

OFFICIAL NOTICE

INDUSTRIAL WELFARE COMMISSION

Summary of Amendments to Wage Orders 1--13, 15 and 17

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 amendments to Wage Orders 1 through 15, as well as Interim Wage Order 2000, as the result of the Legislature's enactment of the "Eight-Hour-Day Restoration and Workplace Flexibility Act," Stats. 1999, ch. 134 (commonly referred to as AB 60).

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 the amended wage orders may be obtained at www.dir.ca.gov/IWC or by mail from the IWC.

Applicability of Order

Any industry or occupation not previously covered by, and all employees not specifically exempted in, the IWC's wage orders in effect in 1997, or otherwise exempted by law, are covered by the Interim Wage Order. [At its public meeting held January 9, 2001, the IWC voted to change the name of the Interim wage order to Wage Order 17 - Regulating Miscellaneous Employees.] All employees employed by any employer operating a business at a horse racing facility, including stable employees, are covered by the terms of Wage Order 10. Employees in the commercial fishing industry are covered by the terms of Wage Orders 10 and 14, as they are defined in those orders.

Sections 3-12 of Wage Orders 1-13 and 15, and Sections 4 and 5 of the Interim Wage Order shall not apply to persons employed in administrative, executive, or professional capacities. Pharmacists employed to engage in the practice of pharmacy are no longer eligible for the professional exemption. Registered nurses employed to engage in the practice of nursing are also not eligible for the professional exemption. However, Sections 3-12 of IWC Orders 1-13 and 15, and Sections 4 and 5 of the Interim Wage Order shall not apply to certified nurse midwives, certified nurse practitioners, and certified nurse anesthetists, within the meaning of Articles 2.5, 7, and 8, of the Business and Professions Code, Division 2, Chapter 6, who otherwise satisfy the requirements for the professional, executive or administrative exemption. (See Stats. 2000, ch. 492, amending Labor Code Section 515.) Those sections of the IWC's orders also shall not apply to employees in computer software fields who earn an hourly rate of pay that is not less than forty-one dollars (\$41.00), and who are primarily engaged in work that is intellectual or creative and requires the exercise of discretion and independent judgment, and who are highly skilled and proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming, and software engineering within the meaning of Labor Code Section 515.5. In addition, effective January 1, 2001, the IWC's orders 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 Section 1171.)

Definitions

Wage Orders 1 through 13, 15, and the Interim Wage Order include definitions for the new terms "alternative workweek schedule" and "shift." In addition, Wage Orders 4 and 5 include definitions for the terms "employee in the health care industry," "health care emergency," and "health care industry."

Hours and Days of Work

The number of hours worked in a day by covered employees without overtime compensation is 8 hours. 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.

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 times 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. Alternative workweek schedules in effect in wage orders that remain in full force shall remain operative, subject to the restrictions below, as long as reported by 01/01/01 to the [Division of Labor Statistics and Research](#).

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.

However, an employer engaged in the operation of a ski establishment shall not be in violation of overtime provisions set forth in Wage Order 10 by instituting a regularly scheduled 10-hour workday within a workweek of 48 hours or less during any month of the year when Alpine or Nordic skiing activities are conducted. Overtime is paid at the rate of 1½ times the regular rate of pay for every hour worked after the completion of 10 hours in a workday or 48 hours in a workweek.

Personal attendants, employees who have direct responsibility for children receiving 24-hour care, and resident

managers, as they are defined in Wage Order 5, shall not be covered by daily overtime provisions set forth in that wage order if they are not employed more than 40 hours nor more than 6 days in any workweek. Other than in an emergency as defined, however, if their hours or days of work exceed those time periods, they are entitled to the payment of daily overtime for more than 8 hours worked in any day of that workweek.

Alternative workweeks - health care industry

An employer in the health care industry, as defined in Wage Orders 4 and 5, who properly institutes a regularly scheduled alternative workweek schedule of not more than 12 hours at the regular rate of pay per day within a 40-hour workweek is valid and shall be exempt from the payment of overtime. Overtime is paid at the rate of double the regular rate of pay for every hour worked after the completion of 12 hours in 1 workday. Weekly and seventh consecutive day overtime pay provisions apply accordingly.

An employer in the health care industry, as defined in Wage Orders 4 and 5, who properly institutes a regularly scheduled workweek that includes no more than three 12-hour workdays, shall make a reasonable effort to find an alternative work assignment for any employee who participated in the vote that authorized the schedule, and is unable to work the 12-hour shifts. The employer shall not be required to offer such an alternative work assignment if the employee was hired after the vote and adoption of the alternative workweek. Unless there is a health care emergency defined in Orders 4 and 5, an employer may not require an employee to work more than 12 hours per day, and if there is such an emergency, the employer may do so up to 16 hours, with any hours after that only on a voluntary basis.

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 are 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 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 of 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/her position concerning that alternative workweek to the affected employees. Any violation is subject to Labor Code Section 98 *et seq.*

An election to establish or repeal an alternative workweek schedule must be held during regular working hours at the worksite. 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 signs 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 of the wage orders, other than specified subsections, shall 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 shall apply, unless the agreement expressly provides otherwise.

Makeup 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 makeup 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.

Meal Periods and Rest Periods

Other than as specified in Orders 4, 5 and 12, an employee must receive a 30-minute meal period for every 5 hours of work. Pursuant to mutual consent by the employer and the employee, an employee may: (1) waive a 30-minute meal period if the day's work will be completed in no more than 6 hours; or (2) may waive the second of two 30-minute meal periods when the day's work will be completed in no more than 12 hours and the first 30-minute meal period was not waived.

When an employer fails to provide a meal or rest period in accordance with the applicable provisions of these orders, he/she shall pay the employee 1 additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.

Minimum Wages/ Meals and Lodging

While there are no changes to the overall present levels, the Industrial Welfare Commission is in the midst of a review of the adequacy of the minimum wage, which in turn would affect the level of meal and lodging credits. Employers in the commercial fishing industry may continue the custom of paying crew members on the basis of a formula for "one-half day," "three-quarter day," "full day," or "overnight" trips consistent with their present obligation to pay the minimum wage for all hours worked. However, if the trip exceeds the defined hours of the formula, the additional hours must be recorded as additional hours worked and compensated accordingly. In practice, this alternative record keeping system may result in employees being paid more than the actual hours worked, but can never result in their being paid less than the actual hours worked. It is, therefore, primarily established as a convenience for employers.

Reporting Time Pay, Licenses for Disabled Workers, Records, Cash Shortage and Breakage, Uniforms and Equipment, Change Rooms and Resting Facilities, Seats, Temperature, Filing Reports, Inspection, Separability, and Posting of Order

There have been no substantive changes to these provisions of the wage orders. However, the IWC has determined to use the word "disabled" rather than the word "handicapped" in the wage orders.

Violations and Penalties

Any employer or other person acting on behalf of the employer who violates or causes to be violated the provisions of the wage orders shall 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](#).

These amendments to the wage orders shall be in effect as of October 1, 2000.

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, El Centro, 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.