

4-4-2006

Minimum Wage. Managerial Exemption. Flexible Work Schedule. Initiative Statute.

Follow this and additional works at: http://repository.uchastings.edu/ca_ballot_inits

Recommended Citation

Minimum Wage. Managerial Exemption. Flexible Work Schedule. Initiative Statute. California Initiative 1217 (2006).
http://repository.uchastings.edu/ca_ballot_inits/1378

This Initiative is brought to you for free and open access by the California Ballot Propositions and Initiatives at UC Hastings Scholarship Repository. It has been accepted for inclusion in Initiatives by an authorized administrator of UC Hastings Scholarship Repository. For more information, please contact marcusc@uchastings.edu.

BELL, McANDREWS & HILTACHK, LLP

SA2006RF0022

ATTORNEYS AND COUNSELORS AT LAW

455 CAPITOL MALL, SUITE 801

SACRAMENTO, CALIFORNIA 95814

(916) 442-7757

FAX (916) 442-7759

CHARLES H. BELL, JR.
COLLEEN C. McANDREWS
THOMAS W. HILTACHK
CHERYL L. LOMBARD
JIMMIE E. JOHNSON
ASHLEE N. BROWN

February 10, 2006

1441 FOURTH STREET
SANTA MONICA, CA 90401
(310) 458-1405
FAX (310) 260-2666
www.bmhlaw.com

PAUL GOUGH
OF COUNSEL

Ms. Patricia Galvan
Initiative Coordinator
Office of the Attorney General
State of California
PO Box 994255
Sacramento, CA 94244-25550

RECEIVED
FEB 10 2006

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Re: Request for Title and Summary for Proposed Initiative

Dear Ms. Galvan:

Pursuant to Article II, Section 10(d) of the California Constitution, I am submitting the attached proposed statewide ballot measure to your office and request that you prepare a title and summary of the measure as provided by law. Included with this submission is the required proponent affidavit signed by the proponent of this measure pursuant to section 9608 of the California Elections Code. I have also included a check to cover the \$200 filing fee.

Thank you for your time and attention to this important matter. If you require additional information or have any questions, please feel free to contact me at (916) 442-7757.

Very truly yours,

Thomas W. Hiltachk

TWH/jg

Enclosure

FAIR PAY AND WORKPLACE FLEXIBILITY ACT OF 2006

SECTION 1. Findings and Declarations

The People of California find and declare that:

California's minimum wage has not increased since 2002. With our economy growing, it is time for workers at the lowest end of the economic scale to receive a raise.

At the same time, small businesses and their workers suffer from outdated and inefficient workplace and overtime rules that do not allow for sufficient flexibility for employers and workers to schedule their hours of work for mutual benefit.

California overtime law, which is unique in the country, makes it difficult for most employers and workers to agree to a flexible work schedule. These employers cannot agree to give employees the ability to choose to work four ten-hour days per week without paying daily overtime to those workers.

As a consequence, millions of California employees cannot take advantage of a flexible work schedule, which would benefit working families. Having the ability to choose to work four ten-hour days will provide more time for workers to spend much needed time with their families, lessen traffic congestion on our crowded roads and highways, and give workers the ability to spend one day a week on personal matters, such as volunteering at a child's school, scheduling medical appointments and attending to other important family matters that often are difficult to schedule with a five day per week, eight hour per day schedule.

The Fair Pay and Workplace Flexibility Act of 2006 protects workers from being forced to work more than eight hours in a day without receiving overtime. It simply allows these workers to request a flexible work schedule, up to four ten-hour days per week, and allows their employers to agree to provide such a schedule without having to pay overtime for the ninth and tenth hour worked per day in such a schedule.

This Act also protects workers by ensuring that overtime will be paid after ten hours in a day for workers who have chosen a flexible schedule pursuant to this Act. Additionally, a covered employee who works twelve or more hours in any day will receive overtime at a rate of double their normal pay. Additionally, this Act ensures that all workers, including those who choose a flexible schedule, will receive overtime for any hour worked past forty hours in a single week.

Workplaces that are unionized already have the ability for workers to choose to work four ten-hour days. It is virtually impossible for employees of non-unionized workplaces to enjoy such a benefit. The People find that no compelling public policy exists to discriminate in such a fashion against workers in non-unionized workplaces.

At the same time, California's unique overtime rules have been misused by trial lawyers who often file lawsuits seeking to force employers to pay overtime to salaried managers and supervisors, as well as salaried employees who make over \$100,000 annually. These lawsuits unnecessarily drive up the cost of doing business, and frequently rob employers of money that could be used to pay hourly workers to work overtime.

The purpose of the Fair Pay and Workplace Flexibility Act of 2006 is to improve working conditions for Californians by increasing the minimum wage for those at the lowest end of the economic ladder, and reforming overtime rules to allow for employee chosen flexible schedules, while ensuring that those who should be entitled to overtime continue to receive it, and that those who should not receive overtime are prohibited from doing so.

The People enact this Act to achieve this purpose.

SECTION 2. Minimum Wage Increase

Section 1182.12 is added to the Labor Code, to read:

1182.12.

(a) Notwithstanding any other provision of this part, on and after July 1, 2007, the minimum wage for all industries shall be not less than seven dollars and twenty-five cents (\$7.25) per hour, and on and after July 1, 2008, the minimum wage for all industries shall be not less than seven dollars and seventy-five cents (\$7.75) per hour.

SECTION 3. Employee Selected Flexible Work Schedule

Section 511.5 is added to the Labor Code, to read:

511.5.

- (a) Notwithstanding contrary provisions found in Section 511 of the Labor Code or in any other statute, or order of the Industrial Welfare Commission, a non-exempt employee may work up to 10 hours per workday without any obligation on the part of the employer to pay overtime pay, except as provided in subsection (b), if the employee requests such a schedule in writing and if the employer approves the request (hereafter referred to as the overtime exemption "employee-selected flexible work schedule").
- (b) If an employee-selected flexible work schedule is implemented, the employer shall pay overtime at time and one-half the employee's regular rate of pay for all hours worked over 40 in a workweek or over 10 hours in a workday, whichever are greater. All work performed in excess of 12 hours per workday and any work performed in excess of 8 hours on a fifth, sixth or seventh day in the workweek shall be paid as double the employee's regular rate of pay.

- (c) An employer may inform its employees that it is willing to consider an employee request to work an employee-selected flexible work schedule, but may not induce such a request by promising an employment benefit or by threatening an employment detriment.
- (d) The employee or employer shall have the right to discontinue the employee-selected flexible work schedule at any time by giving written notice to the other. The request will be effective the first day of the next pay period or on the fifth day after notice is given if there are fewer than 5 days before the start of the next pay period, unless otherwise agreed to by the employer and the employee.
- (e) This section shall not apply to any employee working in a work unit where a valid alternative workweek schedule is in place, as authorized under Section 511 of the Labor Code.
- (f) This section shall not apply to any employee covered by a valid collective bargaining agreement or employed by the State of California, a city, county, city and county, district, municipality or other public, quasi-public or municipal corporation or any political subdivision of this state.
- (g) These provisions shall be effective as of January 1, 2007.

SECTION 4.

Section 510 of the Labor Code, is amended to read as follows:

(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.

(4) An employee-selected flexible work schedule adopted pursuant to Section 511.5.

(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.

SECTION 5. White Collar Manager Exemption

Section 515.10 is added to the Labor Code, to read:

515.10.

(a) Notwithstanding any other provision in this chapter or any order of the Industrial Welfare Commission, any managerial employee, as defined in this section, shall be exempt from the overtime requirements of Sections 510 and 511 and the provisions of the orders of the Industrial Welfare Commission applicable to non-exempt employees.

(b) The term "managerial employee" shall mean any employee:

- (1) Who is compensated on a salary basis at a rate of not less than \$540 per week, exclusive of board, lodging or other facilities;
- (2) Whose primary duty is management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof;
- (3) Who customarily and regularly directs the work of two or more other employees; and
- (4) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight.

(c) The provisions of (b)(1) through (4) shall be interpreted in accordance with the provisions of the Fair Labor Standards Act and the regulations issued thereunder that appear in 29 C.F.R. Sections 541.100 – 541.106 and 541.700 – 541.708.

(d) These provisions provide an independent exemption that is separate from the exemptions authorized in Sections 515 to 515.11 and the orders of the Industrial Welfare Commission.

(e) These provisions shall be effective as of January 1, 2007.

SECTION 6. Highly Compensated Employee Exemption

Section 515.11 is added to the Labor Code, to read:

(a) An employee with a total annual salary of at least \$100,000 shall be exempt from the requirements of the Labor Code and the provisions of the orders of the Industrial Welfare Commission applicable to non-exempt employees, including but not limited to the overtime requirements of Section 510, if the employee customarily and regularly performs any one or more of the exempt duties or responsibilities of an executive, administrative, professional, managerial employee, or computer software professional employee identified in Sections 515, 515.5, 515.6, 515.10, or any applicable order of the Industrial Welfare Commission. Total annual salary includes commissions and non-discretionary bonuses.

(b) An employee who does not work a full year for the employer, either because the employee is newly hired after the beginning of the year or ends the employment before the end of the year, may qualify for exemption under this section if the employee receives a pro rata portion of the minimum amount established in paragraph (a) of this section, based upon the number of weeks that the employee will be or has been employed. An employer may make one final payment sufficient to achieve the required level within one month after the end of employment.

(c) The employer may utilize any 52-week period as the year, such as a calendar year, a fiscal year, or an anniversary of hire year. If the employer does not identify some other year period in advance, the calendar year will apply.

(d) If an employee's total annual salary does not total at least the minimum amount established in paragraph (a) of this section by the last pay period of the 52-week period, the employer may, during the last pay period or within one month after the end of the 52-week period, make one final payment sufficient to achieve the required level. Any such final payment made after the end of the 52-week period may count only toward the prior year's total annual salary and not toward the total annual salary in the year it was paid. If the employer fails to make such a payment, the employee does not qualify as a highly compensated employee, but may still qualify as exempt under any other provision, including but not limited to, any provision in Sections 515 to 515.11 or any order of the Industrial Welfare Commission.

(e) Provision (a) shall be interpreted in accordance with the provisions of the Fair Labor Standards Act and the regulations issued thereunder that appear in 29 C.F.R. Section 541.701.

(f) These provisions provide an independent exemption that is separate from the exemptions authorized in Sections 515 to 515.11 and the orders of the Industrial Welfare Commission.

SECTION 7.

This measure shall be liberally construed to accomplish its purposes.

SECTION 8.

The Division of Labor Standards Enforcement shall enforce these provisions and shall adopt and/or revise regulations in the manner necessary to conform and implement the above provisions. The provisions of this measure shall supersede or override any inconsistent provisions in any wage orders of the Industrial Welfare Commission.

SECTION 9.

If any provision of this measure, or part thereof, is for any reason held to be invalid, unenforceable, or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect, and to this end the provisions are severable.

SECTION 10.

In the event this measure and another conflicting measure or measures are approved by a majority of votes at the same election, and this measure receives a greater number of affirmative votes than any such measure or measures, this measure shall control in its entirety and said other measures shall be rendered void and without legal effect. If this measure is approved but does not receive a greater number of affirmative votes than such other conflicting measure or measures, this measure and any sections within it that are not in direct conflict with such other measure or measures shall take effect to the maximum extent permitted by law.

SECTION 11.

If this measure is approved by the voters but superseded by law by any other conflicting ballot measure approved by the voters at the same election, and the conflicting ballot measure is later held invalid, this measure shall be self-executing and given full force of law.

SECTION 12.

This measure may be amended to further its purposes by a bill passed by a two-thirds vote of the membership of both houses of the Legislature and signed by the Governor, provided that at least 14 days prior to passage in each house, copies of the bill in final form shall be made available by the clerk of each house to the public and the news media. All amendments to this measure shall be to further the measure and shall be consistent with its purposes.