

Assembly Bill No. 739

CHAPTER 903

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.

[Approved by Governor October 13, 1995. Filed
with Secretary of State October 16, 1995.]

LEGISLATIVE COUNSEL'S DIGEST

AB 739, 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 would further 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 1¹/₂ 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 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 people of the State of California do enact as follows:

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

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

(1) Underground mines.

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

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

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

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

750.5. Notwithstanding Section 750, an employee may be employed for a period that exceeds eight hours within a 24-hour



period, under the circumstances specified in subdivision (a), (b), or (c), as follows:

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

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

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

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

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

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

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

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

(B) Provide a written statement to the affected employees, prepared by a neutral source knowledgeable in health and safety matters and unaffiliated with the employer, that explains any health and safety considerations of extended work shifts.

(C) Hold informational meetings for the affected employees on each shift during the regular working hours of the affected employees. At each of these meetings, the employer shall explain the effect of the proposed policy on the hours and compensation of the



employees. Written notice of the time, date, place, and purpose of these informational meetings shall be conspicuously posted in at least three locations throughout the mine site for at least seven consecutive days before the date of the meetings. Written notice of the time, date, place, and purpose of the election shall be posted in the same manner and for the same period. Failure to comply with the procedural requirements of this paragraph shall void the results of the election for purposes of this section.

(6) Any employer that establishes a regular scheduled workday pursuant to this subdivision shall make a reasonable attempt to place an employee, who was eligible to participate in the election that authorized an extended workday schedule and who is unable or unwilling to work the extended schedule, in an alternative work assignment that the employee is capable of performing. An employer shall not be required to offer an alternative work assignment to an employee if an alternative work assignment that the employee is capable of performing is not available or if the employee commenced his or her employment after the election.

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

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

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

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

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

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

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

(b) All work performed in any workday in excess of the scheduled hours established by an agreement pursuant to subdivision (b) of Section 750.5 up to and including 12 hours, or in excess of 40 hours in a workweek, shall be compensated at one and one-half times the employee's regular rate of compensation. All work performed in any workday in excess of 12 hours shall be compensated at double the employee's regular rate of compensation. No hours that are



compensated at either one and one-half times, or double, the regular rate of compensation shall be included in determining the number of hours an employee has worked in a workweek for purposes of computing premium compensation.

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

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

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

(b) Any employer, or representative of an employer, that violates Section 750 or 751.8 shall be subject to a civil penalty as follows:

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

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

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

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

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

752.5. The provisions of this chapter are severable. If any provision of this chapter or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 9. Section 6354 of the Labor Code is amended to read:

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

(a) A program for identifying categories of occupational safety and health hazards causing the greatest number and most serious preventable injuries and illnesses and workers' compensation losses and the places of employment where they are occurring. The hazards, industries, and places of employment shall be identified from the data system that is used in the targeted inspection program pursuant to Section 6314.1. The division shall develop procedures for



offering consultation services to high hazard employers who are identified pursuant to this section. The services may include the development of educational material and procedures for reducing or eliminating safety and health hazards, conducting workplace surveys to identify health and safety problems, and development of plans to improve employer health and safety loss records.

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

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

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

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

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

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative



on the same date that the act takes effect pursuant to the California Constitution.

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