

AMENDED IN ASSEMBLY AUGUST 10, 2000
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, *Lempert*,
Margett, Romero, and Steinberg)

December 7, 1998

An act to amend Sections ~~515~~ 512, 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~~

This bill would further require the executive, administrative, or professional employee to customarily and regularly exercise discretion and independent judgment in performing nonexempt duties in order to qualify for the exemption.

(3) 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)~~

(4) 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~~ 2nd 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, *except that the commission may adopt a working condition order permitting a meal period to commence after 6 hours of work if the commission makes a specified determination.*

(4)

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

Vote: 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 512 of the Labor Code is*
2 *amended to read:*

3 512. (a) An employer may not employ an employee
4 for a work period of more than five hours per day without
5 providing the employee with a meal period of not less
6 than 30 minutes, except that if the total work period per
7 day of the employee is no more than six hours, the meal
8 period may be waived by mutual consent of both the
9 employer and employee. An employer may not employ
10 an employee for a work period of more than 10 hours per
11 day without providing the employee with a second meal
12 period of not less than 30 minutes, except that if the total
13 hours worked is no more than 12 hours, the second meal
14 period may be waived by mutual consent of the employer
15 and the employee only if the first meal period was not
16 waived.

17 (b) *Notwithstanding subdivision (a), the Industrial*
18 *Welfare Commission may adopt a working condition*
19 *order permitting a meal period to commence after six*
20 *hours of work if the commission determines that the*
21 *order is consistent with the health and welfare of the*
22 *affected employees.*

23 SEC. 2. Section 515 of the Labor Code is amended to
24 read:

25 515. (a) The Industrial Welfare Commission may
26 establish exemptions from the requirement that an



1 overtime rate of compensation be paid pursuant to
2 Sections 510 and 511 for executive, administrative, and
3 professional employees, provided that the employee is
4 primarily engaged in the duties that meet the test of the
5 exemption ~~and the employee~~, *customarily and regularly*
6 *exercises discretion and independent judgment in*
7 *performing those duties, and* earns a monthly salary
8 equivalent to no less than two times the state minimum
9 wage for full-time employment. The commission shall
10 conduct a review of the duties that meet the test of the
11 exemption. The commission may, based upon this review,
12 convene a public hearing to adopt or modify regulations
13 at that hearing pertaining to duties that meet the test of
14 the exemption without convening wage boards. Any
15 hearing conducted pursuant to this subdivision shall be
16 concluded not later than July 1, 2000.

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

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

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

35 (d) For the purpose of computing the overtime rate of
36 compensation required to be paid to a nonexempt
37 full-time salaried employee, the employee’s regular
38 hourly rate shall be $\frac{1}{40}$ th of the employee’s weekly
39 salary.



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

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

10 (2) This subdivision does not apply to any of the
11 following:

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

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

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

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

30 ~~SEC. 2.~~

31 *SEC. 3.* Section 515.5 is added to the Labor Code, to
32 read:

33 515.5. (a) Except as provided in subdivision (b), an
34 employee in the computer software field shall be exempt
35 from the requirement that an overtime rate of
36 compensation be paid pursuant to Section 510 if all of the
37 following apply:

38 (1) The employee is primarily engaged in work that is
39 intellectual or creative and that requires the exercise of
40 discretion and independent judgment, and the employee



1 is primarily engaged in duties that consist of one or more
2 of the following:

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

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

11 (C) The documentation, testing, creation, or
12 modification of computer programs related to the design
13 of software or hardware for computer operating systems.

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

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

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

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

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

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



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

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

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

19 ~~SEC. 3.~~

20 SEC. 4. Section 516 of the Labor Code is amended to
21 read:

22 516. Except as provided in Section 512, the Industrial
23 Welfare Commission may adopt or amend working
24 condition orders with respect to break periods, meal
25 periods, and days of rest for any workers in California
26 consistent with the health and welfare of those workers.

27 ~~SEC. 4.~~

28 SEC. 5. This act is an urgency statute necessary for
29 the immediate preservation of the public peace, health,
30 or safety within the meaning of Article IV of the
31 Constitution and shall go into immediate effect. The facts
32 constituting the necessity are:

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

