

AMENDED IN SENATE JULY 10, 1995
AMENDED IN ASSEMBLY MAY 30, 1995
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 6354 of, to add Sections 751.8 and 752.5 to, and to repeal and add Section 752 of, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 739, as amended, Bustamante. Employment: hours of employment: smelters and underground 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 delete the reference to underground workings in those provisions of existing law, 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 an exception to the regular maximum hours of employment where a $\frac{2}{3}$ majority of the employees who work for a particular employer vote, in an election conducted at the expense of the employer pursuant to prescribed procedures, to adopt a policy that authorizes a regular workday of more than 8 hours in a 24-hour period. Such a policy would be effective for the duration specified in the policy, not exceeding 12 months. The bill would require the Labor Commissioner to investigate employee claims of misconduct relating to the election and would provide for invalidation of the election for misconduct that could have affected the outcome.

This bill, with certain exceptions, would require an employer to make a reasonable attempt to place an employee who is unwilling or unable to work an extended workday established by such an election, in a work assignment that the employee is capable of performing.

The bill would provide for additional exceptions to the hours of employment on the day a scheduled change of shift takes effect, and where no qualified employee is available to relieve an employee. The bill also would add to the prescribed conditions that permit an employer to require extended hours of employment to include emergencies and maintenance of machinery or equipment.

This bill further would allow exceeding the hours of employment if overtime wages are paid for 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 hours worked in a workday that exceed the scheduled hours established by an employee election under these provisions up to and including 12 hours, or in excess of 40 hours in a workweek, 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.



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 repeal these provisions.

The bill would make an employer, who violates the above provisions ~~of existing law, as revised by this bill relating to the maximum permissible hours of employment and the requirement to pay overtime for hours worked in excess of the maximum hours~~, subject to prescribed civil penalties.

The bill would require the Division of Occupational Safety and Health, using its existing resources, to develop a brochure to provide employees with information relating to potential health and safety effects that extended working hours may have on employees.

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

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

1 SECTION 1. 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 and the
6 hours of employment of any workday shall be
7 consecutive, excluding intermissions for meals, for all
8 persons who are employed or engaged in work in any of
9 the following:

10 (1) Underground mines.

11 (2) Smelters and plants for the reduction or refining of
12 ores or metals.

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

17 (c) No provision of this chapter applies to an employee
18 who is employed in an executive, administrative, or



1 professional capacity, or employed as an outside
2 salesperson.

3 SEC. 2. Section 750.5 of the Labor Code is amended
4 to read:

5 750.5. Notwithstanding Section 750, an employee may
6 be employed for a period that exceeds eight hours within
7 a 24-hour period, under the circumstances specified in
8 subdivision (a), (b), or (c), as follows:

9 (a) If the employer and a labor organization
10 representing employees of the employer have entered
11 into a valid collective bargaining agreement that
12 expressly provides for the wages, hours of work, and
13 working conditions of the employees.

14 (b) If a two-thirds majority of the affected employees
15 of that employer whose hours are regulated by this
16 chapter have voted in an election to adopt a policy that
17 specifies periods of work that may exceed eight hours in
18 a 24-hour period, and the employer adopts that policy,
19 subject to all of the following conditions:

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

22 (2) The election is conducted, at the expense of the
23 employer, with the use of secret ballots, during regular
24 working hours. Upon the written request of an employee
25 to his or her employer, or to the Labor Commissioner,
26 made no later than 10 days prior to the date set for the
27 election, the employer shall cause the election to be
28 conducted by a neutral third party with experience in
29 conducting employee elections. If such a written request
30 is made to the commissioner pursuant to this paragraph,
31 the commissioner shall not disclose the identity of the
32 employee and shall notify the employer, no later than five
33 days prior to the date set for the election, that the election
34 is required to be conducted by a neutral third party. Such
35 an election may be conducted by utilizing mail ballots.

36 (3) All employees of that employer whose hours are
37 regulated by this chapter and who have become
38 employed by that employer within 24 hours of the time
39 the election is commenced are eligible to vote in the
40 election.



1 (4) The policy shall be effective for the period
2 specified therein, not exceeding 12 months.

3 (5) No later than 14 days prior to the date set for an
4 election, the employer shall do all of the following:

5 (A) Provide a written notice to the affected employees
6 that describes the effects the proposed work schedule
7 would have on the employees' wages, hours, and benefits,
8 and the employees' rights under this chapter, including
9 the right to request that the election be conducted by a
10 neutral third party pursuant to this section, and to file a
11 complaint against the employer pursuant to this chapter.

12 (B) Provide a written statement, the form of which
13 shall be developed by the Division of Occupational Safety
14 and Health, that explains any health and safety
15 considerations relating to extended shifts.

16 (C) Hold informational meetings for the affected
17 employees on each shift during the regular working hours
18 of the affected employees. At each of these meetings, the
19 employer shall explain the effect of the proposed policy
20 on the hours and compensation of the employees. Written
21 notice of the time, date, place, and purpose of these
22 informational meetings shall be conspicuously posted in
23 at least three locations throughout the mine site for at
24 least seven consecutive days before the date of the
25 meetings. Written notice of the time, date, place, and
26 purpose of the election shall be posted in the same
27 manner and for the same period. Failure to comply with
28 the procedural requirements of this paragraph shall void
29 the results of the election for purposes of this section.

30 (6) Any employer that establishes a regular scheduled
31 workday pursuant to this subdivision shall make a
32 reasonable attempt to place an employee, who was
33 eligible to participate in the election that authorized an
34 extended workday schedule and who is unable or
35 unwilling to work the extended schedule, in an
36 alternative work assignment that the employee is capable
37 of performing. An employer shall not be required to offer
38 an alternative work assignment to an employee if an
39 alternative work assignment that the employee is capable



1 of performing is not available or if the employee
2 commenced his or her employment after the election.

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

4 SEC. 3. Section 751 of the Labor Code is amended to
5 read:

6 751. In the case of an emergency where life or
7 property is in imminent danger, the work shift may be
8 extended during the continuance of the emergency.

9 SEC. 4. Section 751.5 of the Labor Code is amended
10 to read:

11 751.5. Where emergency repairs to, or maintenance
12 or replacement of, machinery or equipment are
13 necessary for the continuous operation thereof, the hours
14 that that an employee may be engaged in performing the
15 emergency repairs, maintenance, or replacement, may,
16 during the pendency of the emergency, exceed the
17 period specified in Section 750.

18 SEC. 5. Section 751.8 is added to the Labor Code, to
19 read:

20 751.8. (a) Notwithstanding Section 750, the period of
21 employment may exceed eight hours in any 24-hour
22 period if the employee is paid at the overtime rate of pay
23 for hours worked in excess of that employee's regularly
24 scheduled shift and for hours worked in excess of 40 hours
25 in a seven-day period. Unless regularly scheduled shifts
26 are established pursuant to Section 750.5, overtime rates
27 of pay shall be paid for all hours worked in excess of those
28 hours prescribed by Section 750 as the maximum
29 allowable hours of employment.

30 (b) All work performed in any workday in excess of
31 the scheduled hours established by an agreement
32 pursuant to subdivision (b) of Section 750.5 up to and
33 including 12 hours, or in excess of 40 hours in a workweek,
34 shall be compensated at one and one-half times the
35 employee's regular rate of compensation. All work
36 performed in any workday in excess of 12 hours shall be
37 compensated at double the employee's regular rate of
38 compensation. No hours that are compensated at either
39 one and one-half times, or double, the regular rate of
40 compensation shall be included in determining the



1 number of hours an employee has worked in a workweek
2 for purposes of computing premium compensation.

3 SEC. 6. Section 752 of the Labor Code is repealed.

4 SEC. 7. Section 752 is added to the Labor Code, to
5 read:

6 752. (a) Any affected employee, or his or her
7 representative, may file a complaint with the Labor
8 Commissioner concerning the conduct of an election
9 pursuant to subdivision (b) of Section 750.5 within 14 days
10 following notice of the outcome of the election. The
11 Labor Commissioner shall investigate the complaint and
12 shall invalidate the election if the commissioner finds that
13 misconduct has occurred that could have affected the
14 outcome of the election. If the election is invalidated, the
15 commissioner shall prohibit the employer from
16 conducting a similar election for a period of 12 months.

17 (b) Any employer, or representative of an employer,
18 that violates ~~any provision of this chapter~~ *Section 750 or*
19 *751.8* shall be subject to a civil penalty as follows:

20 (1) For any initial violation that is intentionally
21 committed, fifty dollars (\$50) for each affected employee
22 for each violation for each pay period.

23 (2) For each subsequent violation for the same
24 offense, one hundred dollars (\$100) for each violation for
25 each affected employee for each pay period, regardless of
26 whether the initial violation is intentionally committed.

27 (c) If the Labor Commissioner determines that an
28 employer has failed to comply with paragraph (6) of
29 subdivision (b) of Section 750.5, the Labor Commissioner
30 shall order the employer to comply. The order, in
31 appropriate cases, shall include provisions for
32 reinstatement and back pay.

33 (d) An employer shall not retaliate in any way against
34 an employee for exercising any right pursuant to this
35 chapter.

36 SEC. 8. Section 752.5 is added to the Labor Code, to
37 read:

38 752.5. The provisions of this chapter are severable. If
39 any provision of this chapter or its application is held
40 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. Section 6354 of the Labor Code is amended to
4 read:

5 6354. The division shall, upon request, provide a full
6 range of occupational safety and health consulting
7 services to any employer or employee group. These
8 consulting services shall include:

9 (a) A program for identifying categories of
10 occupational safety and health hazards causing the
11 greatest number and most serious preventable injuries
12 and illnesses and workers' compensation losses and the
13 places of employment where they are occurring. The
14 hazards, industries, and places of employment shall be
15 identified from the data system that is used in the
16 targeted inspection program pursuant to Section 6314.1.
17 The division shall develop procedures for offering
18 consultation services to high hazard employers who are
19 identified pursuant to this section. The services may
20 include the development of educational material and
21 procedures for reducing or eliminating safety and health
22 hazards, conducting workplace surveys to identify health
23 and safety problems, and development of plans to
24 improve employer health and safety loss records.

25 The program shall include a component for reducing
26 the number of work-related, repetitive motion injuries,
27 including, but not limited to, back injuries. The division
28 may formulate recommendations for reducing repetitive
29 motion injuries after conducting a survey of the
30 workplace of the employer who accepts services of the
31 division. The recommendations shall include, wherever
32 appropriate, the application of generally accepted
33 ergonomic and engineering principles to eliminate
34 repetitive motions that are generally expected to result
35 in injuries to workers. The recommendations shall also
36 include, wherever appropriate, training programs to
37 instruct workers in methods for performing job-related
38 movements, such as lifting heavy objects, in a manner
39 that minimizes strain and provides safeguards against
40 injury.



1 The division shall establish model injury and illness
2 prevention training programs to prevent repetitive
3 motion injuries, including recommendations for the
4 minimum qualifications of instructors. The model
5 programs shall be made available to employers, employer
6 associations, workers' compensation insurers, and
7 employee organizations on request.

8 (b) A program for providing assistance in the
9 development of injury prevention programs for
10 employees and employers. The highest priority for the
11 division's consulting services shall be given to
12 development of these programs for businesses with fewer
13 than 250 employees in industries identified in the regional
14 plans developed pursuant to subdivision (b) of Section
15 6314.1.

16 (c) A program for providing employers or employees
17 with information, advice, and recommendations on
18 maintaining safe employment or place of employment,
19 and on applicable occupational safety and health
20 standards, techniques, devices, methods, practices, or
21 programs.

22 (d) The division shall, as a part of its consulting
23 services, develop a brochure that explains potential
24 health and safety effects on employees of working
25 extended hours pursuant to Section 750.5. The division
26 shall use its existing resources to develop the brochure
27 pursuant to this subdivision.

28 SEC. 10. No reimbursement is required by this act
29 pursuant to Section 6 of Article XIII B of the California
30 Constitution because the only costs that may be incurred
31 by a local agency or school district will be incurred
32 because this act creates a new crime or infraction,
33 eliminates a crime or infraction, or changes the penalty
34 for a crime or infraction, within the meaning of Section
35 17556 of the Government Code, or changes the definition
36 of a crime within the meaning of Section 6 of Article
37 XIII B of the California Constitution.

38 Notwithstanding Section 17580 of the Government
39 Code, unless otherwise specified, the provisions of this act



1 shall become operative on the same date that the act
2 takes effect pursuant to the California Constitution.

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