pete Wilson, Governor, State of California

DEPARTMENT OF INDUSTRIAL RELATIONS
INDUSTRIAL WELFARE COMMISSION
455 Golden Gate Avenue
San Francisco, CA 94102

ADDRESS REPLY:
P.O. Box 420603
San Francisco, CA 94142-0603

June 30, 1993

NOTICE TO EMPLOYERS AND REPRESENTATIVES OF PERSONS WORKING IN THE HEALTH CARE INDUSTRY

On June 29, 1993, the Industrial Welfare Commission (IWC) amended Order 4-89, regulating Professional, Technical, Clerical, Mechanical, and Similar Occupations, and Order 5-89, regulating the Public Housekeeping Industry. The amendments, effective August 21, 1993, apply only to persons employed in the health care industry and their employers.

The IWC made changes to Section 2, *Definitions*, Section 3, *Hours and Days of Work*, and Section 11, *Meal Periods*, under the special provisions of Labor Code Section 1182.7. A copy of the amendments and the statement as to the basis upon which the changes are predicated are attached for your information.

An official copy of the amendments for posting, will be mailed to employers under separate cover. Employers who do not receive a poster by August 21, 1993, may contact the IWC at (415) 703-3820 for a copy.

INDUSTRIAL WELFARE COMMISSION

Lynnel Pollock, Chairperson
James Rude, Vice Chairperson
Robert Hanna
Donald Novey
Dorothy Vuksich

Final Language: Health Care Industry

1) Add the following language to subsection (H) in *Definitions*, Section 2 of Wage Orders 4-89 and 5-89:

(H) . . . Within the health care industry, the term "hours worked" means the time during which an employee is suffered or permitted to work for the employer, whether or not required to do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act.

2) Add the following language to subsection (K) in *Definitions*, Section 2 of Wage Order 4-89, and subsection (L) in *Definitions*, Section 2 of Wage Order 5-89:

(K)* . . . Within the health care industry, the term "primarily" as used in Section 1, Applicability, means (1) more than one-half the employee's work time as a rule of thumb or, (2) if the employee does not spend over 50 percent of the employee's time performing exempt duties, where other pertinent factors support the conclusion that management, managerial, and/or administrative duties represent the employee's primary duty. Some of these pertinent factors are the relative importance of the managerial duties as compared with other types of duties; the frequency with which the employee exercises discretionary powers, the employee's relative freedom from supervision, and the relationship between the employee's salary and the wages paid other employees for the kind of nonexempt work performed by the supervisor.

***Subsection letter (L) in Order 5-89.**

3) Add the following Section 3 (J) to Hours and Days of Work of Order 4-89; strike language in Section 3 (K) of Order 5-89 and replace with the following:

(J)* Employees in the health care industry may work on any days any number of hours a day up to twelve (12) without overtime, as long as the employer and at least two-thirds (2/3) of the affected employees in a work unit agree to this flexible work arrangement, in writing, in a secret ballot election before the performance of the work, provided:

(1) An employee who works beyond twelve (12) hours in a workday shall be compensated at double the employee's regular rate of pay for all hours in excess of twelve (12);

(2) An employee who works in excess of forty (40) hours in a workweek shall be compensated at one and one-half (1 1/2) times the employee's regular rate of pay for all hours over forty (40) hours in the workweek;

(3) Prior to the secret ballot vote, any employer who proposes to institute a flexible work arrangement shall make a disclosure in writing to the affected employees, including the effects of the proposed arrangement on the employees' wages, hours, and benefits. Such a disclosure shall include meeting(s), duly noticed, held at least fourteen (14) days prior to voting, for the specific purpose of discussing the effects of the flexible work arrangement. Failure to comply with this section shall make the election null and void;

(4) The same overtime standards shall apply to employees who are temporarily assigned to a work unit covered by this subsection;

(5) Any employer who institutes an arrangement pursuant to this subsection shall make a reasonable effort to find an alternative work assignment for any employee who participated in the secret ballot election and is unable or unwilling to comply with the agreement. An employer shall not be required to offer an alternative work assignment to an employee if an alternative assignment is not available or if the employee was hired after the adoption of the flexible work arrangement. There is no maximum number of employees whom an employer may voluntarily accommodate consistent with its desire and ability to do so;

(6) After a lapse of twelve (12) months and upon petition of a majority of the affected employees, a new secret ballot election shall be held and a two-thirds (2/3) vote of the affected employees shall be required to reverse the arrangement above. If the arrangement is revoked, the employer shall comply within sixty (60) days. Upon a proper showing by the employer of undue hardship, the Division may grant an extension of time for compliance;

(7) For purposes of this subsection, affected employees may include all employees in a readily identifiable work unit, such as a division, a department, a job classification, a shift, a separate physical location, or a recognized subdivision of any such work unit. A work unit may consist of an individual employee as long as the criteria for an identifiable work unit in this subsection are met.

***Subsection letter (J) in Order 4-89; subsection letter (K) in Order 5-89.**

(K)* When an employee in the health care industry requests in writing, and the employer concurs, the employee shall be permitted to make up work time lost as a result of personal obligations. The amount of make up time shall not exceed two (2) hours in any one workweek [or, where applicable, four (4) hours

in any one fourteen (14) day work period] and must be made up during that workweek [or work period, whichever is applicable]. With the exception of the make up time authorized in this subsection, the appropriate overtime provisions in Section 3 shall apply to all other excess daily or weekly hours worked in the workweek [or fourteen (14) day work period].

*** Subsection letter (K) in Order 4-89; subsection letter (L) in Order 5-89. Bracketed language applies to Order 5 only.**

4) Strike current subsection (C) in Section 3, *Hours and Days of Work*, of Wage Order 5-89 and replace with the following language.

(C) No employer engaged in the operation of a hospital or an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises shall be deemed to have violated any provision of this Section if, pursuant to an agreement or understanding arrived at between the employer and employee before performance of the work, a work period of fourteen (14) consecutive days is accepted in lieu of the workweek of seven consecutive days for purposes of overtime computation and if, for any employment in excess of eight (8) hours in any workday and in excess of eighty (80) hours in such fourteen (14) day period, the employee receives compensation at a rate not less than one and one-half (1 1/2) times the regular rate at which the employee is employed.

5) Add new subsection (C) to Section 11, *Meal Periods*, of Wage Orders 4-89 and 5-89:

(C) Notwithstanding any other provision of this order, employees in the health care industry who work shifts in excess of eight (8) total hours in a workday may voluntarily waive their right to a meal period. In order to be valid, any such waiver must be documented in a written agreement that is voluntarily signed by both the employee and the employer. The employee may revoke the waiver at any time by providing the employer at least one day's written notice. The employee shall be fully compensated for all working time, including any on-the-job meal period, while such a waiver is in effect.

IWC FORM 1105A 93 2857 Printed On Recycled Paper

Department of Industrial Relations
State of California
Pete Wilson, Governor
Lloyd W. Aubry Jr., Director of Industrial Relations

State of California
Department of Industrial Relations
DIVISION OF LABOR STANDARDS ENFORCEMENT
P.O. Box 420603
San Francisco, CA 94142-0603

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OFFICIAL NOTICE

Amendments to Sections 2, 3, and 11 of
Industrial Welfare Commission Order No. 5-89, Regulating the

PUBLIC HOUSEKEEPING INDUSTRY

These changes affect only the health care industry

Employers of persons working in the health care industry covered by Order 5-89 must post these amendments next to that order

555555555555555555

Amendments to Secs. 2, 3, and 11 Order 5-89 Title 8, California Code of Regulations 11050 Effective August 21, 1993

• Please Post •

Amendments to Industrial Welfare Commission Order No. 5-89, Regulating the

PUBLIC HOUSEKEEPING INDUSTRY

OFFICIAL NOTICE

To employers and representatives of persons in occupations covered by IWC Order No. 5-89 who work in the ***health care industry:***

The Industrial Welfare Commission (IWC) of the State of California proceeded according to its authority in the Labor Code and the Constitution of California, and concluded that Sections 2, 3, and 11 of its Order 5-89, regulating the Public Housekeeping Industry, should be amended to affect persons who work in the health care industry. The IWC promulgated these amendments to Order 5-89, made pursuant to the special provisions of Labor Code Section 1182.7, on June 29, 1993. The amendments become effective on August 21, 1993.

All other provisions of Section 2, Definitions, Section 3, Hours and Days of Work, and Section 11, Meal Periods, and all other sections of Order 5-89 remain in full force and effect.

The amendments allow more flexibility with respect to work scheduling, managerial and administrative exemptions, and the definition of hours worked for compensation. They apply *only* to persons covered by this order who work in the health care industry. This includes, but is not limited to, all employees who work for hospitals, skilled nursing facilities, intermediate care and residential care facilities, convalescent care institutions, and similar establishments.

The amendments printed in this mailer must be posted next to the calendar-style poster on which the entire Order 5-89 is printed, and which should already be posted where employees can read it.

The reasons for the changes accompany the amendments in the *Statement as to the Basis*, provided for your information. If you have any questions on interpreting the amendments or how they apply to you, please contact your nearest Division of Labor Standards Enforcement office, listed below.

If you need additional copies of this amendment, please write to: Division of Labor Standards Enforcement, P.O. Box 420603, San Francisco, CA 94142-0603.

2. DEFINITIONS

[The following language is added to Section 2, *Definitions*, subsection (H).]

(H) ... Within the health care industry, the term "hours worked" means the time during which an employee is suffered or permitted to work for the employer, whether or not required to do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act.

[The following language replaces subsection (K) in Section 3, *Hours and Days of Work*.]

(K) Employees in the health care industry may work on any days any number of hours a day up to twelve (12) without overtime, as long as the employer and at least two-thirds (2/3) of the affected employees in a work unit agree to this flexible work arrangement, in writing, in a secret ballot election before the performance of the work, provided:

(1) An employee who works beyond twelve (12)

(7) For purposes of this subsection, affected employees may include all employees in a readily identifiable work unit, such as a division, a department, a job classification, a shift, a separate physical location, or a recognized subdivision of any such work unit. A work unit may consist of an individual employee as long as the criteria for an identifiable work unit in this subsection are met.

[The following language is added to Section 2, *Definitions*, subsection (L).]

(L) ... Within the health care industry, the term "primarily" as used in Section 1, *Applicability*, means (1) more than one-half the employee's work time as a rule of thumb or, (2) if the employee does not spend over 50 percent of the employee's time performing exempt duties, where other pertinent factors support the conclusion that management, managerial, and/or administrative duties represent the employee's primary duty. Some of these pertinent factors are the relative importance of the managerial duties as compared with other types of duties, the frequency with which the employee exercises discretionary powers, the employee's relative freedom from supervision, and the relationship between the employee's salary and the wages paid other employees for the kind of nonexempt work performed by the supervisor.

3. HOURS AND DAYS OF WORK

[The following language replaces subsection (C) in Section 3, *Hours and Days of Work*.]

(C) No employer engaged in the operation of a hospital or an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises shall be deemed to have violated any provision of this Section if, pursuant to an agreement or understanding arrived at between the employer and employee before performance of the work, a work period of fourteen (14) consecutive days is accepted in lieu of the workweek of seven consecutive days for purposes of overtime computation and if, for any employment in excess of eight (8) hours in any workday and in excess of eighty (80) hours in such fourteen (14) day period, the employee receives compensation at a rate not less than one and one-half (1 1/2) times the regular rate at which the employee is employed.

hours in a workday shall be compensated at double the employee's regular rate of pay for all hours in excess of twelve (12);

(2) An employee who works in excess of forty (40) hours in a workweek shall be compensated at one and one-half (1 1/2) times the employee's regular rate of pay for all hours over forty (40) hours in the workweek;

(3) Prior to the secret ballot vote, any employer who proposes to institute a flexible work arrangement shall make a disclosure in writing to the affected employees, including the effects of the proposed arrangement on the employees' wages, hours, and benefits. Such a disclosure shall include meeting(s), duly noticed, held at least fourteen (14) days prior to voting, for the specific purpose of discussing the effects of the flexible work arrangement. Failure to comply with this section shall make the election null and void;

(4) The same overtime standards shall apply to employees who are temporarily assigned to a work unit covered by this subsection;

(5) Any employer who institutes an arrangement pursuant to this subsection shall make a reasonable effort to find an alternative work assignment for any employee who participated in the secret ballot election and is unable or unwilling to comply with the agreement. An employer shall not be required to offer an alternative work assignment to an employee if an alternative assignment is not available or if the employee was hired after the adoption of the flexible work arrangement. There is no maximum number of employees whom an employer may voluntarily accommodate consistent with its desire and ability to do so;

(6) After a lapse of twelve (12) months and upon petition of a majority of the affected employees, a new secret ballot election shall be held and a two-thirds (2/3) vote of the affected employees shall be required to reverse the arrangement above. If the arrangement is revoked, the employer shall comply within sixty (60) days. Upon a proper showing by the employer of undue hardship, the Division may grant an extension of time for compliance;

[The following is added to Section 3, *Hours and Days of Work*, as subsection (L).]

(L) When an employee in the health care industry requests in writing, and the employer concurs, the employee shall be permitted to make up work time lost as a result of personal obligations. The amount of make up time shall not exceed two (2) hours in any one workweek or, where applicable, four (4) hours in any one fourteen (14) day work period and must be made up during that workweek or work period, whichever is applicable. With the exception of the make up time authorized in this subsection, the appropriate overtime provisions in Section 3 shall apply to all other excess daily or weekly hours worked in the workweek or fourteen (14) day work period.

11. MEAL PERIODS

[The following is added to Section 11, *Meal Periods*, as subsection (C).]

(C) Notwithstanding any other provision of this order, employees in the health care industry who work shifts in excess of eight (8) total hours in a workday may voluntarily waive their right to a meal period. In order to be valid, any such waiver must be documented in a written agreement that is voluntarily signed by both the employee and the employer. The employee may revoke the waiver at any time by providing the employer at least one day's written notice. The employee shall be fully compensated for all working time, including any on-the-job meal period, while such a waiver is in effect.

Amendments adopted in San Francisco on June 29, 1993. Amendments effective August 21, 1993.

INDUSTRIAL WELFARE COMMISSION
STATE OF CALIFORNIA
Lynnel Pollock, Chairperson
James Rude
Robert Hanna
Donald Novey
Dorothy Vuksich

QUESTIONS ABOUT ENFORCEMENT of the Industrial Welfare Commission orders and reports of violations should be directed to the Division of Labor Standards Enforcement. Consult the white pages of your telephone directory under CALIFORNIA, State of, Industrial Relations for the address and telephone number of the office nearest you. The Division has offices in the following cities: Bakersfield, El Centro, Eureka, Fresno, Long Beach, Los Angeles, Marysville, Oakland, Pomona, Redding, Sacramento, Salinas, San Bernardino, San Diego, San Francisco, San Jose, Santa Ana, Santa Barbara, Santa Rosa, Stockton, Van Nuys.

Statement as to the Basis of Amendments to Sections 2, 3, and 11 of Industrial Welfare Commission Order No. 5-89

Labor Code Sec. 1182.7 requires the Industrial Welfare Commission (IWC) to provide accelerated review of petitions filed by organizations recognized in the health care industry who request amendments to an IWC order directly affecting only the health care industry. Under this authority, the California Association of Hospitals and Health Systems (CAHHS) petitioned the IWC to amend and/or clarify certain sections of Order 5, solely for employers and employees in the health care industry. The IWC accepted the petition which proposed to redefine "primarily" and "hours worked" to parallel federal law in Section 2, *Definitions*; to clarify and expand regulations regarding flexible schedules and overtime in Section 3, *Hours and Days of Work*; and to permit employees to waive meal periods in Section 11, *Meal Periods*. The IWC held three public hearings on its proposals in April 1993.

After deliberating on all the evidence presented with respect to its proposals, the IWC adopted amendments to Order 5 for the health care industry on June 29, 1993, and offers the following statement as to the basis for its actions:

DEFINITIONS

Testimony suggested the current DLSE interpretations of "hours worked" were "unduly narrow" resulting in "substantial confusion and serious technical problems," and consistency with the Fair Labor Standards Act (FLSA) would eliminate this confusion. In response to testimony presented at the public hearings that the reference to "29 CFR Part 785" was unclear, the IWC amended that language and referred to "the Fair Labor Standards Act" instead, a term more easily understood by the public. On June 29, 1993, the IWC adopted language to assure "hours worked" in the health care industry would be interpreted in accordance with the FLSA, the regulations interpreting the FLSA including, but not limited to, those contained in 29 CFR Part 785, and federal court decisions. The clarification confirms the IWC's intention that issues related to working time will be resolved consistently under state and federal law.

With respect to redefining "primarily" for the health care industry, the IWC decided since it had examined the professional component of the administrative/executive/professional exemption and adopted language to exempt learned and artistic professions as recently as 1989, it was time to respond to demands for a more flexible application of the executive/administrative exemption than the rigid 51 percent rule. Employees testified current regulations sometimes resulted in treating an employee as nonexempt under a rigid application of a 51 percent rule, such as where emergency or other conditions resulted in less than 50 percent of the time being devoted to exempt duties. On June 29, 1993, the IWC adopted language consistent with the FLSA which promoted clarity and compliance while providing needed flexibility to allow exempt executive and administrative employees to perform nonexempt duties without losing their exempt status. In response to public comment suggesting the term "other pertinent factors" was unclear and confusing to employees, the IWC clarified the meaning of that term by listing some, but not all, examples of pertinent factors.

HOURS AND DAYS OF WORK

With respect to the petitioner's request to amend Order 5 so that the IWC's standard for a 14-day work period conformed with federal law, the IWC was advised that while such work periods are ordinarily implemented on a departmental-wide or institutional-wide basis, DLSE's interpretation of the current regulation would allow one employee "to destroy the validity of such an arrangement by individually insisting on a seven day workweek standard." Public testimony in favor of the proposal claimed it set a "reasonable standard," one similar to the FLSA. Other arguments suggested a change was necessary to prevent individual employees from "opting in and out" of 14-day work periods because such activity could prove disruptive to established arrangements. Those opposed to the IWC's proposal objected to deleting language referring to a "written agreement or understanding voluntarily arrived at" from the current regulation, protections not found in the FLSA. On June 29, 1993, the IWC adopted its original proposal regarding the 14-day work period because it provided for a more stable working environment by clarifying how 14-day work periods would be consistently calculated and because it confirmed the IWC's intention that the California standard parallels the federal standard. Finally, the IWC stated its intent that flexible work arrangements, such as allowing employees to work up to 12 hours a day without overtime, and 14-day work periods, were mutually exclusive of one another and thus cannot be used simultaneously for the same employees.

Testimony supported the petitioner's claims that DLSE's interpretations regarding the flexible scheduling rules adopted in 1986 and 1988 limited desirable options for employees and frustrated the IWC's intent of more, not less, flexibility. Many employees told the IWC they voluntarily worked 12-hour shifts at a "reduced rate of pay," with overtime after eight hours a day. Although this practice is permissible, it sometimes adversely affected their benefits and pensions—in order to cope with DLSE's overly "restrictive" policies. Other employees said they preferred to "mix days off" and working the same days each week was an "unrealistic" practice. The revised language clarifies the IWC's original intent to maximize flexibility in scheduling so that the days and hours of work can vary. While some employees argued part-time employees who have flexible work arrangements should be paid premium wages when asked to work beyond their normal part-time arrangements, by the end of the public hearings, most employees agreed requiring premium wages for part-time or temporary employees who work less than 12 hours a day or 40 hours a week is unfair to full-time workers in the same work unit who earn straight time pay for the same daily and weekly hours. While a few employees suggested the "secret ballot election process" allowed under the IWC orders was "flawed" due to "lack of oversight," the Labor Commissioner testified DLSE had received few, if any, complaints regarding the election process.

After evaluating all the evidence, on June 29, 1993, the IWC adopted its proposal to amend flexible scheduling rules so that an individual employee in the health care industry could agree with his or her employer to work on any days any number of hours a day under certain protective conditions. The new language allowing flexible work arrangements permits employers and employees maximum daily and weekly scheduling flexibility, including but not limited to allowing employees to work overtime on a regular basis, as long as the appropriate premium wages are paid for work after twelve (12) hours a day, or in the case of weekly overtime, forty (40) hours a workweek. Moreover, the final language clarified only one meeting regarding disclosure need be held when not more than one meeting is necessary. The IWC intended the same overtime standards to apply to all employees in a work unit regardless of full-time, part-time, on-call, replacement, permanent, or temporary status. The new rules do not invalidate any arrangement that was implemented prior to their effective date.

With respect to allowing employees in the health care industry to make up work time lost as a result of personal obligations, the IWC proposed and eventually adopted the petitioner's suggested language. The IWC agreed the request was reasonable and balanced the needs of employees and employers. Moreover, the language provided flexibility on an as needed basis without requiring a group vote or long term schedule change.

MEAL PERIODS

The petitioner requested the IWC to allow employees in the health care industry who work shifts in excess of eight (8) total hours in a workday to waive their right to "any" meal period or meal periods as long as certain protective conditions were met. The vast majority of employees testifying at public hearings supported the IWC's proposal with respect to such a waiver, but only insofar as waiving "a" meal period or "one" meal period, not "any" meal period. Since the waiver of one meal period allows employees freedom of choice combined with the protection of at least one meal period on a long shift, on June 29, 1993, the IWC adopted language which permits employees to waive a second meal period provided the waiver is documented in a written agreement voluntarily signed by both the employee and the employer, and the waiver is revocable by the employee at any time by providing the employer at least one day's notice.

INDUSTRIAL WELFARE COMMISSION

EXHIBIT B

Assembly Bill No. 60

CHAPTER 134

An act to amend Sections 510, 554, 556, and 1182.1 of, to add Sections 500, 511, 512, 513, 514, 515, 516, 517, and 558 to, to repeal Section 1183.5 of, and to amend and repeal Sections 1182.2, 1182.3, 1182.9, and 1182.10 of, the Labor Code, relating to employment.

[Approved by Governor July 20, 1999. Filed with Secretary of State July 21, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

AB 60, 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 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, as specified, hours worked in excess of 8 hours in one day, hours worked in excess of 40 hours in one workweek, and the first 8 hours worked on the 7th day of work in a given workweek are to be compensated at the rate of no less than 1 $^{1}/_{2}$ times the regular rate of pay of an employee. Under the bill, hours worked in excess of 12 hours in one day as well as hours worked in excess of 8 hours on any 7th day of a workweek are to be compensated at the rate of no less than twice the regular rate of pay of an employee. Employees working pursuant to an alternative workweek schedule under other specified provisions of this bill would be exempt from these requirements.

This bill would make an employer, or other person acting on behalf of an employer, subject to prescribed civil penalties for the violation of prescribed provisions of the Labor Code or provisions regulating hours and days of work of wage orders of the Industrial Welfare Commission. The bill would authorize the Labor Commissioner to issue citations for violations of prescribed provisions of the Labor Code regulating the payment of wages for overtime work and provisions regulating hours and days of work in wage orders of the commission and would prescribe a procedure by which the cited employer or other person may contest the proposed assessment of a civil penalty.

Under existing law, work performed in the necessary care of animals, crops, or agricultural lands is exempt from specified regulation under the above provisions, including the standard for compensation at an overtime rate for work in excess of 8 hours per day.

This bill instead would exempt persons employed in an agricultural occupation, as defined in the wage order of the Industrial Welfare Commission relating to agricultural occupations, with a prescribed exception, from specified regulation under the Labor Code.

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 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 when approved by at least $^2/_3$ of the affected employees in a work unit by secret ballot. The bill would provide that an employee working more than 8 hours, but not more than 12 hours, in a day pursuant to an alternative workweek schedule is required to be paid an overtime rate of compensation of no less than 1 $^1/_2$ times the regular rate of pay of the employee for work in excess of the regular hours established by that schedule and for work in a workweek in excess of 40 hours per week and an overtime rate of compensation of no less than double the regular rate of pay of the employee for any work in excess of 12 hours per day and work in excess of 8 hours on days worked beyond the regularly scheduled workweek under the agreement.

The bill would declare null and void certain alternative workweek schedules adopted pursuant to specified wage orders of the Industrial Welfare Commission.

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, with a specified exception.

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 hours of that makeup

work time, 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, except for hours in excess of 11 hours of work in one day or 40 hours in one workweek. The bill would require an employee to provide a signed written request for each occasion he or she makes that request. The bill would prohibit an employer from encouraging or otherwise soliciting an employee to make that request.

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 authorize the Industrial Welfare Commission to establish exemptions, with specified limitations, from the requirement that premium pay be paid for overtime work for executive, administrative, and professional employees, provided that the employee is primarily engaged in the duties which meet the test of the exemption and the employee earns a monthly salary equivalent to no less than 2 times the state minimum wage for full-time employment. The bill would require the commission to conduct a review of the duties that meet the test of this exemption and authorize the commission to hold a public hearing, to be conducted no later than July 1, 2000, to adopt or modify regulations relating to duties that meet the test of the exemption without convening a wage board.

The bill would authorize the Industrial Welfare Commission to review, retain, or eliminate exemptions from the hours requirements that were contained in a valid wage order in effect in 1997 and would authorize the commission to establish additional exemptions therefrom for the health or welfare of employees in any occupation, trade, or industry until January 1, 2005.

Under existing law, employment in which the hours of work do not exceed 30 hours in a week or 6 hours in a day are exempt from the general provisions of the Labor Code relating to the hours and days that constitute a workday and a workweek, and related provisions.

This bill would clarify that the exemption applies to the requirements for a day's rest within a period of 7 days of labor and the prohibition against requiring an employee to work more than 6 days in 7.

Existing provisions of the Labor Code contain specific workday and workweek requirements relating to employees of ski establishments, employees of licensed hospitals, and stable employees engaged in the

raising, feeding, or management of racehorses. Existing law also exempts employers engaged in specified commercial fishing enterprises from the minimum wage and maximum hour provisions of existing law.

This bill would repeal those provisions as of July 1, 2000.

This bill would require the Industrial Welfare Commission, prior to July 1, 2000, to conduct a review of wages, hours, and working conditions in the ski industry, commercial fishing industry, and health care industry, and for licensed pharmacists, outside salespersons, and stable employees in the horse racing industry. The bill would authorize the commission, based upon that review, to convene a public hearing to adopt or modify regulations at that hearing pertaining to those industries without convening wage boards. The bill would provide that the hearing be concluded by July 1, 2000.

The bill also would require the Industrial Welfare Commission, at a public hearing, to adopt wage, hours, and working conditions orders consistent with this measure without convening wage boards, which orders shall be final and conclusive for all purposes. Additionally, the commission would be authorized to adopt regulations consistent with this measure necessary to provide assurances of fairness regarding the conduct of employee workweek elections, employee disclosures, employee requests to the Labor Commissioner to review designations of work units, and processing of employee petitions as provided for in this measure or under any wage order of the commission.

Additionally, the bill would authorize the Industrial Welfare Commission to adopt or amend orders relating to break periods, meal periods, and days of rest.

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

The bill also would make other technical and conforming changes and would declare null and void specified wage orders of the Industrial Welfare Commission relating to these provisions and temporarily reinstate specified prior orders of the commission.

This bill would further require the Industrial Welfare Commission to study the extent to which alternative workweek schedules are used in California with a cost-benefit analysis and to report the results of the study and recommendations to the Legislature by July 1, 2001.

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.

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

SECTION 1. This act shall be known and may be cited as the "Eight-Hour-Day Restoration and Workplace Flexibility Act of 1999."

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

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

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

(c) Ending daily overtime would result in a substantial pay cut for California workers who currently receive daily overtime.

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

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

(f) In 1998 the Industrial Welfare Commission issued wage orders that deleted the requirement to pay premium wages after eight hours of work a day in five wage orders regulating eight million workers.

(g) Therefore, the Legislature affirms the importance of the eight-hour workday, declares that it should be protected, and reaffirms the state's unwavering commitment to upholding the eight-hour workday as a fundamental protection for working people.

SEC. 3. Section 500 is added to the Labor Code, to read:

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. 4. 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) 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. 5. Section 511 is added to the Labor Code, to read:

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