Session 202

Wage and Hour Law Update

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WAGE & HOUR QUIZ

1. You contract with an outside janitorial firm for cleaning services. A year later, 20 of its employees file a complaint with DOL claiming that overtime was not paid for more than 40 hours per week. Do you have any potential liability?
   a. Yes. They worked in your facility.
   b. No. They were not your employees.
   c. Maybe. If you are considered a joint employer.

2. An employee who works for a customer of your company has filed suit for unpaid overtime against his employer. You refuse to permit this person access to your facility because he is a "troublemaker." Have you committed a violation of the FLSA?
   a. No. He is not your employee.
   b. Yes. You are a joint employer
   c. Yes. The non-retaliation provisions of the FLSA apply to "any person."

3. Your company has created a new position, Executive Assistant to the President. The person who has been hired to fill this position has a college degree. This is an office position whose duties are to provide personal and business assistance to the chief operating officer of the Company. The salary paid for this position is $10,000 per year. Is this an exempt position under the FLSA?
   a. No. The position is merely a "go-fer."
   b. Yes. This person has a college degree.
   c. Yes. This position is a salaried exempt administrative position under FLSA regulations.

4. You have salespeople who are eligible for incentive pay. Incentive pay is computed quarterly based on sales volume and paid one month later. In order to receive any incentive pay for the quarter, the salesperson must still be employed on the payout date. Can you legally withhold the incentive pay from an employee who quits before the payout date?
   a. Yes. Employee knew terms of incentive pay at time of hire and is now stuck with them.
   b. No. This would be a forfeiture of earned income.
   c. Maybe. Depends on whether the incentive pay is considered commission.

5. Your secretaries are required to attend an all day office management seminar in a city 100 miles away. Do you have to pay them for travel time and overtime?
   a. Yes. Travel time at the employer's request is work time.
   b. No. This is non-compensable commuting time.
   c. You must pay them but you can deduct their normal commuting time and meal time.

6. A secretary in your office wants to work six-eight hour days one week and four eight-hour days the next week. You ask her to sign a waiver of the overtime due and she agrees. Is this legal?
   a. Yes. The waiver makes it legal.
   b. No. Overtime cannot be waived.
   c. Maybe. Depends on whether the waiver is truly voluntary.

7. You have a mandatory arbitration of employment disputes policy in your employee handbook. A group of employees who claim they have not been properly paid overtime have filed suit. Can you force them to arbitrate their claims under your policy?
   a. Yes. They must abide by the terms of the agreement they made when employed.
   b. No. The agreement to arbitrate is void under the FLSA.
   c. No. Such mandatory agreements to arbitrate are unenforceable as a matter of law.

8. An exempt employee regularly leaves every Thursday at 4:00 p.m. in order to have dinner with his invalid mother. He has not offered to work additional hours on another day or to come in early on Thursdays. Can you dock him for the early Thursdays?
   a. Yes. His pay is based on a 40-hour week.
   b. No. Exempt employees cannot be docked for partial day absences.
   c. No. But you may be able to require him to substitute his earned paid leave time for the hours missed.

9. An exempt employee is called for jury duty. Your policy pays for 10 days but he serves 12 non-consecutive days. Must you pay him for the additional two days?
   a. Yes. You cannot deduct from an exempt employee's pay.
   b. No. The additional two days are personal absences and can be deducted.
   c. Maybe. You must pay him if he performed any work during the week that includes the absences.

10. You have a workforce that is represented by a union for the purposes of collective bargaining. Your labor counsel has just advised you that, in order to classify certain employees as outside salesmen who are exempt from the FLSA, you must be certain that these employees spend at least 80% of their time in sales activity. Without negotiating with the Union, you unilaterally institute a rule requiring these employees to spend 80% of their work time each week making outside sales calls. Have you committed a violation of the NLRA?
    a. Yes. The rule affects the terms and conditions of the employment of these employees and is, therefore, a mandatory subject of bargaining.
    b. No. The rule is instituted to comply with the FLSA so it can be implemented unilaterally.
    c. Maybe. It depends upon what the collective bargaining agreement says about management rights.

11. An employee complains to her supervisor that she is being made to work too much overtime and she is not being paid properly for such overtime. The supervisor gives the employee a new assignment which everyone in the department knows is a "dog" which requires time-consuming work and which is unpleasant. Has the supervisor committed a violation of the FLSA?
    a. No. The employee is exempt.
    b. No. The employee has not filed suit under the FLSA.
    c. Maybe. It depends upon the jurisdiction you are in.

12. An exempt employee has brought suit under the FLSA claiming the Company has not retained records of hours worked for the last three years as required by Department of Labor Regulations under the FLSA. The Company has filed a motion to dismiss. What will be the outcome?
    a. The motion to dismiss will be denied because there are triable issues of fact.
    b. The motion to dismiss will be granted because the employee is exempt so the FLSA does not apply.
    c. The motion to dismiss will be granted because there is no private right of action for recordkeeping violations under the FLSA.

13. You are a California employer after 1/1/2000 in the manufacturing industry. Your collective bargaining agreement provides overtime for your warehousemen after 10 hours per day. Their regular rate of pay is $6.75 per hour. Can you pay them $7.75 per hour for the 9th and 10th hours of work each day?

    a. Yes. All employees covered by a CBA are exempt from the eight hour a day overtime requirement.
    b. Yes. Because the CBA provides premium pay for hours in excess of eight and the regular wage is at least one dollar more than the state minimum wage of $5.75 per hour.
    c. No. The employees , rate of pay is less than 30% more than the state minimum wage of $5.75 per hour. Therefore, they must be paid at 1 * x.

14. You are a California employer after 1/1/2000. An employee works 11 hours in a day. Must you offer him two meal periods?

    a. Yes. Two meal periods are required by the new Eight Hour Day Law if an employee works more than 10 hours.
    b. No. He is due one meal period after the first six hours.
    c. Yes. Two meal periods are required by the new Eight Hour Day Law if an employee works more than 10 hours. But if he will complete his shift within 12 hours, the second meal period can be waived by mutual consent.

15. You are a California employer after 1/1/2000. An employee comes to you and asks to leave work two hours early that day to attend an NBA game and make up the time by working two extra hours next week. You allow it. Is this legal?

    a. Yes. This is the type of flexibility encouraged by the new law.
    b. No. The time must be made up within the same workweek.
    c. No. The request must be submitted in writing for each time the employee will work make up time.
    d. b and c.

WAGE & HOUR LAW UPDATE – SELECTED CASES

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Introduction

The Fair Labor Standards Act (FLSA) was passed in 1938. Since that time, there have been numerous cases concerning its provisions. In addition, there have been volumes of regulations implemented by the Department of Labor (DOL). This paper will summarize recent developments of significance to in-house counsel.

Definitions

As a general rule, the FLSA applies to all employees of an employer unless the employees are otherwise exempted from the provisions of the FLSA by statute. The categories of employees who are exempt from the FLSA include, salaried executive, professional and administrative employees and outside sales employees. However, it should be noted that just because an employee may be exempt from the FLSA by either statute or regulation, he or she may still be subject to state law concerning overtime obligations.

Ackerman v. Coca-Cola, 1999 U.S. App. LEXIS 11940 (10th Cir. Jun. 10, 1999): Employees who were employed for the purpose of selling the employer's products and who were regularly and customarily engaged in that activity away from the employer's office were "outside salespersons" under DOL regulations and were, therefore exempt from the provisions of FLSA. The performance of tasks which are incidental to the consummation of the sale of products do not turn an otherwise exempt "outside salesperson" into a non-exempt employee.

Ramirez v. Yosemite Water Co., Inc., 20 Cal. 4th 785 (1999): Although employee may have met the FLSA definition of "outside salesman," he may not be an "outside salesman" under the California Labor Code. California Wage Order No. 7-80 requires

that to be an "outside salesman" the employee must "regularly work more than half the working time away from the employer's place of business selling." FLSA regulations consider work incidental to sales as part of the "outside sales" exemption but California regulations do not.

Deductions From Pay

Although an employee may meet the regulatory definition of "exempt," an employer may make an otherwise exempt employee non-exempt by subjecting him or her to deductions for partial-day absences, thereby treating an otherwise salaried exempt employee as an hourly employee.

Auer v. Robbins, 519 U.S. 452 (1997): Employees of St. Louis Police Department brought suit under FLSA claimed that they were not "exempt" because, under their employer's department manual, their salary could be reduced for a variety of disciplinary infractions. The Supreme Court found that the manual did not "effectively communicate" pay deductions are a form of punishment anticipated for employees in the position held by the plaintiffs. Although there was one plaintiff whose salary was reduced as a disciplinary measure, the Supreme Court held that this deduction was not made for lack of work and could be corrected by proper payment under DOL regulations. This so-called "window of correction" does not require immediate repayment of the improperly-made deduction. (For further discussion of this "window of correction," *see* ***Paresi v. City of Portland,*** 1999 U. S. App. LEXIS 7560 (9th Cir. Jun. 17, 1999)).

Caperci v. Rite Aid Corp., 43 F. Supp. 2d 83 (D. Mass. 1998): The court held that although the employer might change the regularly weekly pay of its pharmacists from time to time, it never reduced the employee's gross weekly pay below the stated salary amount. Therefore, the plaintiffs were exempt salaried employees. The court also held that a reduction in paid leave time, even in partial-day increments, does not affect an employee's status as a salaried employee under the FLSA. Finally, the court held that the employer could compensate employees for overtime worked without losing the exemption under the FLSA.

Danesh v. Rite Aid Corp., 39 F. Supp. 2d 7 (D.D.C. 1999): Employer turned otherwise exempt employee into non-exempt employee by making deductions from salary due to tardiness.

In re Wal-Mart Stores, Inc., 1999 U.S. Dist. LEXIS 11949 (D. Colo. Jul. 30, 1999): The employer changed the salary of its employees prospectively depending upon the number of hours to be worked. The court found that the employees were not salaried exempt but were treated as hourly employees and, therefore, the employer owed the employees overtime. The court also found that the "window of correction" was not available to the employer because the reductions in the salaries of the plaintiffs were made for "lack of work."

Joint Employer Liability

Recently Guess? Inc. agreed to pay up to $1 million to settle a class action alleging that contractors working for Guess failed to pay their employees legally required overtime and minimum wages. DLR No. 140 (Jul. 22, 1999, p. A-1). Although Guess did not admit any liability, it had previously agreed to be responsible for labor law compliance by its contractors. *Id.* The DOL takes the position that an employee may have more than one employer for the purposes of the FLSA and that all joint employers are individually responsible for compliance with the FLSA. 29 C.F.R. § 791.2(a).

Baystate Alternative Staffing, Inc. v. Herman, 163 F.3d 668 (1st Cir. 1998): Employer owned and operated temporary employment agencies which provided unskilled labor to companies in need of temporary workers. Although the employer required all its workers to sign a "contractor agreement" which stated the worker was an independent contractor, the court found that the employer issued paychecks, provided workers' compensation insurance, proscribed rules for the employees, instructed the employees on appropriate clothing and behavior for job sites. The employer contended that the employees were employed only by the client companies and not by the temporary agencies. According to the court, there are four factors to be looked at in determining whether an employee is jointly employed: (1) whether the alleged employer had the power to hire and fire the

employees; (2) whether the alleged employer supervised and controlled employee work schedules or conditions of employment; (3) whether the alleged employer determined the rate and method of payment; and (4) whether the alleged employer maintained employment records. The court found that the absence of direct, on-site supervision did not preclude a finding that the temporary agencies were the employers of the temporary workers.

Karr v. Strong Detective Agency, Inc., 787 F.2d 1205 (7th Cir. 1985): Plaintiff worked as private detective at warehouse of employer's client. Client paid employee for all hours worked in accordance with FLSA. Additionally, employer paid employee $1 per hour for all hours worked for client. The court found that both the client and the detective agency were employers of the employee. The court looked to DOL regulations concerning joint employer status which provide that a joint employment relationship exists: (1) where there is an arrangement between the employers to share the employee's services; (2) where one employer is acting directly or indirectly in the interest of the other in relation to the employee; or (3) where the employers are not completely disassociated with respect to the employment of a particular employee and may be deemed to share control of the employee, directly or indirectly. Applying these criteria, the court determined that the detective agency and the client were joint employers and that the detective agency was entitled to take credit under the FLSA for all payments made to the employee by the client company.

Braddock v. Madison County, 34 F. Supp. 2d 1098 (S.D. Ind. 1998): Employees of county courts brought suit to recover compensation for overtime hours worked. The county claimed that the employees performed work for the courts and not for the county, so the judges were liable for the overtime compensation. The plaintiffs were hired by the judges, who also controlled their work schedules but the number of employees and the compensation for each position was determined by the county. The county refused to pay overtime to the plaintiffs. The court held that the plaintiffs were employees of both the county and the courts because the county controlled the plaintiffs' compensation, overtime appropriations and overall staffing levels in the courts. The court also held that

the county could be held liable for the overtime compensation because it had the power to prevent the violations and did not take action to prevent them.

Non-Retaliation

The FLSA prohibits "any person" from

> discharg[ing] or in any other manner discriminat[ing] against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter, or has testified or is about to testify in any such proceeding, or has served or is about to serve on an industry committee.

29 U.S.C. § 215 (a) (3). However, there is a split in the courts about whether informal complaints give rise to protection under the anti-retaliation provisions of the FLSA.

Sapperstein v . Hager, 1999 U.S. App. LEXIS 19042 (7th Cir. Aug. 17, 1999): An employee worked for an employer which had gross sales less than the jurisdictional amount of $500,000 and was therefore not covered by the FLSA by statute. The employee filed suit alleging that the employer violated state child labor laws and failed to properly pay him overtime under the FLSA. The employee subsequently amended his complaint to allege that he had been retaliated against by the employer. The court held that even if the employer was not a covered "employer" under 29 U.S.C. § 203 (s) (1) (A) (ii), the anti-retaliation provisions of the FLSA apply to "any person" and are not limited to "employers" as that term is defined in the FLSA. Thus, the court held that the plaintiff's action could proceed even if the employer was not a covered and even if the claims for overtime compensation were not valid under the FLSA.

Lambert v. Ackerly, 1999 U.S. App. LEXIS 11929 (9th Cir. Jun. 10, 1999): Plaintiffs were ticket sales agents for professional sports team who were paid an monthly salary, regardless of the overtime they actually worked. The employees complained to their employer about the failure to pay them overtime pay and were told that if they continued to pursue these claims they would not have jobs with the employer. The employees hired an attorney who wrote the employer a letter concerning the claim for overtime pay. Within two months, the plaintiffs were laid off from their positions; the only sales agent

not discharged was the one agent who had never complained about the overtime violations. The Seventh Circuit noted that there was a split among the circuits as to whether the anti-retaliation provisions of the FLSA apply to "informal" complaints, with the First, Third, Sixth, Eighth, Tenth and Eleventh Circuits holding that such "informal" complaints are covered by FLSA. On the other hand, the Second Circuit holds that "informal" complaints are not covered by the anti-retaliation provisions of the FLSA. The Ninth Circuit then held that the anti-retaliation provisions of the FLSA include complaints actually communicated to employers.

Clevinger v. Motel Sleepers, Inc., 36 F. Supp. 2d 322 (W.D. Va. 1999): Plaintiff complained to management about failure to pay her minimum wage and was subsequently fired by employer. The plaintiff admitted that she had never filed a complaint concerning the alleged FLSA violations with either the DOL or any other agency. The court held that the language of the FLSA "supports the interpretation that a more verifiable activity is required than merely an oral complaint to a supervisor." Thus, the court granted partial summary judgment on the plaintiff's retaliation claim.

Ball v. Memphis Bar B-Q Co., Inc., 34 F. Supp. 2d 342 (E.D. Va. 1999): Plaintiff alleged that he advised his employer that a coworker was preparing to bring an FLSA action against the employer. Plaintiff claimed that he and the employer discussed potential testimony and that the Plaintiff was fired because he refused to testify in a particular way. The court determined that the issue before it was whether the FLSA protects potential testimony in lawsuits that have only been contemplated. The court held that the language of the FLSA protects an employee only when he has testified in an FLSA proceeding or is scheduled to testify in a then-pending FLSA proceeding. Based upon this analysis, the court dismissed the complaint.

Recordkeeping Violations

Under regulations promulgated by DOL, employers are required to maintain records showing the "hours worked each workday" during each seven day work week for three (3) years. 29 C.F.R. § 516.2 (7), 516.5 (a). However, in ***East v. B ullocks, Inc.,*** 34 F.

Supp. 2d 1176 (D. Ariz. 1998), the court held that there is no private right of action for recordkeeping violations under the FLSA.

Arbitration of FLSA Claims

There is language in the FLSA which prohibits the unsupervised waiver of rights under the FLSA. The DOL has taken the position that the FLSA precludes mandatory arbitration of FLSA claims. DLR. No. 144 (Jul. 28, 1999, p. A-1). Recently a New York brokerage house settled claims that it violated the FLSA and California wage and hour laws by failing to pay discount brokers for work performed during their lunch hour. *Id.* The amount of the settlement was $3.3 million. *Id*

FLSA and Collective Bargaining

Provisions of collective bargaining agreements that violate the FLSA are void as against public policy. However, there have been a couple of recent cases discussing the application of the FLSA to collective bargaining relationships.

Brooks v. Ridgefield Park, N.J., 1999 U.S. App. LEXIS 16827 (3rd Cir. Jul. 21, 1999): Plaintiffs were police officers whose overtime compensation promptly as required by the FLSA in 29 U.S.C. § 207 (a). Under a collective bargaining agreement between the employees' union and their employer, the employer accumulated the employees' overtime and paid it on a monthly, rather than weekly, basis. The court noted that this particular provision of the collective bargaining agreement had been in effect for many years and that it had been requested by the union. The Third Circuit agreed that the overtime payment schedule of the employer violated the FLSA and that the collective bargaining agreement could not waive the employees' rights under the FLSA. The court then went on to examine whether liquidated damages were appropriate under the facts of this case. In examining this question, the court noted that the situation giving rise to the lawsuit was a result of the employees' request. The court found that the by instituting the suit under the FLSA, the plaintiffs "did not bargain in good faith." The court remanded

the case for consideration of whether the actions of the employer were taken in good faith in order to determine whether liquidated damages are appropriate.

Watsonville Newspapers, 327 NLRB No. 160 (Mar. 24, 1999): Without negotiating with the Union, the employer advised its ad sales employees that they were required to spend specific hours each day in the field calling on customers. Prior to this, these employees had discretion to schedule their work. The employer claimed it had no obligation to bargain about the change because it was designed to conform with the FLSA. The NLRB held that the employer violated the NLRA by unilaterally implemented this change and that the FLSA did not give the employer the privilege to impose the change unilaterally. According to the NLRB, the employer was not obligated by the FLSA to structure the jobs of these employees as exempt and it had a duty to bargain with the union over the proposed new rule. The NLRB required the employer to return the employees to the status quo ante, even though it might cause the employees to be non-exempt pending bargaining. In its opinion, the NLRB noted that although the unilateral change made by the employer was consistent with the employees' job description, it was a change in the actual terms and conditions of their employment.

Proposed Legislation

Equity for Temporary Workers Act of 1999 (H. 2298): This bill was introduced in the House of Representatives on June 6, 1999. It mandates that temporary workers who work for an employer for 1000 hours during a 12-month period will be eligible to receive any benefit offered by the employer to other permanent employees, regardless of whether the temporary worker was "placed in the employ of such employer by the employer, by a temporary help agency, or staffing firm." The bill would provide that any employer having employees who are subject to Section 6 of the FLSA would be prohibited from discriminating between employees based upon their employment status by paying wages to temporary employees at a lesser rate than the rate at which the employer pays wages to full-time employees for equal work, unless such payment is made pursuant to a seniority system, merit system, or a differential based on any factor other than employment status.

Rewarding Performance in Compensation Act (H.R. 1381): This act would eliminate the FLSA requirement that employers include employee incentive bonuses as part of hourly pay for the purposes of calculating overtime. This would eliminate the hassle for employers who link a portion of the compensation received by their employees to incentive bonuses based upon the employer's profit.

Conclusion

There have been a number of recent developments in the wage and hour law area. Although most of the cases are very fact-specific, there are lessons to be learned from each of them.

Eight Hour Day Restoration and Workplace Flexibility Act of 1999

BILL NUMBER: AB 60 CHAPTERED 07/21/99

CHAPTER 134
FILED WITH SECRETARY OF STATE JULY 21, 1999
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AMENDED IN ASSEMBLY MARCH 22, 1999
AMENDED IN ASSEMBLY MARCH 15, 1999

INTRODUCED BY Assembly Member Knox
(Coauthor: Senator Burton)

DECEMBER 7, 1998

An act to amend Sections 510, 554, 556, and 1182.1 of, to add Sections 500, 511, 512, 513, 514, 515, 516, 517, and 558 to, to repeal Section 1183.5 of, and to amend and repeal Sections 1182.2, 1182.3, 1182.9, and 1182.10 of, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 60, Knox. Employment: overtime.

Existing law provides that 8 hours of labor constitute a day's work unless it is otherwise expressly stipulated by the parties to a contract.

This bill would delete the authority of parties to otherwise expressly stipulate the number of hours that constitute a day's work.

The bill would provide that, except for an employee working pursuant to an alternative workweek schedule, as specified, hours worked in excess of 8 hours in one day, hours worked in excess of 40 hours in one workweek, and the first 8 hours worked on the 7th day of work in a given workweek are to be compensated at the rate of no less than 1 1/2 times the regular rate of pay of an employee. Under the bill, hours worked in excess of 12 hours in one day as well as hours worked in excess of 8 hours on any 7th day of a workweek are to be compensated at the rate of no less than twice the regular rate of pay of an employee. Employees working pursuant to an alternative workweek schedule under other specified provisions of this bill would be exempt from these requirements.

This bill would make an employer, or other person acting on behalf of an employer, subject to prescribed civil penalties for the violation of prescribed provisions of the Labor Code or provisions regulating hours and days of work of wage orders of the Industrial

Welfare Commission. The bill would authorize the Labor Commissioner to issue citations for violations of prescribed provisions of the Labor Code regulating the payment of wages for overtime work and provisions regulating hours and days of work in wage orders of the commission and would prescribe a procedure by which the cited employer or other person may contest the proposed assessment of a civil penalty.

Under existing law, work performed in the necessary care of animals, crops, or agricultural lands is exempt from specified regulation under the above provisions, including the standard for compensation at an overtime rate for work in excess of 8 hours per day.

This bill instead would exempt persons employed in an agricultural occupation, as defined in the wage order of the Industrial Welfare Commission relating to agricultural occupations, with a prescribed exception, from specified regulation under the Labor Code.

Under an existing statute, any employer who intends to use a flexible scheduling technique, as permitted by wage order of the commission, is required to make full written disclosure to the affected employees concerning certain matters of the flexible schedule, as specified. Existing wage orders of the commission specify the rate of overtime compensation required to be paid to an employee for work in excess of 40 hours per week. Other existing provisions of those wage orders provide that no employer is in violation of those overtime provisions if the employees of the employer have adopted a voluntary written agreement that satisfies specified criteria.

This bill would repeal that statute and instead codify the authority of the employees of an employer to adopt an alternative workweek schedule that permits work by affected employees for no longer than 10 hours per day within a 40-hour workweek without the payment to the affected employees of an overtime rate of compensation when approved by at least 2/3 of the affected employees in a work unit by secret ballot. The bill would provide that an employee working more than 8 hours, but not more than 12 hours, in a day pursuant to an alternative workweek schedule is required to be paid an overtime rate of compensation of no less than 1 1/2 times the regular rate of pay of the employee for work in excess of the regular hours established by that schedule and for work in a workweek in excess of 40 hours per week and an overtime rate of compensation of no less than double the regular rate of pay of the employee for any work in excess of 12 hours per day and work in excess of 8 hours on days worked beyond the regularly scheduled workweek under the agreement.

The bill would declare null and void certain alternative workweek schedules adopted pursuant to specified wage orders of the Industrial Welfare Commission.

Existing wage orders of the commission prohibit an employer from employing an employee for a work period of more than 5 hours per day without providing the employee with a meal period of not less than 30 minutes, with the exception that if the total work period per day of the employee is no more than 6 hours, the meal period may be waived by mutual consent of both the employer and employee.

This bill would codify that prohibition and also would further prohibit an employer from employing an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, with a specified

exception.

The bill would provide that, if an employer approves the written request of an employee to make up work time that is lost as a result of a personal obligation of the employee, the hours of that makeup work time, if performed in the same workweek in which the time was lost, may not be counted towards computing the total number of hours worked in a day for purposes of specified overtime requirements, except for hours in excess of 11 hours of work in one day or 40 hours in one workweek. The bill would require an employee to provide a signed written request for each occasion he or she makes that request. The bill would prohibit an employer from encouraging or otherwise soliciting an employee to make that request.

Existing wage orders of the commission provide that no person employed in an administrative, executive, or professional capacity is required by those wage orders to be compensated for overtime work. Those existing wage orders define an employee as employed in an administrative, executive, or professional capacity if, among other things, the employee is engaged in work that is primarily intellectual, managerial, or creative, and which requires exercise of discretion and independent judgment and the employee receives compensation of not less than a specified amount per month.

This bill would authorize the Industrial Welfare Commission to establish exemptions, with specified limitations, from the requirement that premium pay be paid for overtime work for executive, administrative, and professional employees, provided that the employee is primarily engaged in the duties which 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.

The bill would require the commission to conduct a review of the duties that meet the test of this exemption and authorize the commission to hold a public hearing, to be conducted no later than July 1, 2000, to adopt or modify regulations relating to duties that meet the test of the exemption without convening a wage board.

The bill would authorize the Industrial Welfare Commission to review, retain, or eliminate exemptions from the hours requirements that were contained in a valid wage order in effect in 1997 and would authorize the commission to establish additional exemptions therefrom for the health or welfare of employees in any occupation, trade, or industry until January 1, 2005.

Under existing law, employment in which the hours of work do not exceed 30 hours in a week or 6 hours in a day are exempt from the general provisions of the Labor Code relating to the hours and days that constitute a workday and a workweek, and related provisions.

This bill would clarify that the exemption applies to the requirements for a day's rest within a period of 7 days of labor and the prohibition against requiring an employee to work more than 6 days in 7.

Existing provisions of the Labor Code contain specific workday and workweek requirements relating to employees of ski establishments, employees of licensed hospitals, and stable employees engaged in the raising, feeding, or management of racehorses. Existing law also exempts employers engaged in specified commercial fishing enterprises from the minimum wage and maximum hour provisions of existing law.

This bill would repeal those provisions as of July 1, 2000.

This bill would require the Industrial Welfare Commission, prior to July 1, 2000, to conduct a review of wages, hours, and working conditions in the ski industry, commercial fishing industry, and

health care industry, and for licensed pharmacists, outside salespersons, and stable employees in the horse racing industry. The bill would authorize the commission, based upon that review, to convene a public hearing to adopt or modify regulations at that hearing pertaining to those industries without convening wage boards.

The bill would provide that the hearing be concluded by July 1, 2000.

The bill also would require the Industrial Welfare Commission, at a public hearing, to adopt wage, hours, and working conditions orders consistent with this measure without convening wage boards, which orders shall be final and conclusive for all purposes. Additionally, the commission would be authorized to adopt regulations consistent with this measure necessary to provide assurances of fairness regarding the conduct of employee workweek elections, employee disclosures, employee requests to the Labor Commissioner to review designations of work units, and processing of employee petitions as provided for in this measure or under any wage order of the commission.

Additionally, the bill would authorize the Industrial Welfare Commission to adopt or amend orders relating to break periods, meal periods, and days of rest.

Since violation of these provisions would, under existing law, constitute a misdemeanor, the bill would impose a state-mandated local program.

The bill also would make other technical and conforming changes and would declare null and void specified wage orders of the Industrial Welfare Commission relating to these provisions and temporarily reinstate specified prior orders of the commission.

This bill would further require the Industrial Welfare Commission to study the extent to which alternative workweek schedules are used in California with a cost-benefit analysis and to report the results of the study and recommendations to the Legislature by July 1, 2001.

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.

This bill would provide that no reimbursement is required by this act for a specified reason.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. This act shall be known and may be cited as the "Eight-Hour-Day Restoration and Workplace Flexibility Act of 1999."

SEC. 2. The Legislature hereby finds and declares all of the following:

(a) The eight-hour workday is the mainstay of protection for California's working people, and has been for over 80 years.

(b) In 1911, California enacted the first daily overtime law setting the eight-hour daily standard, long before the federal government enacted overtime protections for workers.

(c) Ending daily overtime would result in a substantial pay cut for California workers who currently receive daily overtime.

(d) Numerous studies have linked long work hours to increased rates of accident and injury.

(e) Family life suffers when either or both parents are kept away from home for an extended period of time on a daily basis.

(f) In 1998 the Industrial Welfare Commission issued wage orders that deleted the requirement to pay premium wages after eight hours of work a day in five wage orders regulating eight million workers.

(g) Therefore, the Legislature affirms the importance of the eight-hour workday, declares that it should be protected, and reaffirms the state's unwavering commitment to upholding the eight-hour workday as a fundamental protection for working people.

SEC. 3. Section 500 is added to the Labor Code, to read:

500. For purposes of this chapter, the following terms shall have the following meanings:

(a) "Workday" and "day" mean any consecutive 24-hour period commencing at the same time each calendar day.

(b) "Workweek" and "week" mean any seven consecutive days, starting with the same calendar day each week. "Workweek" is a fixed and regularly recurring period of 168 hours, seven consecutive 24-hour periods.

(c) "Alternative workweek schedule" means any regularly scheduled workweek requiring an employee to work more than eight hours in a 24-hour period.

SEC. 4. Section 510 of the Labor Code is amended to read:

510. (a) Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work. The requirements of this section do not apply to the payment of overtime compensation to an employee working pursuant to any of the following:

(1) An alternative workweek schedule adopted pursuant to Section 511.

(2) An alternative workweek schedule adopted pursuant to a collective bargaining agreement pursuant to Section 514.

(3) An alternative workweek schedule to which this chapter is inapplicable pursuant to Section 554.

(b) Time spent commuting to and from the first place at which an employee's presence is required by the employer shall not be considered to be a part of a day's work, when the employee commutes in a vehicle that is owned, leased, or subsidized by the employer and is used for the purpose of ridesharing, as defined in Section 522 of the Vehicle Code.

(c) This section does not affect, change, or limit an employer's liability under the workers' compensation law.

SEC. 5. Section 511 is added to the Labor Code, to read:

511. (a) Upon the proposal of an employer, the employees of an employer may adopt a regularly scheduled alternative workweek that authorizes work by the affected employees for no longer than 10 hours per day within a 40-hour workweek without the payment to the affected employees of an overtime rate of compensation pursuant to

this section. A proposal to adopt an alternative workweek schedule shall be deemed adopted only if it receives approval in a secret ballot election by at least two-thirds of affected employees in a work unit. The regularly scheduled alternative workweek proposed by an employer for adoption by employees may be a single work schedule that would become the standard schedule for workers in the work unit, or a menu of work schedule options, from which each employee in the unit would be entitled to choose.

(b) An affected employee working longer than eight hours but not more than 12 hours in a day pursuant to an alternative workweek schedule adopted pursuant to this section shall be paid an overtime rate of compensation of no less than one and one-half times the regular rate of pay of the employee for any work in excess of the regularly scheduled hours established by the alternative workweek agreement and for any work in excess of 40 hours per week. An overtime rate of compensation of no less than double the regular rate of pay of the employee shall be paid for any work in excess of 12 hours per day and for any work in excess of eight hours on those days worked beyond the regularly scheduled workdays established by the alternative workweek agreement. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

(c) An employer shall not reduce an employee's regular rate of hourly pay as a result of the adoption, repeal or nullification of an alternative workweek schedule.

(d) An employer shall make a reasonable effort to find a work schedule not to exceed eight hours in a workday, in order to accommodate any affected employee who was eligible to vote in an election authorized by this section and who is unable to work the alternative schedule hours established as the result of that election. An employer shall be permitted to provide a work schedule not to exceed eight hours in a workday to accommodate any employee who was hired after the date of the election and who is unable to work the alternative schedule established as the result of that election. An employer shall explore any available reasonable alternative means of accommodating the religious belief or observance of an affected employee that conflicts with an adopted alternative workweek schedule, in the manner provided by subdivision (j) of Section 12940 of the Government Code.

(e) The results of any election conducted pursuant to this section shall be reported by an employer to the Division of Labor Statistics and Research within 30 days after the results are final.

(f) Any type of alternative workweek schedule that is authorized by this code and that was in effect on January 1, 2000, may be repealed by the affected employees pursuant to this section. Any alternative workweek schedule that was adopted pursuant to Wage Order Numbers 1, 4, 5, 7, or 9 of the Industrial Welfare Commission is null and void, except for an alternative workweek providing for a regular schedule of no more than 10 hours' work in a workday that was adopted by a two-thirds vote of affected employees in a secret ballot election pursuant to wage orders of the Industrial Welfare Commission in effect prior to 1998. This subdivision does not apply to exemptions authorized pursuant to Section 515.

(g) Notwithstanding subdivision (f), an alternative workweek schedule in the health care industry adopted by a two-thirds vote of affected employees in a secret ballot election pursuant to Wage

Orders 4 and 5 in effect prior to 1998 that provided for workdays exceeding 10 hours but not exceeding 12 hours in a day without the payment of overtime compensation shall be valid until July 1, 2000. An employer in the health care industry shall make a reasonable effort to accommodate any employee in the health care industry who is unable to work the alternative schedule established as the result of a valid election held in accordance with provisions of Wage Orders 4 or 5 that were in effect prior to 1998.

(h) Notwithstanding subdivision (f), if an employee is voluntarily working an alternative workweek schedule providing for a regular work schedule of not more than 10 hours work in a workday as of July 1, 1999, an employee may continue to work that alternative workweek schedule without the entitlement of the payment of daily overtime compensation for the hours provided in that schedule if the employer approves a written request of the employee to work that schedule.

SEC. 6. Section 512 is added to the Labor Code, to read:

512. An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

SEC. 7. Section 513 is added to the Labor Code, to read:

513. If an employer approves a written request of an employee to make up work time that is or would be lost as a result of a personal obligation of the employee, the hours of that makeup work time, if performed in the same workweek in which the work time was lost, may not be counted towards computing the total number of hours worked in a day for purposes of the overtime requirements specified in Section 510 or 511, except for hours in excess of 11 hours of work in one day or 40 hours in one workweek. An employee shall provide a signed written request for each occasion that the employee makes a request to make up work time pursuant to this section. An employer is prohibited from encouraging or otherwise soliciting an employee to request the employer's approval to take personal time off and make up the work hours within the same week pursuant to this section.

SEC. 8. Section 514 is added to the Labor Code, to read:

514. This chapter does not apply to an employee covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work, and working conditions of the employees, and if the agreement provides premium wage rates for all overtime hours worked and a regular hourly rate of pay for those employees of not less than 30 percent more than the state minimum wage.

SEC. 9. Section 515 is added to the Labor Code, to read:

515. (a) The Industrial Welfare Commission may establish exemptions from the requirement that an overtime rate of compensation be paid pursuant to Sections 510 and 511 for executive, administrative, and professional employees, provided that the employee is primarily engaged in the duties which meet the test of the exemption and the employee earns a monthly salary equivalent to no less than two times the state minimum wage for full-time

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

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

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

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

(d) For the purpose of computing the overtime rate of compensation required to be paid to a nonexempt full-time salaried employee, the employee's regular hourly rate shall be 1/40th of the employee's weekly salary.

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

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

SEC. 10. Section 516 is added to the Labor Code, to read:

516. Notwithstanding any other provision of law, the Industrial Welfare Commission may adopt or amend working condition orders with respect to break periods, meal periods, and days of rest for any workers in California consistent with the health and welfare of those workers.

SEC. 11. Section 517 is added to the Labor Code to read:

517. (a) The Industrial Welfare Commission shall, at a public hearing to be concluded by July 1, 2000, adopt wage, hours, and working conditions orders consistent with this chapter without convening wage boards, which orders shall be final and conclusive for all purposes. These orders shall include regulations necessary to provide assurances of fairness regarding the conduct of employee workweek elections, procedures for employees to petition for and obtain elections to repeal alternative workweek schedules, procedures for implementation of those schedules, conditions under which an adopted alternative workweek schedule can be repealed by the employer, employee disclosures, designations of work, and processing of workweek election petitions pursuant to Parts 2 and 4 of this division and in any wage order of the commission and such other regulations as may be needed to fulfill the duties of the commission pursuant to this part.

(b) Prior to July 1, 2000, the Industrial Welfare Commission shall conduct a review of wages, hours, and working conditions in the ski

industry, commercial fishing industry, and health care industry, and for stable employees in the horseracing industry. Notwithstanding subdivision (a) and Sections 510 and 511, and consistent with its duty to protect the health, safety, and welfare of workers pursuant to Section 1173, the commission may, based upon this review, convene a public hearing to adopt or modify regulations at that hearing pertaining to the industries herein, without convening wage boards. Any hearing conducted pursuant to this subdivision shall be concluded not later than July 1, 2000.

(c) Notwithstanding subdivision (a) of Section 515, prior to July 1, 2000, the commission shall conduct a review of wages, hours, and working conditions of licensed pharmacists. The commission may, based upon this review, convene a public hearing to adopt or modify regulations at that hearing pertaining to licensed pharmacists without convening wage boards. Any hearing conducted pursuant to this subdivision shall be concluded not later than July 1, 2000.

(d) Notwithstanding sections 1171 and subdivision (a) of Section 515, the Industrial Welfare Commission shall conduct a review of wages, hours, and working conditions of outside salespersons. The commission may, based upon this review, convene a public hearing to adopt or modify regulations at that hearing pertaining to outside salespersons without convening wage boards. Any hearing conducted pursuant to this subdivision shall be concluded not later than July 1, 2000.

(e) Nothing in this section is intended to restrict the Industrial Welfare Commission in its continuing duties pursuant to Section 1173.

(f) No action taken by the Industrial Welfare Commission pursuant to this section is subject to the requirements of Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code.

(g) All wage orders and other regulations issued or adopted pursuant to this section shall be published in accordance with Section 1182.1.

SEC. 12. Section 554 of the Labor Code is amended to read:

554. Sections 551 and 552 shall not apply to any cases of emergency nor to work performed in the protection of life or property from loss or destruction, nor to any common carrier engaged in or connected with the movement of trains. This chapter, with the exception of Section 558, shall not apply to any person employed in an agricultural occupation, as defined in Order No. 14-80 (operative January 1, 1998) of the Industrial Welfare Commission, nor shall the provisions of this chapter apply when the employer and a labor organization representing employees of the employer have entered into a valid collective bargaining agreement pursuant to Section 514. Nothing in this chapter shall be construed to prevent an accumulation of days of rest when the nature of the employment reasonably requires that the employee work seven or more consecutive days, providing that in each calendar month the employee receive days of rest equivalent to one day's rest in seven. The requirement respecting the equivalent of one day's rest in seven shall apply, notwithstanding the other provisions of this chapter relating to collective bargaining agreements, where the employer and a labor organization representing employees of the employer have entered into a valid collective bargaining agreement respecting the hours of work of the employees, unless the agreement expressly provides otherwise.

In addition to the exceptions herein, the Chief of the Division of Labor Standards Enforcement may, when in his judgment hardship will result, exempt any employer or employees from the provisions of Sections 551 and 552.

SEC. 13. Section 556 of the Labor Code is amended to read:

556. Sections 551 and 552 shall not apply to any employer or employee when the total hours of employment do not exceed 30 hours in any week or six hours in any one day thereof.

SEC. 14. Section 558 is added to the Labor Code, to read:

558. (a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:

(1) For any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

(2) For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

(3) Wages recovered pursuant to this section shall be paid to the affected employee.

(b) If upon inspection or investigation the Labor Commissioner determines that a person had paid or caused to be paid a wage for overtime work in violation of any provision of this chapter, or any provision regulating hours and days of work in any order of the Industrial Welfare Commission, the Labor Commissioner may issue a citation. The procedures for issuing, contesting, and enforcing judgments for citations or civil penalties issued by the Labor Commissioner for a violation of this chapter shall be the same as those set out in Section 1197.1.

(c) The civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.

SEC. 15. Section 1182.1 of the Labor Code is amended to read:

1182.1. Any action taken by the commission pursuant to Sections 517 and 1182 shall be published in at least one newspaper in each of the Cities of Los Angeles, Sacramento, Oakland, San Jose, Fresno, San Diego, and San Francisco. A summary of the action taken and notice of where the complete text of the new or amended order may be obtained may be published in lieu of the complete text when the commission determines such summary and notice will adequately inform the public. The statement as to the basis of the order need not be published.

SEC. 16. Section 1182.2 of the Labor Code is amended to read:

1182.2. (a) The Legislature finds that the hours and days of work of employees employed in California in the seasonal ski industry are subject to fluctuations which are beyond the control of their employers. The Legislature further finds that the economic interests of these employees are best served when minimum limitations are placed upon their hours and days of work. Accordingly, no employer who operates a ski establishment shall be in violation of any provision of this code or any applicable order of the Industrial Welfare Commission by instituting a regularly scheduled workweek of not more than 56 hours, provided that any employee shall be compensated at a rate of not less than one and one-half times the

employee's regular rate of pay for any hours worked in excess of 56 hours in any workweek.

(b) As used in this section, "ski establishment" means an integrated, geographically limited recreational area comprised of the basic skiing facilities, together with all operations and facilities related thereto.

(c) This section shall apply only during any month of the year when Alpine or Nordic skiing activities, including snowmaking and grooming activities, are actually being conducted by the ski establishment.

This section shall remain in effect only until July 1, 2000, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2000, deletes or extends that date.

SEC. 17. Section 1182.3 of the Labor Code is amended to read:

1182.3. No employee licensed pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 of the Fish and Game Code, or is employed on a commercial passenger fishing boat licensed pursuant to Article 5 (commencing with Section 7920) of Chapter 1 of Part 3 of Division 6 of the Fish and Game Code, shall be subject to a minimum wage or maximum hour order of the commission.

This section shall remain in effect only until July 1, 2000, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2000, deletes or extends that date.

SEC. 18. Section 1182.9 of the Labor Code is amended to read:

1182.9. An employer engaged in the operation of a licensed hospital or providing personnel for the operation of a licensed hospital who institutes, pursuant to an applicable order of the commission, a regularly scheduled workweek that includes no more than three working days of no more than 12 hours each within any workweek, shall make a reasonable effort to find an alternative work assignment for any employee who participated in the vote which authorized the schedule and is unable to work 12-hour workday schedules. An employer shall not be required to offer an alternative work assignment to an employee if an alternative work assignment is not available or if the employee was hired after the adoption of the 12-hour, 3-day workweek schedule.

This section shall remain in effect only until July 1, 2000, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2000, deletes or extends that date.

SEC. 19. Section 1182.10 of the Labor Code is amended to read:

1182.10. (a) Notwithstanding any other provision of this chapter, or any order of the commission, the employment of stable employees engaged in the raising, feeding, and management of racehorses by a trainer shall be subject to the same standards governing wages, hours, and conditions of labor as those established by the commission for employees in agricultural occupations engaged in the raising, feeding, and management of other livestock, except as set forth in subdivision (b).

(b) Notwithstanding the provisions of any order of the commission permitting employees employed in agricultural occupations to work 10 hours on each of six workdays in a seven-day workweek without the payment of overtime compensation, stable employees shall not be employed more than 10 hours in any workday, nor more than 56 hours during seven days in any workweek. However, stable employees may be employed in excess of 10 hours in any workday, and in excess of 56 hours during seven days in one workweek, if these employees are compensated at a rate of not less than one and one-half times the

employees' regular rate of pay for all hours worked in excess of 10 hours in any workday, or 56 hours in any workweek.

(c) For purposes of this section:

(1) "Stable employees" includes, but is not limited to, grooms, hotwalkers, exercise workers, and any other employees engaged in the raising, feeding, or management of racehorses, employed by a trainer at a racetrack or other nonfarm training facility.

(2) "Trainer" has the same definition as in Section 24001 of the Food and Agricultural Code.

(3) "Workday" and "workweek" have the same definition as in the order of the commission applicable to employees employed in agricultural occupations.

(4) "Regular rate of pay" includes all wages paid by the trainer to the stable employee for a workweek of not more than 56 hours, but excludes those amounts excluded from regular pay by Section 7(e) of the Fair Labor Standards Act (29 U.S.C. Sec. 207(e)), and excludes the payment of the stable employee's share, if any, of the purse of a race, whether that share is paid by the owner of the racehorse or by the trainer.

This section shall remain in effect only until July 1, 2000, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2000, deletes or extends that date.

SEC. 20. Section 1183.5 of the Labor Code is repealed.

SEC. 21. Wage Orders number 1-98, 4-98, 5-98, 7-98, and 9-98 adopted by the Industrial Welfare Commission are null and void, and Wage Orders 1-89, 4-89 as amended in 1993, 5-89 as amended in 1993, 7-80, and 9-90 are reinstated until the effective date of wage orders issued pursuant to Section 517.

SEC. 22. The Industrial Welfare Commission shall study the extent to which alternative workweek schedules are used in California and the costs and benefits to employees and employers of those schedules, and report the results of the study and recommendations to the Legislature not later than July 1, 2001.

SEC. 23. No reimbursement is required by this act pursuant to Section 6 of Article XIIIB of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIIIB of the California Constitution.

Eight-Hour Day Restoration and Workplace Flexibility Act of 1999

By Beverly A. Stuart

Daily overtime is back! Governor Davis signed A.B. 60 reinstating daily overtime in California on July 20, 1999. Essentially, the new law codifies provisions of several Labor Commissioner Wage Orders in effect prior to 1998. Most significant among those is the requirement that California employers pay overtime to employees who work more than eight hours in a day or who work on the seventh day of a week, regardless of the number of hours worked in the week. Most provisions of the new law become effective January 1, 2000.

In addition to restoring daily overtime, the new law also adds new civil penalties for violations, including personal liability. Alternative work schedules are subject to new rules, as is make-up time. In addition, the new law institutes the right to a second meal period after ten hours of work. Although the definitions of exempt employees remain unchanged, the minimum salary requirement is now twice the state minimum wage rather than a set amount. The Industrial Welfare Commission (IWC) is granted authority to review and adopt new rules on various issues, such as the three 12 hour days alternative schedule, rules regarding pharmacists and employees of ski establishments, stables in the horse racing industry, the healthcare industry, and the commercial fishing industry, and definitions for executive and administrative employees and outside salespersons. The new law provides that registered nurses cannot qualify as exempt under state law even if they qualify as professionals under federal law.

Although the new law is very similar to the pre-1998 Wage Orders, it does not track them exactly. For example, the new law appears to provide a total exemption from the law for employees covered by collective bargaining agreements, whereas the old wage orders only exempted them from particular provisions. Therefore, the new law must be reviewed carefully and compared to current payroll practices.