

AMENDED IN ASSEMBLY MAY 15, 2000

AMENDED IN SENATE MAY 12, 1999

**SENATE BILL**

**No. 88**

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**Introduced by Senator ~~Escutia~~ Sher and Assembly Member  
Honda  
(Principal coauthor: Senator Vasconcellos)**

December 7, 1998

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~~An act to add Article 1.5 (commencing with Section 5210) to Chapter 5 of Division 2 of the Insurance Code and to amend Section 515 of, and to add Section 515.5 to, the Labor Code, relating to employment.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 88, as amended, ~~Escutia~~ Sher. ~~Workforce Investment Act of 1998~~ *Overtime compensation.*

*(1) Existing law provides that 8 hours of labor constitutes a day's work. Under existing law, any work in excess of 8 hours in one workday and any work in excess of 40 hours in any one workweek and the first 8 hours worked on the 7th day of work in any one workweek is required to be compensated at the rate of no less than 1½ times the regular rate of pay for an employee.*

*This bill, except as specified, would exempt a professional employee in the computer software field from this overtime compensation requirement if the employee is primarily engaged in work that is intellectual or creative, the employee's hourly rate of pay is not less than \$41.00, and the employee meets other requirements.*

(2) Existing law authorizes the Industrial Welfare Commission to establish exemptions from the requirement that an overtime rate of compensation be paid for executive, administrative, and professional employees, provided that the employee is primarily engaged in the duties that 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. Existing law provides, however, that registered nurses employed to engage in the practice of nursing shall not be exempted from the overtime compensation requirements by any order of the commission, unless they individually meet the criteria for exemption established for executive or administrative employees.

This bill would provide that the exclusion from overtime exemptions for a registered nurse does not apply to a certified nurse midwife, a certified nurse anesthetist, or a certified nurse practitioner when employed to perform duties for which the respective certification is required.

~~Existing federal law, the Workforce Investment Act of 1998, integrates various federal employment programs into a one-stop service delivery system to provide workers with the information, advice, job search assistance, and training they need to get and keep good jobs. The act requires the creation of youth systems to provide a broad range of employment and training services to youth, with special emphasis on prevention strategies for at-risk youth. The act requires states to implement the act's provisions by July 1, 2000.~~

~~This bill would require local workforce investment boards created pursuant to that federal act by SB 146 of the 1999-2000 Regular Session, to establish youth councils, as specified. It would enact related youth employment provisions.~~

~~By imposing duties on local government with respect to the implementation of these local employment programs, this 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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do~~



~~not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for these costs shall be made pursuant to these statutory provisions.~~

~~This bill would become operative only if certain provisions relating to the establishment of local workforce investment boards, as proposed by SB 146 of the 1999 2000 Regular Session, are also enacted during the first half of that session.~~

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

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

1 ~~SECTION 1. Article 1.5 (commencing with Section~~  
2 ~~SECTION 1. Section 515 of the Labor Code is~~  
3 ~~amended to read:~~

4 515. (a) The Industrial Welfare Commission may  
5 establish exemptions from the requirement that an  
6 overtime rate of compensation be paid pursuant to  
7 Sections 510 and 511 for executive, administrative, and  
8 professional employees, provided that the employee is  
9 primarily engaged in the duties ~~which~~ *that* meet the test  
10 of the exemption and the employee earns a monthly  
11 salary equivalent to no less than two times the state  
12 minimum wage for full-time employment. The  
13 commission shall conduct a review of the duties ~~which~~  
14 *that* meet the test of the exemption. The commission  
15 may, based upon this review, convene a public hearing to  
16 adopt or modify regulations at that hearing pertaining to  
17 duties ~~which~~ *that* meet the test of the exemption without  
18 convening a wage ~~boards~~ *board*. Any hearing conducted  
19 pursuant to this subdivision shall be concluded not later  
20 than July 1, 2000.

21 (b) (1) The commission may establish additional  
22 exemptions to hours of work requirements under this  
23 division where it finds that hours or conditions of labor  
24 may be prejudicial to the health or welfare of employees



1 in any occupation, trade, or industry. This paragraph shall  
2 become inoperative on January 1, 2005.

3 (2) Except as otherwise provided in this section and in  
4 subdivision (g) of Section 511, nothing in this section  
5 requires the commission to alter any exemption from  
6 provisions regulating hours of work that was contained in  
7 any valid wage order in effect in 1997. Except as otherwise  
8 provided in this division, the commission may review,  
9 retain, or eliminate any exemption from provisions  
10 regulating hours of work that was contained in any valid  
11 wage order in effect in 1997.

12 (c) For the purposes of this section “full-time  
13 employment” means employment in which an employee  
14 is employed for 40 hours per week.

15 (d) For the purpose of computing the overtime rate of  
16 compensation required to be paid to a nonexempt  
17 full-time salaried employee, the employee’s regular  
18 hourly rate shall be  $\frac{1}{40}$ th of the employee’s weekly  
19 salary.

20 (e) For the purposes of this section, “primarily” means  
21 more than one-half of the employee’s work time.

22 (f) (1) In addition to the requirements of subdivision  
23 (a), registered nurses employed to engage in the practice  
24 of nursing shall not be exempted from coverage under  
25 any part of the orders of the Industrial Welfare  
26 Commission, unless they individually meet the criteria  
27 for exemptions established for executive or  
28 administrative employees.

29 (2) *This subdivision does not apply to any of the*  
30 *following:*

31 (A) *A certified nurse midwife employed to perform*  
32 *duties for which certification is required pursuant to*  
33 *Article 2.5 (commencing with Section 2746) of Chapter*  
34 *6 of Division 2 of the Business and Professions Code.*

35 (B) *A certified nurse anesthetist employed to perform*  
36 *duties for which certification is required pursuant to*  
37 *Article 7 (commencing with Section 2825) of Chapter 6*  
38 *of Division 2 of the Business and Professions Code.*

39 (C) *A certified nurse practitioner employed to*  
40 *perform duties for which certification is required*



1 pursuant to Article 8 (commencing with Section 2834) of  
2 Chapter 6 of Division 2 of the Business and Professions  
3 Code.

4 (D) Nothing in this paragraph shall exempt the  
5 occupations set forth in subparagraphs (A), (B), and (C)  
6 from meeting the requirements of subdivision (a).

7 SEC. 2. Section 515.5 is added to the Labor Code, to  
8 read:

9 515.5. (a) Except as provided in subdivision (b), a  
10 professional employee in the computer software field  
11 shall be exempt from the requirement that an overtime  
12 rate of compensation be paid pursuant to Section 510 if all  
13 of the following apply:

14 (1) The employee is primarily engaged in work that is  
15 intellectual or creative and that requires the exercise of  
16 discretion and independent judgment, and the employee  
17 is primarily engaged in duties that consist of one or more  
18 of the following:

19 (A) The application of systems analysis techniques and  
20 procedures, including consulting with users, to  
21 determine hardware, software, or system functional  
22 specifications.

23 (B) The design, development, documentation,  
24 analysis, creation, testing, or modification of computer  
25 systems or programs, including prototypes, based on and  
26 related to, user or system design specifications.

27 (C) The documentation, testing, creation, or  
28 modification of computer programs related to the design  
29 of software or hardware for computer operating systems.

30 (2) The employee is highly skilled and is proficient in  
31 the theoretical and practical application of highly  
32 specialized information to computer systems analysis,  
33 programming, and software engineering. A job title shall  
34 not be determinative of the applicability of this  
35 exemption.

36 (3) The employee's hourly rate of pay is not less than  
37 forty-one dollars (\$41.00). The Division of Labor Statistics  
38 and Research shall adjust this pay rate on October 1 of  
39 each year to be effective on January 1 of the following  
40 year by an amount equal to the percentage increase in the



1 *California Consumer Price Index for Urban Wage*  
2 *Earners and Clerical Workers.*

3 *(b) The exemption provided in subdivision (a) does*  
4 *not apply to an employee if any of the following apply:*

5 *(1) The employee is a trainee or employee in an*  
6 *entry-level position who is learning to become proficient*  
7 *in the theoretical and practical application of highly*  
8 *specialized information to computer systems analysis,*  
9 *programming, and software engineering.*

10 *(2) The employee is in a computer-related occupation*  
11 *but has not attained the level of skill and expertise*  
12 *necessary to work independently and without close*  
13 *supervision.*

14 *(3) The employee is engaged in the operation of*  
15 *computers or in the manufacture, repair, or maintenance*  
16 *of computer hardware and related equipment.*

17 *(4) The employee is an engineer, drafter, machinist, or*  
18 *other professional whose work is highly dependent upon*  
19 *or facilitated by the use of computers and computer*  
20 *software programs and who is skilled in computer-aided*  
21 *design software, including CAD/CAM, but who is not in*  
22 *a computer systems analysis or programming occupation.*

23 *(5) The employee is a writer engaged in writing*  
24 *material related to consumer products, including box*  
25 *labels, product descriptions, documentation, promotional*  
26 *material, setup and installation instructions, and other*  
27 *similar written information, either for print or for*  
28 *on-screen media or who writes or provides content*  
29 *material intended to be read by customers, subscribers,*  
30 *or visitors to computer related media such as the World*  
31 *Wide Web or CD-Roms.*

32 *(6) The employee is engaged in any of the activities set*  
33 *forth in subdivision (a) for the purpose of creating*  
34 *imagery for effects used in the motion picture, television,*  
35 *or theatrical industry.*

36 ~~5210) is added to Chapter 5 of Division 2 of the~~  
37 ~~Unemployment Insurance Code, to read:~~

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Article 1.5 ~~Youth Programs~~

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~~5210. The Legislature finds and declares that youth programs authorized under the federal Workforce Investment Act of 1998 require the creation of youth systems that are closely linked to the labor market and local education systems, and that provide a broad range of coordinated services to youth and provide special emphasis on prevention strategies for at risk youth. Programs funded under the federal Workforce Investment Act of 1998 shall prepare participants for either post secondary educational opportunities or unsubsidized employment.~~

~~5211. Each local workforce investment board created pursuant to the federal Workforce Investment Act of 1998 shall establish a youth council.~~

~~5212. (a) Youth councils shall be comprised of the following representatives:~~

~~(1) Members of the local workforce investment board with special interest and expertise in youth policy.~~

~~(2) Representatives of youth service agencies, including juvenile justice and local law enforcement agencies.~~

~~(3) Representatives of local public housing authorities.~~

~~(4) Parents of eligible youth seeking assistance under the federal Workforce Investment Act of 1998.~~

~~(5) Individuals, including former participants, and representatives of organizations that have experience relating to youth activities.~~

~~(6) Representatives of the Job Corps, as appropriate.~~

~~(7) Representatives of local education agencies serving youth.~~

~~(b) It the intent of the Legislature that when appointing members to the youth council, the chairperson of the local workforce investment board and the chief elected official appoint the following representatives:~~

~~(1) Representatives of youth who are enrolled in school and youth who are out of school.~~

~~(2) Representatives of the private sector.~~



1 ~~5213. The duties of the youth council shall include all~~  
2 ~~of the following:~~

3 ~~(a) Development of the youth employment and~~  
4 ~~training policy for eligible and noneligible youth in the~~  
5 ~~local workforce investment area in collaboration with~~  
6 ~~local educational entities, representatives of the private~~  
7 ~~sector, and local community-based organizations~~  
8 ~~serving youth.~~

9 ~~(b) Development of the portions of the local~~  
10 ~~workforce investment plan required pursuant to the~~  
11 ~~federal Workforce Investment Act of 1998 relating to~~  
12 ~~eligible youth.~~

13 ~~(c) Recommendations of eligible providers of youth~~  
14 ~~activities to be awarded grants or contracts on a~~  
15 ~~competitive basis by the local workforce development~~  
16 ~~board to carry out youth activities.~~

17 ~~(d) Oversight and coordination of youth activities in~~  
18 ~~the local area, including activities provided by eligible~~  
19 ~~services providers under the federal Workforce~~  
20 ~~Investment Act of 1998.~~

21 ~~(e) Ensuring that youth program activities, including~~  
22 ~~those provided by local educational entities, are~~  
23 ~~connected to the local one-stop delivery system.~~

24 ~~5214. (a) Youth eligible to receive services funded~~  
25 ~~under Title 1 of the federal Workforce Investment Act of~~  
26 ~~1998 shall be all of the following:~~

27 ~~(1) Age 14 through 21.~~

28 ~~(2) A low-income individual as defined by the Federal~~  
29 ~~Workforce Investment Act of 1998.~~

30 ~~(3) At least one of the following:~~

31 ~~(A) Deficient in basic literacy skills.~~

32 ~~(B) A school dropout.~~

33 ~~(C) Homeless, a runaway, or a foster child.~~

34 ~~(D) Pregnant or parenting.~~

35 ~~(E) An offender.~~

36 ~~(F) A youth with a disability who requires additional~~  
37 ~~assistance to complete an educational program, or to~~  
38 ~~secure and hold employment.~~

39 ~~(b) Up to 5 percent of youth participants in youth~~  
40 ~~programs funded under Title 1 of the federal Workforce~~





1 ~~Investment Act of 1998 may be individuals who do not~~  
2 ~~meet the income criteria for eligible youth, and who~~  
3 ~~instead are one of the following:~~

- 4 (1) ~~A school dropout.~~
- 5 (2) ~~Basic skills deficient.~~
- 6 (3) ~~One or more grade levels below the grade level~~  
7 ~~appropriate for the individual's age.~~
- 8 (4) ~~Pregnant or parenting.~~
- 9 (5) ~~Possessing one or more disabilities, including~~  
10 ~~learning disabilities.~~
- 11 (6) ~~Homeless or a runaway.~~
- 12 (7) ~~An offender.~~
- 13 (8) ~~Facing serious barriers to employment as~~  
14 ~~identified by the local workforce investment board.~~

15 (e) ~~Eligible youth who are 18 through 21 years old may~~  
16 ~~participate in youth and adult programs concurrently, as~~  
17 ~~appropriate for the individual.~~

18 ~~5215. Youth funds under the federal Workforce~~  
19 ~~Investment Act of 1998 may be used to provide eligible~~  
20 ~~youth with all of the following:~~

- 21 (a) ~~Assistance in achieving academic and employment~~  
22 ~~success with educational and skill competencies to~~  
23 ~~provide effective linkages to employers.~~
- 24 (b) ~~Ongoing mentoring opportunities.~~
- 25 (c) ~~Training opportunities.~~
- 26 (d) ~~Supportive services.~~
- 27 (e) ~~Incentives for recognition and achievement.~~
- 28 (f) ~~Opportunities for leadership, development,~~  
29 ~~decision making, citizenship, and community service.~~

30 ~~SEC. 2. Notwithstanding Section 17610 of the~~  
31 ~~Government Code, if the Commission on State Mandates~~  
32 ~~determines that this act contains costs mandated by the~~  
33 ~~state, reimbursement to local agencies and school~~  
34 ~~districts for those costs shall be made pursuant to Part 7~~  
35 ~~(commencing with Section 17500) of Division 4 of Title~~  
36 ~~2 of the Government Code. If the statewide cost of the~~  
37 ~~claim for reimbursement does not exceed one million~~  
38 ~~dollars (\$1,000,000), reimbursement shall be made from~~  
39 ~~the State Mandates Claims Fund.~~



1 ~~SEC. 3. This bill shall become operative only if Senate~~  
2 ~~Bill 146 of the 1999-2000 Regular Session is enacted in the~~  
3 ~~first half of the 1999-2000 Regular Session and that bill~~  
4 ~~adds Chapter 5 (commencing with Section 5200) to~~  
5 ~~Division 2 of the Unemployment Insurance Code.~~

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