STATE OF CALIFORNIA

GRAY DAVIS, Governor

DEPARTMENT OF INDUSTRIAL RELATIONS
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April 25, 2001

Ralph Lightstone, Chief Consultant
Assembly Committee on Labor and Employment
State Capitol
P.O. Box 942849
Sacramento, CA 94249

SENT BY FAX TO:
(916) 319-2191

Re: Applicability of the State Minimum Wage to the California State University

Dear Mr. Lightstone:

This in response to your inquiry as to whether the state minimum wage applies to the California State University. As you are of course aware, under Article 14, section 1 of the California Constitution, the State Legislature is empowered "to provide for minimum wages and for the general welfare of employees, and for those purposes may confer on a commission legislative, executive and judicial powers." This provision, under a different section, and initially applicable only to women and minors, became part of the State Constitution in 1914. Thus, the Industrial Welfare Commission ("IWC") is a constitutionally authorized body.

Labor Code section 1173 has provided, since its adoption decades ago, that "it shall be the continuing duty of the Industrial Welfare Commission . . . to ascertain the hours and conditions of labor and employment in the various occupations, trades and industries in which employees are employed in this state, and to . . . conduct a full review of the adequacy of the minimum wage . . . ." Minimum wage requirements adopted by the IWC have the force of law, as Labor Code section 1197 provides: "The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful." Like section 1173, section 1197 predated the 1937 codification of existing law into the Labor Code.

2001.04.25

On October 23, 2000, the IWC amended Minimum Wage Order-98, increasing the state minimum wage to $6.25 per hour, and repealing certain non-statutory exemptions from the minimum wage, including the former exemption for employees employed by the State or local governments or any political subdivision thereof. This new minimum wage order, MW-2001, took effect on January 1, 2001. There is no doubt that employees of the California State University are covered by express provisions of this minimum wage order.

Your question concerning the applicability of the state minimum wage to these employees is prompted by the unique and highly unusual provisions of Education Code section 67706.2, which was enacted by the Legislature in 1996 as a general declaration of legislative intent. Section 66706.2 provides:

> Recognizing the unique mission and functions of the California State University among the departments, agencies, and boards of the state, it is the intent of the Legislature that both of the following occur:
>
> (a) Before legislation that, by its terms, applies to the state or its agencies, departments or boards, may apply to the California State University, the legislation should be compatible with the mission and functions of the California State University.
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> (b) The California State University not be governed by any statute enacted after January 1, 1997, that does not amend a previously applicable act and that applies generally to the state or state agencies, departments or boards, unless the statute expressly provides that the California State University is to be governed by the statute.

It is our conclusion that Education Code section 66706.2 does not exempt the California State University from the obligation to pay its employees the state minimum wage. This conclusion is founded upon the following factors:

1. The laws under which the IWC exercised its authority to cover public employees under the minimum wage order all predate the enactment of Education Code section 66706.2, so these laws apply to the State University without expressly providing that the State University is to be governed by such laws, and whether or not these laws are "compatible with the [University's] mission and functions."

2. No statute in effect on December 31, 1996 exempted public employees from the state minimum wage; rather, this *non-statutory* exemption was solely based on then existing IWC orders. The elimination of this exemption was the result of action by the IWC, not the Legislature, and Education Code section 66706.2 does not require a regulatory body that has general rule-making authority over a certain area to expressly provide that its rules govern the State University.

It is therefore the Labor Commissioner's policy to enforce the state minimum wage requirements of MW-2001 on behalf of employees of all state and local government employers, including employees of the California State University. Thank you for seeking our views on this subject.

Sincerely,

Miles E. Locker
Chief Counsel

cc: Arthur Lujan
Tom Grogan
Roger Miller
Greg Rupp
Nance Steffen
Doug McConkie
All DLSE Attorneys