

AMENDED IN ASSEMBLY JUNE 29, 2000

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~~ *Sections 515 and 516* 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 who is primarily engaged in performing duties for which the respective certification is required.

(3) *Existing law authorizes the commission to adopt or amend working condition orders with respect to meal periods, among other things. Other existing law prohibits, except as provided, an employer from employing an employee for more than 5 hours per day without providing the employee with a meal period of not less than 30 minutes, or for employing an employee for more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.*

This bill would prohibit the commission from adopting a working condition order that conflicts with those 30-minute meal period requirements.

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

Vote: $\frac{2}{3}$. 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
13 exemption. The commission may, based upon this review,
14 convene a public hearing to adopt or modify regulations
15 at that hearing pertaining to duties that meet the test of
16 the exemption without convening wage boards. Any
17 hearing conducted pursuant to this subdivision shall be
18 concluded not later than July 1, 2000.

19 (b) (1) The commission may establish additional
20 exemptions to hours of work requirements under this
21 division where it finds that hours or conditions of labor
22 may be prejudicial to the health or welfare of employees
23 in any occupation, trade, or industry. This paragraph shall
24 become inoperative on January 1, 2005.

25 (2) Except as otherwise provided in this section and in
26 subdivision (g) of Section 511, nothing in this section
27 requires the commission to alter any exemption from
28 provisions regulating hours of work that was contained in
29 any valid wage order in effect in 1997. Except as otherwise
30 provided in this division, the commission may review,
31 retain, or eliminate any exemption from provisions
32 regulating hours of work that was contained in any valid
33 wage order in effect in 1997.

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

37 (d) For the purpose of computing the overtime rate of
38 compensation required to be paid to a nonexempt



1 full-time salaried employee, the employee's regular
2 hourly rate shall be $\frac{1}{40}$ th of the employee's weekly
3 salary.

4 (e) For the purposes of this section, "primarily" means
5 more than one-half of the employee's worktime.

6 (f) (1) In addition to the requirements of subdivision
7 (a), registered nurses employed to engage in the practice
8 of nursing shall not be exempted from coverage under
9 any part of the orders of the Industrial Welfare
10 Commission, unless they individually meet the criteria
11 for exemptions established for executive or
12 administrative employees.

13 (2) This subdivision does not apply to any of the
14 following:

15 (A) A certified nurse midwife who is primarily
16 engaged in performing duties for which certification is
17 required pursuant to Article 2.5 (commencing with
18 Section 2746) of Chapter 6 of Division 2 of the Business
19 and Professions Code.

20 (B) A certified nurse anesthetist who is primarily
21 engaged in performing duties for which certification is
22 required pursuant to Article 7 (commencing with Section
23 2825) of Chapter 6 of Division 2 of the Business and
24 Professions Code.

25 (C) A certified nurse practitioner who is primarily
26 engaged in performing duties for which certification is
27 required pursuant to Article 8 (commencing with Section
28 2834) of Chapter 6 of Division 2 of the Business and
29 Professions Code.

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

33 SEC. 2. Section 515.5 is added to the Labor Code, to
34 read:

35 515.5. (a) Except as provided in subdivision (b), an
36 employee in the computer software field shall be exempt
37 from the requirement that an overtime rate of
38 compensation be paid pursuant to Section 510 if all of the
39 following apply:



1 (1) The employee is primarily engaged in work that is
2 intellectual or creative and that requires the exercise of
3 discretion and independent judgment, and the employee
4 is primarily engaged in duties that consist of one or more
5 of the following:

6 (A) The application of systems analysis techniques and
7 procedures, including consulting with users, to
8 determine hardware, software, or system functional
9 specifications.

10 (B) The design, development, documentation,
11 analysis, creation, testing, or modification of computer
12 systems or programs, including prototypes, based on and
13 related to, user or system design specifications.

14 (C) The documentation, testing, creation, or
15 modification of computer programs related to the design
16 of software or hardware for computer operating systems.

17 (2) The employee is highly skilled and is proficient in
18 the theoretical and practical application of highly
19 specialized information to computer systems analysis,
20 programming, and software engineering. A job title shall
21 not be determinative of the applicability of this
22 exemption.

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

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

32 (1) The employee is a trainee or employee in an
33 entry-level position who is learning to become proficient
34 in the theoretical and practical application of highly
35 specialized information to computer systems analysis,
36 programming, and software engineering.

37 (2) The employee is in a computer-related occupation
38 but has not attained the level of skill and expertise
39 necessary to work independently and without close
40 supervision.



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

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

10 (5) The employee is a writer engaged in writing
11 material, including box labels, product descriptions,
12 documentation, promotional material, setup and
13 installation instructions, and other similar written
14 information, either for print or for on-screen media or
15 who writes or provides content material intended to be
16 read by customers, subscribers, or visitors to computer
17 related media such as the World Wide Web or CD-Roms.

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

22 SEC. 3. *Section 516 of the Labor Code is amended to*
23 *read:*

24 516. ~~Notwithstanding any other provision of law~~
25 *Except as provided in Section 512, the Industrial Welfare*
26 *Commission may adopt or amend working condition*
27 *orders with respect to break periods, meal periods, and*
28 *days of rest for any workers in California consistent with*
29 *the health and welfare of those workers.*

30 SEC. 4. This act is an urgency statute necessary for
31 the immediate preservation of the public peace, health,
32 or safety within the meaning of Article IV of the
33 Constitution and shall go into immediate effect. The facts
34 constituting the necessity are:

35 In order, at the earliest possible time, to protect
36 businesses that rely on the computer industry as well as
37 certain vital health care professions, it is necessary for this
38 act to take effect immediately.

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