

OFFICIAL NOTICE

INDUSTRIAL WELFARE COMMISSION

Summary of Wage Order 16-2001

For Certain On-Site Occupations in the Construction, Drilling, Logging, and Mining Industries

To employers and representatives of persons working in industries and occupations in the State of California:

The Industrial Welfare Commission (hereinafter the "IWC"), having proceeded according to its authority in the Labor Code and the Constitution of California, has promulgated a new wage order. Wage Order 16-2000 covers employees engaged in occupations in the on-site industries of construction, drilling, mining, and logging, as described below.

Summary

This summary must be made available to employees in accordance with the IWC's wage orders

This is a summary. Copies of the full text of Wage Order 16-2000 may be obtained at www.dir.ca.gov/IWC or by mail from the IWC.

Applicability of Order

The following on-site employee occupations are now covered by the provisions of this order: 1) construction, including, but not limited to, work involving alteration, demolition, building, excavating, renovation, remodeling, maintenance, improvement, and repair work, and work for which a contractor's license is required by the California Business and Professions Code Division 3, Chapter 9, §§ 7025 *et seq.*; 2) drilling, including but not limited to, all work required to drill, establish, repair, and rework wells for the exploration or extraction of oil, gas, or water resources; 3) logging work for which a timber operator's license is required pursuant to California Public Resources Code §§ 4571 through 4586; and, 4) mining (not covered by Labor Code § 750 *et seq.*), including all work required to mine and/or establish pits, quarries, and surface or underground mines for the purposes of exploration, or extraction of nonmetallic minerals and ores, coal, and building materials such as stone and gravel, whether paid on a time, piece rate, commission, or the basis. Wage Order 16 supercedes any industry or occupation order that may have applied to such employee occupations.

The provisions of this Order shall not apply to outside salespersons, or to any individual who is the parent, spouse, or child of the employer. Except for sections 1, 2, 4, 9, and 18, the provisions of this order also shall not apply to any employee directly employed by the State or any political subdivision thereof, including in county, city, or special district.

Sections 3-12 of this Order shall not apply to persons employed in administrative, executive, or

professional capacities. Those sections also shall not apply to any individual participating in a national service program, such as AmeriCorps, carried out using assistance provided under Title 42, United States Code, Section 12571. (See Stats. 2000, ch. 365, amending Labor Code § 1171.)

Definitions

Wage Orders 16 includes definitions for the on-site occupations covered. As the result of the enactment of the "Eight-Hour-Day Restoration and Workplace Flexibility Act," Stats. 1999, ch. 134 (commonly referred to as AB 60), the Order also includes definitions for the terms "alternative workweek schedule", "work unit" and "regularly scheduled workweek". Additional definitions are the same as those found in the IWC's other wage orders.

Hours and Days of Work

Generally, the number of hours worked in a day by covered employees without overtime compensation is 8 hours. (See Alternative Workweeks, below.) The number of hours worked in a week by covered employees without overtime compensation is 40 hours. The number of days worked consecutively by covered employees in any workweek without overtime compensation is 6 days.

Daily Overtime Pay

Overtime is paid at the rate of 1½ times the regular rate of pay for every hour worked after the completion of 8 hours worked at the regular rate of pay in 1 workday. Overtime is paid at the rate of double the regular rate of pay for every hour worked after the completion of 12 hours worked in 1 workday. Nothing 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.

Weekly Overtime Pay

Overtime is paid at the rate of 1½ times the regular rate of pay for every hour worked after the completion of 40 hours worked at the regular rate of pay in 1 workweek.

Seventh Consecutive Workday Overtime Pay

Overtime is paid at the rate of 1½ time the regular rate of pay for the first 8 hours worked on the seventh consecutive workday in any workweek, without regard to the total number of hours worked in the previous 6 days. Overtime is paid at the rate of double the regular rate of pay for every hour worked after the completion of 8 hours worked on the seventh consecutive workday in any workweek.

Alternative Workweeks

An alternative workweek schedule means any regularly scheduled workweek requiring an employee to work more than 8 hours in a 24-hour period, but no more than 40 hours in a workweek. Except in the case of public works construction contracts (See Labor Code §§ 1810-1815), a regularly scheduled alternative workweek schedule of not more than 10 hours at the regular rate of pay per day within a 40-hour workweek is permitted. Regarding such a schedule, overtime is paid at the rate of 1½ times the regular rate of pay for all hours worked after the regularly scheduled hours in a day have been completed, through the twelfth hour of work. Overtime is paid at the rate of double the regular rate of pay for every hour worked after the completion of 12 hours worked in 1 workday. Weekly and seventh consecutive day overtime pay provisions apply accordingly. No employee shall

be terminated, disciplined, or otherwise discriminated against for refusing to work more than 72 hours in any workweek except in the case of an "emergency" as defined in this order.

Alternative Workweeks - Off Shore Drilling Occupations

Employees in off shore oil and gas production, drilling, and servicing occupations, as well as employees in on shore oil and gas separation facility occupations directly servicing off shore production, may adopt a regularly scheduled alternative workweek schedule proposed by an employer of not more than 12 hours at the regular rate of pay per day within a 40-hour workweek. Overtime is paid at the rate of double the regular rate of pay for every hour worked in excess of the daily hours established by the alternative workweek schedule. Weekly and seventh consecutive day overtime pay provisions apply accordingly.

Election Procedures

In order to be valid, an alternative workweek schedule must be proposed by the employer and ratified in a secret ballot election by a 2/3 vote of the affected employees in the work unit. Proposals for alternative workweek schedules must designate a regularly scheduled alternative workweek in which the specified number of work days and work hours are regularly recurring. The actual days worked within that alternative workweek schedule need not be specified. The employer may propose a single work schedule or a menu of work schedule options. A work unit may consist of an individual employee as long as the criteria for an identifiable work unit is satisfied.

Election procedures include a 14-day notice and disclosure requirements. Prior to the secret ballot vote, the employer must make a disclosure in writing to the affected employees, including the effects of the proposed arrangement on the employees' wages, hours, and benefits, as well as notification of at least one meeting that must be held at least fourteen 14-days prior to voting, for the specific purpose of discussing the effects of the alternative workweek schedule. The disclosure shall be made in a non-English language, as well as in English, if at least 5 percent of the affected employees primarily speak that non-English language, and shall be mailed to employees who do not attend the meeting. Employers are prohibited from intimidating or coercing employees to vote either in support or against a proposed alternative workweek, and employees cannot be discharged or discriminated against for expressing opinions concerning the alternative workweek election or for opposing or supporting its adoption or repeal. However, nothing prohibits an employer from expressing his or her position concerning that alternative workweek to the affected employees. Any violation is subject to Labor Code § 98 *et seq.*

An election to establish or repeal an alternative workweek schedule must be held during regular working hours at the work site. The employer bears the costs of conducting the election. Upon a complaint by an affected employee, and after an investigation by the Labor Commissioner, the Labor Commissioner may require the employer to select a neutral third party to conduct the election.

If 1/3 of the affected employees sign a petition to repeal an alternative workweek schedule, the employer must conduct a new secret election. A 2/3 vote of the affected employees is required to repeal the alternative workweek schedule. The election to repeal an alternative workweek schedule cannot be held more than 30 days after the petition is submitted to the employer. However, a vote on a petition to repeal cannot be held less than 12 months after the date that the same group of employees voted in favor of the alternative workweek schedule; provided that, where an alternative workweek schedule was adopted between October 1, 1999 and the effective date of this Order, a new secret ballot election to repeal that alternative workweek schedule shall not be subject to the 12-

month interval between elections. If the alternative workweek schedule is revoked, the employer must comply within 60 days, unless the employer makes a proper showing of undue hardship to the Division of Labor Standards Enforcement and the Division grants an extension of time for compliance.

The results of all elections must be reported by the employer to the Division of Labor Statistics and Research within 30 days after the results are final. The report of election results shall be a public document, and shall include the final tally of the vote, the size of the unit, and the nature of the business of the employer. Employees affected by a change in work hours resulting from the adoption of an alternative workweek schedule may not be required to work those new work hours for at least 30 days after the announcement of the final results of the election.

Minors

VIOLATIONS OF CHILD LABOR LAWS are subject to civil and criminal penalties. Refer to California Labor Code Sections 1285 to 1312 and 1390 to 1399.

Collective Bargaining

Section 3, Hours and Days of Work, of this Order, does not apply to any 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; except that the requirement regarding the equivalent of 1 day's rest in 7 applies unless the agreement expressly provides otherwise. (See paragraphs below regarding Reporting Time Pay, Meal Periods, and Rest Period for additional provisions on collective bargaining agreements.)

Make up Time

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 make up work time, if performed in the same workweek in which the work time was lost, may not be counted toward computing the total number of hours worked in a day for purposes of the overtime requirements, except for hours in excess of 11 hours of work in 1 day or 40 hours of work in 1 workweek.

One Day's Rest in Seven

The provisions of Labor Code §§ 551 and 552 should not be construed to prevent an accumulation of days of rest when the nature of the employment reasonably requires the employee to work seven (7) or more consecutive days; provided that each calendar month the employee receives the equivalent of one day's rest in seven (7).

Minimum Wage / Meals and Lodging

In accordance with the recently amended general minimum wage order, every employer must pay to each employee not less than six dollars and twenty-five cents (\$6.25) per hour for all hours worked, effective January 1, 2001, whether the remuneration is measured by time, piece, commission, or otherwise. This amount will increase to six dollars and seventy-five cents (\$6.75), effective January 1, 2002. Meals and Lodging credits also were increased proportionately.

Reporting Time Pay

All employer mandated travel that occurs after the first location where the employee's presence is required by the employer shall be compensated at the employee's regular or premium rate of pay, whichever is applicable. Each workday that an employee is required to report to the work site, does report, but is not put to work, or is furnished less than half of said employee's usual or schedule day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours at the employee's regular rate of pay, which shall not be less than the minimum wage. However, these provisions are not applicable when operations cannot begin or continue due to threats to employees or property; or when recommended by civil authorities; or public utilities fail to supply electricity, water, or gas, or there is a failure in the public utilities, or sewer system; or the interruption of work is caused by an Act of God or other cause not within the employer's control.

The above provisions apply to any employee covered by a valid collective bargaining agreement unless the collective bargaining agreement expressly provides otherwise.

Records

Employers are required to keep accurate information regarding each employee, including the employee's full name, home address, occupation, social security number, and birth date, if under 18 years, and designated as a minor. In addition, the employer must keep time records showing when the employee begins and ends each work period, meal periods, split shift intervals, total daily hours worked, total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee, and total hours worked in the payroll period and applicable rates of pay. Meal periods during which operations cease and authorized rest periods need not be recorded.

The information required to be kept shall be made readily available to the employee upon reasonable request. When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer. Semimonthly or at the time of each payment of wages, the employer must furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee's social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item. (Refer to Labor Code § 226)

Records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer who has control over wages, hours or working conditions for at least three years at the place of employment or at a central location. An employee's records shall be available for inspection by the employee upon reasonable request. Employers performing work on public works projects should refer to Labor Code § 1776 for additional payroll reporting requirements.

Deductions from Pay, Including Cash Shortage and Breakage

Collections or deductions from employee wages are prohibited unless allowed by law. (Refer Cal. Labor Code §§ 220-226) No fee shall be charged by the employer or agent of the employer for

cashing a payroll check.

Uniforms and Equipment

When "uniforms" are required as a condition of employment, including wearing apparel and accessories of distinctive design or color, such uniforms shall be provided and maintained by the employer. When tools or equipment is required or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage may provide and maintain hand tools and equipment customarily required by the trade or craft in conformity with Labor Code Section 2802.

Meal Periods

An employee must receive a thirty-minute meal period for every 5 hours of work. Pursuant to the mutual consent of the employer and the employee: (1) an employee may waive a thirty-minute meal period if the day's work will be completed in no more than 6 hours; (2) an employee may waive the second of 2 thirty-minute meal periods when the day's work will be completed in no more than 12 hours and the first thirty-minute meal period was not waived. Unless the employee is relieved of all duty during the meal period, the meal period will be considered to be "on-duty" and counted as time worked. On-duty meal periods are permitted only when the nature of the work prevents the employee from being relieved of all duty and when, by written agreement between the parties, an on-the-job paid meal period is agreed to and complies with Labor Code § 512.

When an employer fails to provide a meal period in accordance with this Order, he or she shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

The above provisions do not apply to any employee covered by a valid agreement if the agreement expressly provides for the wages, hours, and working conditions of the employees, and if the agreement provides for premium wage rates for all overtime hours worked and a regular hourly rate of pay for those employees of not less than thirty (30) more than the state minimum wage. However, the employer must provide an adequate supply potable water, soap, and other suitable cleansing agent and single use towels for handwashing.

Rest Periods

Employers must authorize and permit rest periods, which preferably should be in the middle of each work period. Nothing prevents an employer from staggering rest periods to avoid interruption in the flow of work and to maintain continuous operations, or to schedule rest periods to coincide with breaks in the flow of work. The rest periods shall be in employer designated areas and shall be ten (10) minutes per every four (4) hours or a major fraction thereof. In limited circumstances, such as when the disruption of continuous operations would jeopardize the product or process of the work involved, rest periods need not be authorized. In such cases, however, employers are required to make up the missed rest period within the same work day or, within the same pay period, compensate the employee for the missed rest period at the employee's regular rate of pay. A rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

When an employer fails to provide a rest period in accordance with this Order, he or she shall pay the

employee one additional hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

This subsection shall not apply to any employee covered by a valid collective bargaining agreement if the collective bargaining agreement provides equivalent protection.

Seats

Where practicable and when the nature of the process and the work performed reasonably permits the use of seats, consistent with industry-wide standards, employees shall be provided with suitable seats. This section shall not exceed regulations promulgated by the Occupational Safety and Health Standards Board.

Temperature

The temperature maintained in each interior work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed. This section shall not exceed regulations promulgated by the Occupational Safety and Health Standards Board.

Elevators

Employers are required to provide adequate elevators, escalators or similar services consistent with industry-wide standards for the nature of the process and the work performed, where practicable and when employees are employed sixty (60) feet or more above or 48 feet or more below ground level. This section shall not exceed regulations promulgated by the Occupational Safety and Health Board.

Exemptions

If the Division of Labor Standards Enforcement, after due investigation, finds that the enforcement of any provision contained in Section 6, Records; Section 11, Rest Periods; Section 12 Seats; Section 13, Temperature; or Section 14 Elevators, would not materially affect the welfare or comfort of employees and would work an undue hardship on the employer, it may exempt the employer for those provisions. The exemption must be in writing to be effective and may be revoked after reasonable notice is given in writing. Employers, employees, or representatives of employees may apply for exemption to the Division in writing. A copy of the application must be posted at the place of employment at the time the application is filed with the Division.

Violations and Penalties

Any employer or other person acting on behalf of the employer who violates or causes to be violated the provisions of this order will be subject to a civil penalty in addition to any other civil or criminal penalties provided by law. Questions about the enforcement and reports of violations should be directed to the Division of Labor Standards Enforcement.

Filing Reports and Inspection

(See California Labor Code § 1174.)

Separability and Posting

These sections are the same as in all other IWC wage orders and state that provisions that may be found to be invalid or constitutional will not affect the remaining provisions, and that this order must be posted in an area frequented by employees where it may be easily read during the work day.

These Amendments to the Wage Orders shall be in effect as of January 1, 2001

Questions about enforcement of the Wage Orders should be directed to the Division of Labor Standards Enforcement. Consult the white pages of your telephone directory under CALIFORNIA, State of, Industrial Relations for the address and telephone number of the office nearest you. The Division has offices in the following cities: Bakersfield, Eureka, Fresno, Long Beach, Los Angeles, Oakland, Redding, Sacramento, Salinas, San Bernardino, San Diego, San Francisco, San Jose, Santa Ana, Santa Barbara, Santa Rosa, Stockton, and Van Nuys.