

AMENDED IN ASSEMBLY APRIL 26, 1995

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 739

Introduced by Assembly Member Bustamante

February 22, 1995

An act to amend Sections 750, 750.5, 751, ~~751.5, and 752 and 751.5~~ of, and to add Sections 751.2, 751.8, and 752.5 to the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 739, as amended, Bustamante. Employment: hours of employment: smelters and underground workings ~~mines~~.

Existing law regulates the hours of labor that employees employed in underground mines, underground workings, smelting plants, and plants for the reduction or refining of ores and metals, may be employed. Existing law specifies that the period of employment in these industries may not exceed 8 hours within any 24-hour period, except where hours of employment are otherwise prescribed pursuant to a collective bargaining agreement or under prescribed circumstances related to emergencies.

This bill would ~~specify that the hours of employment in these industries also shall not exceed 40 hours in a 7-day period, subject to the above-described exceptions~~ *delete the reference to underground workings for the purpose, and make the above provisions of existing law inapplicable to quarries and other operations for the extraction of nonmetallic minerals. The bill also would make the above*

provisions of existing law inapplicable to executive, administrative, and professional employees and employees employed as outside salespersons. The bill would provide for additional exceptions an exception to the daily and weekly hours of employment (1) where a $\frac{2}{3}$ majority of the employees who work for a particular employer vote in an election, conducted under prescribed procedures, to adopt a policy that authorizes periods of work that exceed the statutory periods, (2). The bill would establish a procedure by which employees may revoke the policy after 12 months. The bill would provide for additional exceptions to the hours of employment on the day a scheduled change of shift takes effect, and (3) where no qualified employee is available to relieve an employee. The bill would also add to the prescribed conditions that permit an employer to require extended hours of employment to include environmental emergencies and maintenance of machinery or equipment.

This bill would further allow exceeding the hours of employment if overtime wages are paid for the excess hours in accordance with wage orders of the Industrial Welfare Commission hours worked in excess of an employee's regular daily hours and for hours worked in excess of 40 hours in a week. The bill would provide that the overtime rate of $1\frac{1}{2}$ times the employee's regular rate of compensation would apply to overtime hours up to and including 12 hours, and that the overtime rate of double the employee's regular rate of compensation would apply to overtime hours that exceed 12 hours in a workday. The bill further would specify that these provisions would not affect overtime wages that are paid based on the number of hours worked in a workweek.

Under existing law, any person who violates, and any person in a prescribed position who commands, persuades, or allows any person to violate, any of the provisions of law regulating the hours of labor that employees employed in these industries, is guilty of a misdemeanor.

~~This bill would make those criminal penalties applicable only for willful violations.~~ By revising the definition of a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated



by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Section 750 of the Labor Code is
2 amended to read:

3 750. (a) Except as otherwise provided in this
4 chapter, no employee may be employed for a period that
5 exceeds; eight hours within any 24-hour period ~~or 40~~
6 ~~hours in a seven-day period~~ and the hours of employment
7 of any workday shall be consecutive, excluding
8 intermissions for meals, for all persons who are employed
9 or engaged in work in any of the following:

10 ~~(a) Underground mines or underground workings.~~

11 (1) *Underground mines.*

12 ~~(b)~~

13 (2) Smelters and plants for the reduction or refining of
14 ores or metals.

15 (b) *No provision of this chapter applies to quarries or*
16 *other operations for the extraction of nonmetallic*
17 *minerals, including, but not limited to, sand, gravel, and*
18 *rock.*

19 (c) *No provision of this chapter applies to an employee*
20 *who is employed in an executive, administrative, or*
21 *professional capacity, or employed as an outside*
22 *salesperson.*

23 SEC. 2. Section 750.5 of the Labor Code is amended
24 to read:

25 750.5. Notwithstanding Section 750, an employee may
26 be employed for a period that exceeds eight hours within
27 a 24-hour period, ~~or 40 hours within a seven-day period;~~
28 under the following circumstances:

29 (a) If the employer and a labor organization
30 representing employees of the employer have entered
31 into a valid collective bargaining agreement that



1 expressly provides for the wages, hours of work, and
2 working conditions of the employees; or

3 ~~(b) If a majority of the employees of that employer~~

4 *(b) If a two-thirds majority of the affected employees*
5 *of that employer* whose hours are regulated by this
6 chapter have voted in an election to adopt a policy that
7 specifies periods of work that may exceed eight hours in
8 a 24-hour period, ~~or 40 hours in a seven-day period, or~~
9 ~~both~~, and the employer adopts that policy, subject to all
10 of the following conditions:

11 (1) The agreement adopted with respect to that policy
12 reflects the results of the election.

13 (2) The election is conducted *by a governmental*
14 *agency* with the use of secret ballots, during regular
15 working hours.

16 (3) All employees of that employer whose hours are
17 regulated by this chapter and who have become
18 employed by that employer within 24 hours of the time
19 the election is commenced are eligible to vote in the
20 election.

21 (4) The policy shall be effective for the period
22 specified therein, ~~not exceeding 12 months.~~ *The policy*
23 *may be revoked after a lapse of 12 months from the date*
24 *the policy is adopted if one-third of the affected*
25 *employees petition for a new election to be conducted*
26 *according to the procedures set forth in this subdivision,*
27 *and two-thirds of the affected employees vote to revoke*
28 *the policy. If the policy is revoked, the employer shall*
29 *implement the change in policy within 60 days after the*
30 *revocation.*

31 (5) Before an election may be conducted, the
32 employer shall hold informational meetings for the
33 affected employees on each shift during the regular
34 working hours of the affected employees. At each of these
35 meetings, the employer shall explain the effect of the
36 proposed policy on the hours and compensation of the
37 employees. *Equal time at these meetings for response*
38 *shall be provided to an independent entity that is*
39 *registered with the governmental agency conducting the*
40 *election and that advocates on behalf of employees with*



1 *respect to health and safety issues.* Written notice of the
2 time, date, place, and purpose of these informational
3 meetings shall be conspicuously posted in at least three
4 locations throughout the mine site for at least seven
5 consecutive days before the date of the meetings. Written
6 notice of the time, date, place, and purpose of the election
7 shall be posted in the same manner and for the same
8 period. Failure to comply with the procedural
9 requirements of this paragraph shall void the results of
10 the election for purposes of this section.

11 (c) On the day a scheduled change of shift takes effect.

12 SEC. 3. Section 751 of the Labor Code is amended to
13 read:

14 751. In the case of an emergency where life or
15 property is in imminent danger, or when there is an
16 imminent danger involving actual or potential
17 environmental pollution, the work shift may be extended
18 during the continuance of the emergency.

19 SEC. 4. Section 751.2 is added to the Labor Code, to
20 read:

21 751.2. Where no qualified employee is available to
22 relieve an employee on duty, the work shift of the
23 employee on duty may be extended until qualified relief
24 is available.

25 SEC. 5. Section 751.5 of the Labor Code is amended
26 to read:

27 751.5. Where repairs to, or maintenance or
28 replacement of, machinery or equipment are necessary
29 for the continuous operation thereof, the ~~work shift of the~~
30 ~~employees engaged in making the repairs, maintenance,~~
31 ~~or replacements~~ *work shift of employees who are*
32 *engaged in repairing, maintaining, or replacing the*
33 *machinery or equipment* may be extended to complete
34 those activities.

35 SEC. 6. Section 751.8 is added to the Labor Code, to
36 read:

37 751.8. (a) Notwithstanding Section 750, the period of
38 employment may ~~not~~ exceed eight hours in any 24-hour
39 period, ~~or 40 hours in a seven-day period,~~ if the employee
40 is paid at the overtime rate of pay, ~~as prescribed by the~~



1 ~~wage orders of the Industrial Welfare Commission, for~~
2 ~~hours worked in excess of that employee's regularly~~
3 ~~scheduled shift and for hours worked in excess of 40 hours~~
4 ~~in a seven-day period. Unless regularly scheduled shifts~~
5 ~~are established pursuant to Section 750.5, overtime rates~~
6 ~~of pay shall be paid for all hours worked in excess of those~~
7 ~~hours prescribed by Section 750, as the as the maximum~~
8 ~~allowable hours of employment. This subdivision does not~~
9 ~~apply to employees who are employed in an executive,~~
10 ~~administrative, or professional capacity, as defined by~~
11 ~~wage orders of the commission, or employed as an outside~~
12 ~~salesperson. employment.~~

13 *(b) The premium wage rate of one and one-half times*
14 *the employee's regular rate of compensation shall apply*
15 *to all hours worked in any workday in excess of the*
16 *regularly scheduled hours established for that workday,*
17 *up to and including 12 hours. The premium wage rate of*
18 *double the employee's regular rate of compensation shall*
19 *apply to all hours worked in excess of 12 hours in any*
20 *workday. This subdivision does not affect the rate of*
21 *premium wages that are paid based on the number of*
22 *hours worked in a workweek.*

23 ~~SEC. 7. Section 752 of the Labor Code is amended to~~
24 ~~read:~~

25 ~~752. Any person who willfully violates any provision~~
26 ~~of this chapter and any person who, as foreman, manager,~~
27 ~~director or officer of a corporation, or as the employer or~~
28 ~~superior officer of any person, commands, persuades, or~~
29 ~~allows any person to violate any provision of this chapter~~
30 ~~is guilty of a misdemeanor, punishable by a fine of not less~~
31 ~~than one hundred dollars (\$100) nor more than six~~
32 ~~hundred dollars (\$600) or by imprisonment of not more~~
33 ~~than 90 days, or both.~~

34 ~~SEC. 8.~~

35 ~~SEC. 7. Section 752.5 is added to the Labor Code, to~~
36 ~~read:~~

37 ~~752.5. The provisions of this chapter are severable. If~~
38 ~~any provision of this chapter or its application is held~~
39 ~~invalid, that invalidity shall not affect other provisions or~~



1 applications that can be given effect without the invalid
2 provision or application.

3 ~~SEC. 9.~~

4 *SEC. 8.* No reimbursement is required by this act
5 pursuant to Section 6 of Article XIII B of the California
6 Constitution because the only costs that may be incurred
7 by a local agency or school district will be incurred
8 because this act creates a new crime or infraction,
9 eliminates a crime or infraction, or changes the penalty
10 for a crime or infraction, within the meaning of Section
11 17556 of the Government Code, or changes the definition
12 of a crime within the meaning of Section 6 of Article
13 XIII B of the California Constitution.

14 Notwithstanding Section 17580 of the Government
15 Code, unless otherwise specified, the provisions of this act
16 shall become operative on the same date that the act
17 takes effect pursuant to the California Constitution.

18 _____

19 CORRECTIONS

20 **Text — Pages 3 and 4.**

21 _____

22

