

AMENDED IN ASSEMBLY MAY 23, 2000

AMENDED IN ASSEMBLY MAY 15, 2000

AMENDED IN SENATE MAY 12, 1999

SENATE BILL

No. 88

Introduced by Senator Sher
(Principal coauthor: Senator Vasconcellos)
(Principal coauthor: Assembly Member Honda)
(Coauthors: Assembly Members Cunneen, Margett,
Romero, and Steinberg)

December 7, 1998

An act to amend Section 515 of, and to add Section 515.5 to, the Labor Code, relating to employment, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 88, as amended, Sher. 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 1¹/₂ 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~~ *who is primarily engaged in performing* duties for which the respective certification is required.

(3) *This bill would declare that it is to take effect immediately as an urgency statute.*

Vote: ~~majority~~ ^{2/3}. 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 515 of the Labor Code is
 2 amended to read:
 3 515. (a) The Industrial Welfare Commission may
 4 establish exemptions from the requirement that an
 5 overtime rate of compensation be paid pursuant to
 6 Sections 510 and 511 for executive, administrative, and
 7 professional employees, provided that the employee is
 8 primarily engaged in the duties that meet the test of the
 9 exemption and the employee earns a monthly salary
 10 equivalent to no less than two times the state minimum
 11 wage for full-time employment. The commission shall
 12 conduct a review of the duties that meet the test of the



1 exemption. The commission may, based upon this review,
2 convene a public hearing to adopt or modify regulations
3 at that hearing pertaining to duties that meet the test of
4 the exemption without convening a ~~wage board~~ *wage*
5 *boards*. Any hearing conducted pursuant to this
6 subdivision shall be concluded not later than July 1, 2000.

7 (b) (1) The commission may establish additional
8 exemptions to hours of work requirements under this
9 division where it finds that hours or conditions of labor
10 may be prejudicial to the health or welfare of employees
11 in any occupation, trade, or industry. This paragraph shall
12 become inoperative on January 1, 2005.

13 (2) Except as otherwise provided in this section and in
14 subdivision (g) of Section 511, nothing in this section
15 requires the commission to alter any exemption from
16 provisions regulating hours of work that was contained in
17 any valid wage order in effect in 1997. Except as otherwise
18 provided in this division, the commission may review,
19 retain, or eliminate any exemption from provisions
20 regulating hours of work that was contained in any valid
21 wage order in effect in 1997.

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

25 (d) For the purpose of computing the overtime rate of
26 compensation required to be paid to a nonexempt
27 full-time salaried employee, the employee’s regular
28 hourly rate shall be $\frac{1}{40}$ th of the employee’s weekly
29 salary.

30 (e) For the purposes of this section, “primarily” means
31 more than one-half of the employee’s worktime.

32 (f) (1) In addition to the requirements of subdivision
33 (a), registered nurses employed to engage in the practice
34 of nursing shall not be exempted from coverage under
35 any part of the orders of the Industrial Welfare
36 Commission, unless they individually meet the criteria
37 for exemptions established for executive or
38 administrative employees.

39 (2) This subdivision does not apply to any of the
40 following:



1 (A) A certified nurse midwife ~~employed to perform~~
2 *who is primarily engaged in performing* duties for which
3 certification is required pursuant to Article 2.5
4 (commencing with Section 2746) of Chapter 6 of Division
5 2 of the Business and Professions Code.

6 (B) A certified nurse anesthetist ~~employed to perform~~
7 *who is primarily engaged in performing* duties for which
8 certification is required pursuant to Article 7
9 (commencing with Section 2825) of Chapter 6 of Division
10 2 of the Business and Professions Code.

11 (C) A certified nurse practitioner ~~employed to~~
12 ~~perform~~ *who is primarily engaged in performing* duties
13 for which certification is required pursuant to Article 8
14 (commencing with Section 2834) of Chapter 6 of Division
15 2 of the Business and Professions Code.

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

19 SEC. 2. Section 515.5 is added to the Labor Code, to
20 read:

21 515.5. (a) Except as provided in subdivision (b), a
22 ~~professional~~ *an* employee in the computer software field
23 shall be exempt from the requirement that an overtime
24 rate of compensation be paid pursuant to Section 510 if all
25 of the following apply:

26 (1) The employee is primarily engaged in work that is
27 intellectual or creative and that requires the exercise of
28 discretion and independent judgment, and the employee
29 is primarily engaged in duties that consist of one or more
30 of the following:

31 (A) The application of systems analysis techniques and
32 procedures, including consulting with users, to
33 determine hardware, software, or system functional
34 specifications.

35 (B) The design, development, documentation,
36 analysis, creation, testing, or modification of computer
37 systems or programs, including prototypes, based on and
38 related to, user or system design specifications.



1 (C) The documentation, testing, creation, or
2 modification of computer programs related to the design
3 of software or hardware for computer operating systems.

4 (2) The employee is highly skilled and is proficient in
5 the theoretical and practical application of highly
6 specialized information to computer systems analysis,
7 programming, and software engineering. A job title shall
8 not be determinative of the applicability of this
9 exemption.

10 (3) The employee's hourly rate of pay is not less than
11 forty-one dollars (\$41.00). The Division of Labor Statistics
12 and Research shall adjust this pay rate on October 1 of
13 each year to be effective on January 1 of the following
14 year by an amount equal to the percentage increase in the
15 California Consumer Price Index for Urban Wage
16 Earners and Clerical Workers.

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

19 (1) The employee is a trainee or employee in an
20 entry-level position who is learning to become proficient
21 in the theoretical and practical application of highly
22 specialized information to computer systems analysis,
23 programming, and software engineering.

24 (2) The employee is in a computer-related occupation
25 but has not attained the level of skill and expertise
26 necessary to work independently and without close
27 supervision.

28 (3) The employee is engaged in the operation of
29 computers or in the manufacture, repair, or maintenance
30 of computer hardware and related equipment.

31 (4) The employee is an engineer, drafter, machinist, or
32 other professional whose work is highly dependent upon
33 or facilitated by the use of computers and computer
34 software programs and who is skilled in computer-aided
35 design software, including CAD/CAM, but who is not in
36 a computer systems analysis or programming occupation.

37 (5) The employee is a writer engaged in writing
38 material ~~related to consumer products~~, including box
39 labels, product descriptions, documentation, promotional
40 material, setup and installation instructions, and other



1 similar written information, either for print or for
2 on-screen media or who writes or provides content
3 material intended to be read by customers, subscribers,
4 or visitors to computer related media such as the World
5 Wide Web or CD-Roms.

6 (6) The employee is engaged in any of the activities set
7 forth in subdivision (a) for the purpose of creating
8 imagery for effects used in the motion picture, television,
9 or theatrical industry.

10 *SEC. 3. This act is an urgency statute necessary for*
11 *the immediate preservation of the public peace, health,*
12 *or safety within the meaning of Article IV of the*
13 *Constitution and shall go into immediate effect. The facts*
14 *constituting the necessity are:*

15 *In order, at the earliest possible time, to protect*
16 *businesses that rely on the computer industry as well as*
17 *certain vital health care professions, it is necessary for this*
18 *act to take effect immediately.*

19 _____
20 CORRECTIONS
21 **Heading — Lines 1 and 3.**
22 **Text — Page 3.**
23 _____
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