

# CALIFORNIA TAKES A STEP BACKWARD, GOVERNOR DAVIS REINSTATES DAILY

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Governor Davis recently signed Assembly Bill 60 entitled "The Eight-Hour-Day Restoration and Flexibility Act of 1999." The Bill will take effect on January 1, 2000 and will bring back overtime pay for most non-exempt employees who work more than eight hours in any workday. The new law eliminates much of the scheduling flexibility which was made possible by California's Industrial Welfare Commission's (IWC) abolishing of the daily overtime requirement two years ago. Specifically, the new law reinstates the pre-1998 versions of Wage Orders 1, 4, 5, 7 and 9 covering the manufacturing industry, professional, technical, clerical and mechanical occupations and the public housekeeping, mercantile and transportation industries. The law will also apply to the remaining Wage Orders on the issues of makeup time, meal periods, commuting time, salary exemptions and penalties. The law generally does not cover agricultural employees, unionized employees and persons who work in the ski, racehorse and commercial fishing industries.

## **New Overtime Rules**

Under the new law, an employer must pay time and a half for all hours worked in excess of eight in one workday or 40 hours in a single workweek. Time and a half must also be paid for the first eight hours of work on the seventh day of work in any single workweek. Double time must be paid after twelve hours in a single workday and after eight hours on the seventh day of work in a workweek.

## **Additional New Rules**

The new law also contains certain provisions which revise prior laws and establish new procedures for the use of an employee's time. These are listed below.

- **Make-Up Time** - An employee may request in writing to make up time lost as a result of a personal obligation during the same week without being paid overtime. In so doing, the employee must not work more than eleven hours in one day or 40 hours in one workweek. Further, the employee must provide the employer with a signed written request on each occasion that the employee wishes to make up time. The employer cannot require, solicit, or encourage employees to request make-up time.
- **Meal Periods** - Most employees are entitled to a meal period every five hours. Employees working less than twelve hours may waive a second meal period after ten hours if the employee and employer agree to do so in writing.
- **Minimum Salary for Exempt Employees** - Executive, administrative and professional employees continue to be exempt from overtime provided they are primarily engaged in duties which meet the test of the applicable exemption. The minimum wage requirement, however, has been raised: these workers must now earn a

monthly salary of at least twice the state minimum wage for full-time employment.

- **Commuting Time** -The new law states that time spent commuting to or from the first place at which the employee's presence is required is not to be considered as part of the employee's work day when the employee commutes in a vehicle which is subsidized by the employer and is used for the purpose of ride-sharing. This provision revises current law which provides that employees must be paid for commuting under certain limited circumstances, such as when a job site is not within reasonable proximity of the employee's regular workplace.

### **Alternative Workweek Schedules**

Under the new law, the daily overtime requirement will not apply to employees working pursuant to an alternative workweek schedule. Such a schedule can allow employees to work up to ten hours per day within a 40-hour workweek without incurring overtime. The schedule must be approved by at least two-thirds of the affected employees through a secret ballot election, the results of which must be reported within thirty days to the California Department of Industrial Relations.

Employers will still have to pay overtime to employees who work hours beyond their regular alternative workweek schedule. Time and a half must be paid to any employee who works in excess of regularly scheduled hours up to twelve in a single workday and for all hours in excess of 40 hours in a week. Employees must be paid twice their regular rate of pay for work in excess of twelve hours per day and in excess of eight hours on days which are not regularly scheduled workdays.

### **Conclusions**

The new law contemplates that the IWC will have until July 1, 2000 to revise certain Wage Orders and to clarify new procedures for setting up and repealing alternative workweek schedules. Accordingly, employers should anticipate that there will be additional changes to the overtime rules. In the meantime, employers should consider updating their overtime, make-up time and meal period policies for the January 1, 2000 changes. Appropriate adjustments should also be made in the payroll system, and new forms may be required for make-up time, meal periods and time cards or timesheets. Employers may also wish to consider implementing an alternative workweek schedule. These changes should be taken seriously: the new rules create penalties that apply to managers and employers who commit violations in the amount of \$50 for the initial violation and \$100 for each subsequent offense in addition to any other penalty specified under existing wage and hour laws.