Case No. S279137

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

TAMELIN STONE, AMANDA KUNWAR, on behalf of themselves and all others similarly situated
Plaintiffs/Appellants,

vs.

ALAMEDA HEALTH SYSTEM, a Public Hospital Authority;
Defendants/Respondents

On Petition from a Decision by the Court of Appeal,
First Appellate District, No. A164021

PLAINTIFF/APPELLANT'S MOTION FOR JUDICIAL NOTICE

David Y. Imai (State Bar # 142822)
Law Offices of David Y. Imai
311 Bonita Drive
Aptos, California
95003
(831) 662-1706

Attorney for Plaintiffs and Appellants
TAMELIN STONE, AMANDA KUNWAR, on behalf of themselves and all others similarly situated

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TABLE OF AUTHORITIES

CASES

STATUTES

PLEASE TAKE NOTICE THAT Plaintiffs/Appellants TAMELIN STONE and AMANDA KUNWAR hereby move the Court for an order that it take judicial notice pursuant to Evidence Code sections 451 and 452 for purposes of this appeal, of the following true and correct documents, which are attached as Exhibits "A" - "K" to the Declaration of David Y. Imai filed in support hereof:

Exhibit "A", a true and correct copy of the California Legislative Counsel's Digest, 2013 Cal. Legis. Serv. Ch. 719 (S.B. 435) (WEST);

Exhibit "B", a true and correct copy of the California Committee Report, 2013 California Senate Bill No. 435, California 2013-2014 Regular Session;

Exhibit "C", a true and correct copy of California Bill Analysis, Assembly Floor, 1999-2000 Regular Session, Assembly Bill 60, May 27, 1999;

Exhibit "D", a true and correct copy of the California Bill Analysis, Senate Floor, 1999-2000 Regular Session, Assembly Bill 2509, August 7, 2000

Exhibit "E", a true and correct copy of the California Bill Analysis, Senate Committee, 2003-2004 Regular Session, Senate Bill 1618, May 20, 2004;

Exhibit "F", a true and correct copy of California Bill Analysis, Senate Floor, 2021-2022 Regular Session, Senate Bill 1334, August 25, 2022;

Exhibit "G", a true and correct copy of a document drafted by the California Legislative Analyst's Office entitled Overview of Health Care Districts, Presented to: Assembly Accountability and Administrative Review Committee, Hon. Roger Dickinson, Chair;

Exhibit "H", a true and correct copy of California Bill Analysis, Senate Committee, 1995-1996 Regular Session, Assembly Bill 2374, June 26, 1996;

Exhibit "I", a true and correct copy of California Bill Analysis, Assembly Floor, 2003-2004 Regular Session, Senate Bill 796, September 2, 2003;

Exhibit "J", a true and correct copy of Industrial Welfare Commission Wage Order 5-2001;

Exhibit "K", a true and correct copy of an advisory opinion by the California Fair Political Practices Commission, CA FPPC Op. 75-044 (Cal.Fair.Pol.Prac.Com.), 1 FPPC Op. 1, 1975 WL 37312.

This motion is based on the attached Memorandum of Points and Authorities, true and correct copies of the above documents, which are

attached as Exhibits "A" - "K" to the Declaration of David Y. Imai filed in support hereof, and the accompanying proposed order granting this motion.

DATED: 9/15/23 BY _____
DAVID Y. IMAI, ESQ.
ATTORNEY FOR
PLAINTIFFS/APPELLANTS
TAMELIN STONE, AMANDA KUNWAR, on behalf of themselves and all others similarly situated

MEMORANDUM OF POINTS AND AUTHORITIES

I.

THE COURT SHOULD TAKE JUDICIAL NOTICE AS REQUESTED.

A. General Principles of Judicial Notice.

"Judicial notice is the recognition and acceptance by the court, for use ... by the court, of the existence of a matter of law or fact that is relevant to an issue in the action without requiring formal proof of the matter." (Lockley v. Law Office of Cantrell, Green, et al. (2001) 91 Cal.App.4th 875, 882 (citations and quotations omitted). "The underlying theory of judicial notice is that the matter being judicially noticed is a law or fact that is not reasonably subject to dispute." (Cal. Evid. Code § 452(h). A reviewing court is permitted to judicially notice facts in the same manner as

a trial court. (Cal. Evid. Code § 459(a))

B. Judicial Notice of Exhibit "J" Is Mandatory Under Evidence Code Section 451

Judicial notice of California statutory law is mandatory under Evidence Code section 451:

> "Matters which must be judicially noticed. Judicial notice shall be taken of the following: (a) The decisional, constitutional, and public statutory law of this state and of the United States and the provisions of any charter described in Section 3, 4, or 5 of Article XI of the California Constitution..." (Evidence Code sec. 451(a))

Exhibit "J", IWC Wage Order 5-2001 must be judicially noticed as "public statutory law of this state" under Evidence Code sec. 451(a)). Judicial notice my also be taken under 452(c) - "official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States". It is relevant to the Appeal because it expressly provides for liability for AHS without exemption.

C. Permissive Judicial Notice Should Be Taken of Exhibits "A" through "I" and "K"

Permissive judicial notice is allowed pursuant to Evidence code section 452:

> "Matters which may be judicially noticed. Judicial notice may be taken of the following matters to the extent that they are not embraced within Section 451: (a) The decisional, constitutional, and statutory law of any state of the United States and the resolutions and private acts of the Congress of

> the United States and of the Legislature of this state. (b) Regulations and legislative enactments issued by or under the authority of the United States or any public entity in the United States. (c) Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States....(h) Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy" (Evidence Code section 452)

Judicial Notice should be granted to Exhibit "G" - Legislative Analyst's Office - Overview of Health Care Districts, Presented to: Assembly Accountability and Administrative Review Committee, Hon. Roger Dickinson, Chair. Judicial notice is permitted for "official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States" under Evidence Code section 451(c) and for "facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy" under section 451(h). Exhibit "G" is a formal analysis of State law establishing Health Care Districts and was published by the California State Legislative Analyst's Office. The Legislative Analyst's Office (LAO) is a California Government Agency which "serves as the "eyes and ears" for the Legislature to ensure that the executive branch is implementing legislative policy in a cost efficient and effective manner." It is "overseen by the Joint Legislative Budget

Committee (JLBC), a 16-member bipartisan committee". (LAO website, https://lao.ca.gov/About) Exhibit "G" is relevant to this appeal because it provides legislative analysis of a California Health District, which is immune from liability. Appellants allege AHS is not a Health District and does not hold immunity.

Exhibit "K" is an advisory opinion issued by the California Fair Political Practices Commission. The Fair Political Practices Commission was created by the California State Legislature under the Political Reform Act and has the authority to institute administrative action for violations of the Act. (People v. Snyder (2000) 22 Cal.4th 304, 308) "One of the commission's functions is to issue advisory rulings that concern possible conflict of interest involving state or local public officials. Good faith compliance with a ruling is generally a defense against enforcement of civil or criminal sanctions." (Okun v. Superior Court (1981) 29 Cal.3d 442, 456) This FPPC opinion is admissible under Evidence Code section 451(c) Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States and section 451(h) as facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy. Exhibit "K" is relevant as to the issue of

the law on sovereign immunity.

Exhibits "A" through "F", "H" and "I" are Legislative Analysis of bills which became law relevant to the issues of this case. They are subject to permissive judicial notice as "official acts of the legislative... departments ...of any state of the United States" and as a record of "any state of the United States", per Evidence Code sections 452(c) and (d).

Exhibit "A", the California Legislative Counsel's Digest, 2013 Cal. Legis. Serv. Ch. 719 (S.B. 435) is relevant to the issue of exemptions from liability for meal and rest break requirements in Labor Code section 226.7;

Exhibit "B", the California Committee Report, 2013 California Senate Bill No. 435, California 2013-2014 Regular Session is also relevant to the issue of exemptions from liability for meal and rest break requirements in Labor Code section 226.7;

Exhibit "C", California Bill Analysis, Assembly Floor, 1999-2000 Regular Session, Assembly Bill 60, May 27, 1999 is relevant to the enactment of overtime requirements in Labor Code section 510 ;

Exhibit "D", California Bill Analysis, Senate Floor, 1999-2000 Regular Session, Assembly Bill 2509, August 7, 2000 is relevant to legislative intent regarding the scope of liability for meal and rest break requirements under Labor Code section 226.7;

Exhibit "E", the California Bill Analysis, Senate Committee, 2003-2004 Regular Session, Senate Bill 1618, May 20, 2004 is relevant to the issue of what entities are bound by Labor Code section 226 wage statement requirements;

Exhibit "F", California Bill Analysis, Senate Floor, 2021-2022 Regular Session, Senate Bill 1334, August 25, 2022 is relevant to issues of derivative liability following the enactment of Labor Code section 512.1;

Exhibit "H", California Bill Analysis, Senate Committee, 1995-1996 Regular Session, Assembly Bill 2374, June 26, 1996 is relevant to issues of AHS's sovereign obligations to treat indigent patients under Welfare and Institutions Code section 17000;

Exhibit "I", California Bill Analysis, Assembly Floor, 2003-2004 Regular Session, Senate Bill 796, September 2, 2003 is relevant to the issue of whether the Private Attorney General Act was intended to allow actions by both a private employee and the State of California;

II.

CONCLUSION

The proposed items are properly subject to Judicial Notice as they consist only of matters issued as official acts of the legislative, executive, and judicial departments of the United States and of any state of the United

States. No item is reasonably subject to dispute, and both are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.

Respectfully submitted.

DATED: 9/15/23 BY _____

DAVID Y. IMAI, ESQ.
ATTORNEY FOR
TAMELIN STONE, AMANDA KUNWAR, on behalf of themselves and all others similarly situated

DECLARATION OF DAVID Y. IMAI IN SUPPORT OF MOTION FOR JUDICIAL NOTICE [CRC 8.54(a)(2)]

I, David Y. Imai declare as follows:

1. I am an attorney at law duly licensed to practice in the Courts of the State of California and am the attorney of record for Plaintiffs/Appellants in this matter, Tamelin Stone and Amanda Kunwar.

2. Attached hereto as Exhibit "A" is a true and correct copy of the California Legislative Counsel's Digest, 2013 Cal. Legis. Serv. Ch. 719 (S.B. 435) (WEST);

3. Attached hereto as Exhibit "B" is a true and correct copy of the California Committee Report, 2013 California Senate Bill No. 435, California 2013-2014 Regular Session;

4. Attached hereto as Exhibit "C" is a true and correct copy of California Bill Analysis, Assembly Floor, 1999-2000 Regular Session, Assembly Bill 60, May 27, 1999;

5. Attached hereto as Exhibit "D" is a true and correct copy of the California Bill Analysis, Senate Floor, 1999-2000 Regular Session, Assembly Bill 2509, August 7, 2000;

6. Attached hereto as Exhibit "E" is a true and correct copy of the California Bill Analysis, Senate Committee, 2003-2004 Regular Session, Senate Bill 1618, May 20, 2004;

7. Attached hereto as Exhibit "F" is a true and correct copy of California Bill Analysis, Senate Floor, 2021-2022 Regular Session, Senate Bill 1334, August 25, 2022;

8. Attached hereto as Exhibit "G" is a true and correct copy of a document drafted by the California Legislative Analyst's Office entitled Overview of Health Care Districts, Presented to: Assembly Accountability and Administrative Review Committee, Hon. Roger Dickinson, Chair;

9. Attached hereto as Exhibit "H"is a true and correct copy of California Bill Analysis, Senate Committee, 1995-1996 Regular Session, Assembly Bill 2374, June 26, 1996;

10. Attached hereto as Exhibit "I" is a true and correct copy of California Bill Analysis, Assembly Floor, 2003-2004 Regular Session, Senate Bill 796, September 2, 2003;

11. Attached hereto as Exhibit "J" is a true and correct copy of Industrial Welfare Commission Wage Order 5-2001.

12. Attached hereto as Exhibit "K" is a true and correct copy of an

advisory opinion by the California Fair Political Practices Commission, CA FPPC Op. 75-044 (Cal.Fair.Pol.Prac.Com.), 1 FPPC Op. 1, 1975 WL 37312;

13. Exhibit "G"was previously submitted to the Trial Court for consideration in the Demurrer now on review. The Superior Court admitted that exhibit upon judicial notice.

14. The remaining Exhibits "A" through "F" and "H" through "K" were not previously submitted to the Superior Court for judicial notice.

15. None of these Exhibits relate to proceedings occurring after the order or judgment that is the subject of this appeal.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: 9/15/23 BY _____

DAVID Y. IMAI, ESQ.
ATTORNEY FOR
PLAINTIFFS/APPELLANTS
TAMELIN STONE, AMANDA KUNWAR, on behalf of themselves and all others similarly situated

Case No. S279137

IN THE SUPREME COURT
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Plaintiffs/Appellants,

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ALAMEDA HEALTH SYSTEM, a Public Hospital Authority;
Defendants/Respondents

On Petition from a Decision by the Court of Appeal,
First Appellate District, No. A164021

[PROPOSED]

ORDER TAKING JUDICIAL NOTICE

Good cause appearing, IT IS HEREBY ORDERED that the Motion Requesting Judicial Notice is granted. IT IS ORDERED that this Court shall take judicial notice of the following:

1. California Legislative Counsel's Digest, 2013 Cal. Legis. Serv. Ch. 719 (S.B. 435) (WEST) attached as Exhibit "A" to Plaintiffs/Appellants' Motion for Judicial Notice;

2. California Committee Report, 2013 California Senate Bill No. 435,

California 2013-2014 Regular Session attached as Exhibit "B" to Plaintiffs/Appellants' Motion for Judicial Notice;

3. California Bill Analysis, Assembly Floor, 1999-2000 Regular Session, Assembly Bill 60, May 27, 1999 attached as Exhibit "C" to Plaintiffs/Appellants' Motion for Judicial Notice;

4. California Bill Analysis, Senate Floor, 1999-2000 Regular Session, Assembly Bill 2509, August 7, 2000 attached as Exhibit "D" to Plaintiffs/Appellants' Motion for Judicial Notice'

5. California Bill Analysis, Senate Committee, 2003-2004 Regular Session, Senate Bill 1618, May 20, 2004 attached as Exhibit "E" to Plaintiffs/Appellants' Motion for Judicial Notice;

6. California Bill Analysis, Senate Floor, 2021-2022 Regular Session, Senate Bill 1334, August 25, 2022 attached as Exhibit "F" to Plaintiffs/Appellants' Motion for Judicial Notice;

7. Document drafted by the California Legislative Analyst's Office entitled Overview of Health Care Districts, Presented to: Assembly Accountability and Administrative Review Committee, Hon. Roger Dickinson, Chair attached as Exhibit "G" to Plaintiffs/Appellants' Motion for Judicial Notice;

8. California Bill Analysis, Senate Committee, 1995-1996 Regular

Session, Assembly Bill 2374, June 26, 1996 attached as Exhibit "H" to Plaintiffs/Appellants' Motion for Judicial Notice;

9. California Bill Analysis, Assembly Floor, 2003-2004 Regular Session, Senate Bill 796, September 2, 2003 attached as Exhibit "I" to Plaintiffs/Appellants' Motion for Judicial Notice;

10. Industrial Welfare Commission Wage Order 5-2001 attached as Exhibit "J" to Plaintiffs/Appellants' Motion for Judicial Notice.

11. Advisory opinion by the California Fair Political Practices Commission, CA FPPC Op. 75-044 (Cal.Fair.Pol.Prac.Com.), 1 FPPC Op. 1, 1975 WL 37312 attached as Exhibit "K" to Plaintiffs/Appellants' Motion for Judicial Notice.

IT IS SO ORDERED:

DATED: _____

Chief Justice Guerrero

EXHIBIT "A"

2013 Cal. Legis. Serv. Ch. 719 (S.B. 435) (WEST)

CALIFORNIA 2013 LEGISLATIVE SERVICE

2013 Portion of 2013-2014 Regular Session

Additions are indicated by **Text**; deletions by
* * * .
Vetoes are indicated by ~~Text~~ ;
stricken material by ~~**Text**~~ .

CHAPTER 719

S.B. No. 435

LABOR AND EMPLOYMENT—COMPENSATION AND SALARIES—MEAN AND REST OR RECOVERY PERIODS

AN ACT to amend Section 226.7 of the Labor Code, relating to compensation.

[Filed with Secretary of State October 10, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

SB 435, Padilla. Compensation: meal and rest or recovery periods.

Existing law prohibits an employer from requiring an employee to work during any meal or rest period mandated by an order of the Industrial Welfare Commission (IWC) and establishes penalties for an employer's failure to provide a mandated meal or rest period.

This bill would make that prohibition applicable to a meal or rest or recovery period mandated by applicable statute or applicable regulation, standard, or order of the IWC, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health. The bill would exempt specified employees from the prohibition. The bill would require an employer to pay an employee, for any meal or rest or recovery period mandated by law, one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided. The bill would define "recovery period" for those purposes.

The people of the State of California do enact as follows:

SECTION 1. Section 226.7 of the Labor Code is amended to read:

<< CA LABOR § 226.7 >>

226.7. **(a) As used in this section, "recovery period" means a cooldown period afforded an employee to prevent heat illness.**

~~* * *~~ **(b) An** employer shall **not** require **an** employee to work during **a** meal or rest **or recovery** period mandated ~~* * *~~ **pursuant to** an applicable **statute, or applicable regulation, standard, or** order of the Industrial Welfare Commission**, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health**.

(c) If an employer fails to provide an employee a meal ~~* * *~~ or rest **or recovery** period in accordance with **a state law, including, but not limited to,** an applicable **statute or applicable regulation, standard, or** order of the Industrial Welfare Commission, **the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health,** the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each **workday** that the meal or rest **or recovery** period is not provided.

(d) This section shall not apply to an employee who is exempt from meal or rest or recovery period requirements pursuant to other state laws, including, but not limited to, a statute or regulation, standard, or order of the Industrial Welfare Commission.

End of Document

EXHIBIT "B"

2013 CA S.B. 435 (NS)
2013 California Senate Bill No. 435, California 2013-2014 Regular Session

CALIFORNIA COMMITTEE REPORT

TITLE: Compensation: meal and rest and recovery periods
VERSION: General
August 12, 2013
Version Date August 12, 2013
Padilla.

TEXT:
BILL ANALYSIS

SB 435 Page 1

Date of Hearing: August 14, 2013

ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT Roger Hernndez, Chair SB 435 (Padilla) - As Amended: August 5, 2103

SENATE VOTE : 25-11

SUBJECT : Compensation: meal and rest and recovery periods

SUMMARY : Enacts provisions of law related to recovery periods, as specified. Specifically, this bill :

1)Provides that, in addition to meal and rest periods, an employer shall not require any employee to work during any "recovery period" mandated by any applicable statute, regulation, standard or order of the Occupational Safety and Health Standards Board (Standards Board) or the Division of Occupational Safety and Health (DOSH).

2)Defines a "recovery period" as a cool-down period afforded an employee to prevent heat illness.

3)Provides that an existing provision of law that requires an employer to pay an employee one additional hour of pay at the employee's regular rate of compensation for each work day that a meal or rest period is not provided also applies to work days that a "recovery period" is not provided.

FISCAL EFFECT : According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS : According to the author, this bill is intended to encourage workers exposed to extreme heat to take recovery periods.

Existing Meal and Rest Period Requirements of Current Law

Under current law, an employer may not employ a worker for a 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 is no more than six hours, the meal period may be waived by mutual consent of both parties. A second 30 minute meal period is required if an employee works more than ten hours per day, except if total hours worked is no

SB 435 Page 2 more than 12, the second meal period may be waived by mutual consent only if the first meal period was not waived. (Labor Code 512).

In addition, the Industrial Welfare Commission (IWC) Wage Orders require that employers authorize and permit nonexempt employees to take a rest period that must, insofar as practicable, be taken in the middle of each work period. The rest period is based on the total hours worked and must be at the minimum rate of a net 10 consecutive minutes for each 4 hour work period, or major fraction thereof. A rest period is not required for employees whose total daily work time is less than 3.5 hours. According to the IWC Wage Orders, authorized rest periods are counted as time worked and therefore, must be paid by the employer.

Existing Labor Code 226.7 prohibits an employer from requiring any employee to work during any meal or rest period mandated by an applicable order of the IWC. Furthermore, an employer who fails to provide this meal or rest period is required to pay the employee one additional hour of pay for each work day that the meal or rest period is not provided.

"Recovery Periods" Under the Existing Heat Illness Prevention Standard

In addition to the IWC orders and Labor Code 226.7, the Heat Illness Prevention regulations established by the Occupational Safety and Health Standards Board have an additional requirement regarding a "recovery" period applicable to all outdoor places of employment. Since August 2005, employers in the State of California have been required by regulation to protect outdoor employees from the hazard of heat illness. This regulation was promulgated in response to unusually hot summer temperatures over a wide area of the state which led to a greatly elevated number of cases of serious heat illness in the workplace, including a number of deaths. This regulation, codified at Title 8 CCR 3395, came about first by adoption of an emergency temporary standard and was followed by adoption of a permanent standard in 2006. Under these regulations, employees are allowed and encouraged to take a cool-down rest in the shade for a period of no less than five minutes at a time when they feel the need to do so to protect themselves from overheating.

ARGUMENTS IN SUPPORT :

SB 435 Page 3

The California Rural Legal Assistance Foundation (one of the sponsors of this measure), writes the following in support:

"[This bill], as amended, generally treats heat stress-related cool down recovery periods the same way daily rest periods are treated under the Labor Code: Employers would be prohibited from requiring workers to perform any work during any heat stress recovery period and, if the employer failed to provide such a recovery period in accordance with state law, the employer would have to pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that a recovery period was not provided.

The right of workers to be afforded heat stress-related recovery periods to cool down during high heat conditions is established by California Code of Regulations, Title 8, Section 3395(d). Although compliance with these requirements is argued to be improving in a number of industries, Cal-OSHA reported, for 2012, that overall compliance with the heat stress regulation (found during inspections) was only 69% in agriculture and 72% in construction, illustrating that many violations likely continue to occur. (See Cal-OSHA Advisory Committee Report Summaries, June 6, 2013.) Currently, the sole remedy for a violation is a citation issued by DOSH.

Given the critical importance of protecting workers from avoidable heat stress illness, and continued limited DOSH enforcement resources, the sponsors and supporters of [this bill] believe it is appropriate to extend to workers the same strong protections from violations of recovery period requirements as are provided for violations of daily rest period requirements. This will allow both the Division of Labor Standards Enforcement and workers themselves to take action if an employer requires work during, or fails to provide, a cool down recovery rest period."

COMMITTEE STAFF COMMENTS :

1) As introduced, this bill also contained provisions related to employees paid on a piece-rate basis, including a requirement that such employees be compensated at their average piece-rate earnings during mandated rest or

SB 435 Page 4 recovery periods. However, with the most recent set of amendments, the piece-rate provisions have been deleted from the bill.

2) In addition, at the request of then-opponents of the bill, the author and the sponsor previously agreed to add language to the bill to provide an exemption for specified exempt employees. However, according to the sponsor, in the most recent set of amendments, this language was inadvertently deleted. Therefore, the author and the sponsor have agreed to add the language back to the bill, but due to legislative time constraints will take that amendment in the Assembly Appropriations Committee.

PRIOR RELATED LEGISLATION :

SB 1538 (Alarcn) of 2004 would have required employers to pay employees for any rest period mandated by statute, regulation, or order of the IWC and would have established the specific formula by which the rate of pay would have been determined for the rest periods of piece-rate workers in the agricultural and garment industries, as specified. SB 1538 was vetoed by Governor Schwarzenegger.

AB 755 (De La Torre) of 2005 was similar to SB 1538. However, AB 755 merely stated that piece-rate workers in the agriculture and garment industries would be compensated at their "average piece-rate wage" for rest periods. AB 755 was also vetoed by Governor Schwarzenegger.

Among other things, AB 2346 (Butler) of 2012 would have required an agricultural employee working on a piece-rate basis to be compensated at the employee's average piece-rate wage during the pay period in which a rest period or recovery period was taken. However, this provision was subsequently amended out of the bill.

REGISTERED SUPPORT / OPPOSITION :

Support

California Conference Board of the Amalgamated Transit Union California Conference of Machinists California Rural Legal Assistance Foundation (sponsor) California Teamsters Public Affairs Council

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Engineers & Scientists of California, IFPTE Local 20 International Longshore & Warehouse Union National Lawyers Guild Labor & Employment Committee Professional and Technical Engineers, IFPTE Local 21 United Farm Workers United Food and Commercial Workers Western States Council UNITE HERE! Utility Workers Union of America, Local 132

Opposition

None on file.

Analysis Prepared by : Ben Ebbink / L. & E. / (916) 319-2091

2013 CA S.B. 435 (NS)

End of Document

EXHIBIT "C"

CA B. An., A.B. 60 Assem., 5/27/1999

California Bill Analysis, Assembly Floor, 1999-2000 Regular Session, Assembly Bill 60

May 27, 1999
California Assembly
1999-2000 Regular Session

ASSEMBLY THIRD READING

AB 60 (Knox)

As Amended May 27, 1999

Majority vote

LABOR AND EMPLOYMENT 6-3

APPROPRIATIONS 12-7

Ayes:	Steinberg, Floyd, Gallegos, Migden, Romero, Shelley	Ayes:	Migden, Cedillo, Davis, Hertzberg, Kuehl Papan, Romero Steinberg, Thomson, Wesson, Wiggins, Wright
Nays:	Margett, McClintock, Oller	Nays:	Brewer, Ashburn, Campbell, Granlund, Maldonado, Margett, Zettel

SUMMARY : Establishes a framework for the payment of daily overtime compensation: 1) time and one-half pay after eight hours of daily work; 2) personal time off for a personal obligation of an employee which may be made up during a workweek without payment of overtime compensation within specified limits; and, 3) the adoption through an employee election of an alternative work week schedule or menu of schedules offered by an employer. Specifically, this bill :

1)Codifies the payment of daily overtime compensation at a rate of one and one half (1) times regular pay after eight hours of daily work and 40 hours of weekly work; at a rate of twice regular pay after 12 hours of daily work and eight hours of work on the seventh day of any workweek. This bill deletes the authority of parties to a contract to otherwise expressly stipulate the number of hours that constitute a day's work.

2)Establishes a procedure for an employer to propose an alternative workweek schedule or a menu of alternative workweek schedules, which may be approved by a 2/3 vote of affected employees. An alternative workweek schedule established pursuant to this procedure could allow up to 10 hours of daily work before overtime compensation is required. Requires the Industrial Welfare Commission (IWC) to adopt regulations governing the procedures for the adoption, repeal, and implementation of alternative workweek schedules.

Nullifies alternative workweek schedules adopted pursuant to five wage orders (WOs) amended effective January 1, 1998 (WO 1 - Manufacturing industry; WO 4 - Professional, technical, clerical, mechanical and similar occupations; WO 5 - Public housekeeping industry; WO 7 - Mercantile industry; WO 9 - Transportation industry) except as provided. Provides 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.

Permits employers in the health care industry to retain until July 1, 2000, an alternative workweek schedule with workdays up to 12 hours without overtime compensation, provided such schedules were approved by employee elections pursuant to WOs 4 or 5 in effect prior to 1998. Also retains statutory exceptions for agricultural employees and employees of train operators.

3)Establishes that within a workweek, an employee may, based on a specific written request, with the consent of an employer, take time off for a personal obligation, and then make up the lost time on other days within the same workweek without payment of daily overtime compensation for the extra hours worked on the makeup day(s). Limits the daily makeup-time to 11 hours per day. Prohibits an employer from encouraging or soliciting such a request.

4)Requires IWC to adopt WOs consistent with this act without convening wage boards.

Authorizes IWC to exempt "administrative, executive, or professional employees" from overtime premium pay requirements, provided that these employees meet specified wage and duty requirements.

Authorizes IWC to review, retain or eliminate any exemptions from an hours of work provision in a valid WO in effect prior in 1997. Provides that IWC may, until January 1, 2004, establish additional exemptions to hours of work requirements 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.

5)Exempts from overtime premium pay requirements employees who are covered by a collective bargaining agreement which meets specified criteria.

6)Sunsets, effective July 1, 2000, specific statutory provisions governing daily and weekly overtime requirements for employees of a ski establishment (i.e., no daily overtime; weekly overtime after 56 hours); a licensed commercial passenger fishing boat i.e., no daily or weekly overtime); a licensed hospital (i.e., daily overtime after 12 hours); and a stable (i.e., daily overtime after 10 hours; weekly overtime after 56 hours). Authorizes IWC, prior to July 1, 2000, to conduct a review, and then adopt regulations regarding overtime in these industries. Also requires IWC to review wage and hours issues with respect to licensed pharmacists and outside salespersons.

EXISTING LAW:

1)Provides under the California Constitution (Article XIV 1) authority for the Legislature to enact statutes governing the general welfare of employees including hours of work; and, to confer on a commission legislative, executive and judicial powers for those purposes. The Legislature has adopted general and specific statutes concerning hours of work, and has conferred those powers to IWC.

2)Provides, by statute, specific exemptions from daily and or weekly overtime requirements.

3)Provides, under 15 WOs adopted by IWC, rules governing wages, hours, and working conditions in particular industries. At the present time, IWC has issued:

a) Eight WOs requiring, generally, the payment of time-and-one-half compensation for work exceeding eight hours per day, 40 hours per week, and for the first eight hours on the seventh consecutive day of work. Double time is generally required for work in excess of 12 hours per day and eight hours on the seventh consecutive day of work in the following industries: WO 2 - Personal service industry; WO 3 - Canning, freezing, and preserving industry; WO 6 - Laundry, linen supply, dry cleaning, and dyeing industry; WO 8 - Industries handling products after harvest; WO 10 - Amusement and recreation industry; WO 11 - Broadcasting industry; WO 12 - Motion picture industry; WO 13 - Industries preparing agricultural products for market, on the farm;

b) Two WOs with daily overtime after longer work days: WO 14 - Agricultural occupations (10 hours); WO 15 - Household occupations (i.e., live in - 12 hours); and,

c) Five WOs with no daily overtime. These WOs formerly included the payment of time-and-one-half compensation for work exceeding eight hours per day. They were amended to repeal daily overtime effective January 1, 1998: WOs 1, 4, 5, 7, and 9; and,

FISCAL EFFECT : According to the Assembly Appropriations Committee analysis, the Department of Industrial Relations (DIR) estimates costs to its Division of Labor Standards Enforcement of up to $1 million to review and process increased numbers of overtime wage claims and alternative workweek requests. DIR estimates these costs would be offset by revenues generated from the civil penalties authorized by this bill.

COMMENTS :

1)Effective January 1, 1998, IWC amended five WOs to eliminate daily overtime and provide that: "No overtime pay shall be required for hours worked in excess of any daily number." Bill supporters estimate that eight million workers were previously covered by daily overtime requirements in these industries and occupations.

2)Beginning in 1913, IWC had jurisdiction over women and minors, and established daily overtime after eight hours for both groups. In 1974, a federal court ruling concerning the discriminatory impact of this approach resulted in new wage orders, covering men and women. Following a protracted legal battle, the California Supreme Court upheld the adoption of final wage orders in 1980. Five of those WOs were amended to repeal daily overtime on January 1, 1998. That action resulted in an unsuccessful legal challenge, legislation including SB 680 (Solis) of 1997 which was vetoed by Governor Wilson, and this bill.

3)This bill would establish daily overtime after eight hours as the general rule in California. It contains two prominent features related to flexibility. First, it provides for the adoption of alternative workweek schedules pursuant to an employee election. The alternative workweek procedure is common to those IWC wage orders which require daily overtime. This bill allows a menu of alternative workweek options rather than a single choice of schedules and limits the alternative schedules to not more than 10 hours per day without triggering daily overtime. Second, this bill allows employees to take off time for a personal obligation and makeup that time during the same workweek without payment of daily overtime (up to 11 hours in a day).

4)This bill raises the salary threshold and would thereby remove exempt status from some lower paid managers. This bill also authorizes IWC, until January 2004, to create new classes of exempt employees. It authorizes IWC to retain or eliminate exemptions contained in pre-1998 wage orders.

5)The maximum legal daily hours of work are not at issue in this bill or the disputed WOs. The issues in controversy are when premium overtime pay is triggered, and which employees may be exempt from such requirements. Flextime, that is, the variable starting times for a workday is also not controlled by this bill. The purpose of overtime premium compensation requirements as viewed by the courts has been to induce the employer to reduce the hours of work and employ more individuals, while compensating employees for the burdens of overtime work.

6)Arguments in support of this bill may be characterized as follows:

a) The elimination of the eight-hour day has severely cut the incomes of part-time and contingent workers who fail to qualify for premium pay under the 40 hour workweek, affected up to eight million workers. Business may annually reclaim up to $1 billion in lost wages as a result of these actions;

b) Numerous studies have linked long work hours to increased rates of accident and injury. Without the eight-hour limitation, many employers would lengthen the workday to 12 or more hours, resulting in extreme fatigue and stress to workers. Family life suffers when either or both parents are kept away from home for an extended period of time on a daily basis;

c) In addition to daily overtime, this bill codifies the 40-hour workweek in state law, which would protect employees in California if legislation which has been proposed in Congress to weaken the 40-hour workweek requirements in the federal law is enacted; and,

d) While both sides support the concept of flexibility, under this bill employees retain the right to approve or disapprove of an alternative workweek schedule, while under IWC's actions, the employer has the authority to force employees to work longer work schedules without their consent.

7)Arguments in opposition to this bill may be characterized as follows:

a) Relief from existing overtime rules as provided by IWC amended WOs has earned employers millions of dollars and allows them to control their production schedules. Employers should be able to work employees 10 or 12 hours a day, without the penalty of overtime if competitive forces necessitate such work schedules;

b) Former IWC WOs were too restrictive and did not allow flexible work schedules. This bill is more restrictive than the former IWC WOs. The alternative workweek process is too cumbersome. Employees need more flexibility to respond to today's work and life needs;

c) California should conform to federal requirements in order to allow California business to compete with other states. This bill sets California even farther apart from overtime rules in other states; and,

d) Hospitals and other industries which have adopted 12-hour day schedules argue that the cost of maintaining this schedule while paying overtime after eight hours (or 10 hours in the case of an alternative work schedule) would be prohibitive. The ski industry, and certain other industries, argue that conditions of employment in their industry is unique and justifies a continuing exemption from daily overtime requirements.

Analysis prepared by : Ralph Lightstone / L. & E. / (916) 319-2091

FN: 0001134

CA B. An., A.B. 60 Assem., 5/27/1999

End of Document

EXHIBIT "D"

CA B. An., A.B. 2509 Sen., 8/07/2000

California Bill Analysis, Senate Floor, 1999-2000 Regular Session, Assembly Bill 2509

August 7, 2000
California Senate
1999-2000 Regular Session

SENATE RULES COMMITTEE

Office of Senate Floor Analyses

THIRD READING

Bill No: AB 2509

Author: Steinberg (D)

Amended: 8/7/00 in Senate

Vote: 21

SENATE INDUSTRIAL RELATIONS COMMITTEE: 4-1, 6/28/00

AYES: Alarcon, Figueroa, Karnette, Solis

NOES: Mountjoy

SENATE JUDICIARY COMMITTEE: 5-3, 8/8/00

AYES: Escutia, O'Connell, Peace, Sher, Schiff

NOES: Haynes, Morrow, Wright

SENATE APPROPRIATIONS COMMITTEE: 7-5, 8/21/00
AYES: Johnston, Bowen, Burton, Escutia, Karnette, Perata, Vasconcellos

NOES: Johnson, Kelley, Leslie, McPherson, Mountjoy

ASSEMBLY FLOOR: 41-32, 5/25/00 - See last page for vote

SUBJECT: Employment: remedies for employment law violations

SOURCE: California Labor Federation

DIGEST: This bill makes various changes to the Labor Code relative to rights, remedies, and procedures. The bill streamlines and alters many enforcement and administrative procedures of wage and hour laws before the Labor Commissioner and the courts, increases civil penalties and damages for violations.

ANALYSIS:

Background

Existing law provides a framework for the enforcement of laws relating to the payment wages and overtime compensation, and working conditions by the Labor Commissioner, chief of the Division of Labor Standards Enforcement (DLSE) in the State Department of Industrial Relations (DIR).

Despite the efforts of DIR, California has a large and growing "underground economy" of employers who are chronic violators of wage and hour, safety, and tax laws. Such employers pay cash under the table or with checks that bounce, fail to report and pay employment taxes, work their employees long hours without rest breaks, and avoid paying wage judgments issued against them. In so doing, according to executive orders issued by Governor's Deukmejian and Wilson, it is estimated that the State's loss of income taxes alone increased from $2 billion in 1986 to $3 billion in 1993.

Changes to existing law

1. Existing law provides the Labor Commissioner, his or her deputies, and agents to issue subpoenas for the purpose of carrying out the laws which the Division of Labor Standards Enforcement is responsible for enforcing.

This bill provides that in an administrative wage claim proceeding before the commissioner (Berman hearing), notice for production of documents, which is served by mail in compliance with Code of Civil Procedure Section 1013, may be used in lieu of a subpoena. The notice would have the same force and effect as a subpoena.

2. Existing law provides that interest on all due and unpaid wages shall accrue at the rate established in Section 19269 of the Revenue and Taxation Code. This section of law has been repealed.

This bill provides that the legal rate of interest on due and unpaid wages shall be at the statutory rate established by Civil Code Section 3289(b), which is 10 percent.

3. Existing law provides that any order, decision, or award made by the Labor Commissioner in a Berman administrative hearing may be appealed to the municipal or superior court.

This bill exempts those appeal proceedings from the requirement of mandatory arbitration.

4. Existing law provides that the court may award costs and attorney's fees to the prevailing parties in an unsuccessful appeal.

This bill provides that the award of costs and attorney's fees applies, regardless of whether the successful party is represented by his or her own attorney or by the Labor Commissioner.

Existing law does not require an appellant to post a bond as a condition of filing an appeal from an adverse Berman hearing decision.

This bill requires employers filing an appeal of the commissioner in a Berman hearing to post a prescribed undertaking and provides for disposition thereof.

6. Existing law provides that any person may file a complaint for unlawful discharge or unlawful discrimination with the Labor Commissioner, who is empowered to provide prescribed relief if the complaint is found meritorious.

If the Labor Commissioner dismisses such a complaint, the Labor Commissioner is required to notify the complainant of the right to bring a court action or to file a complaint against the state program with the United States Department of Labor.

This bill specifies that if a timely complaint is filed against the state program with the United States Department of Labor, the Labor Commissioner's decision dismissing the complaint is vacated pending issuance of findings by the United States Department of Labor.

The bill requires the Labor Commissioner, within 15 days of receiving those findings, either to notify the parties of the reopening of the investigation or to issue a new determination of the complaint.

Existing law provides that any wage claimant may sue directly or through an assignee for any wages or penalty due him under this article.

This bill expressly provides that an employee may file a civil judicial action without exhausting any administrative remedy under the jurisdiction of the Labor Commissioner, and may in such a civil action seek any relief that would be available from the Labor Commissioner. The bill would make the six-month limitation period for filing a complaint with the Labor Commissioner inapplicable to such a civil action.

8. Existing law provides that an employer in the building and construction industry is liable for a penalty of up to 30 days' wages and fringe benefits to any employee paid by a check, draft, or voucher that is drawn on a nonexistent account or that is dishonored for insufficient funds if the instrument is presented for payment within 30 days of receipt. This penalty does not apply if the employer can establish that the violation was unintentional.

This bill makes this penalty applicable to all employers, and makes related conforming and technical, nonsubstantive changes.

9. Existing law provides that employers are required to provide employees semimonthly, with payment of wages, an itemized statement listing gross wages, total hours worked of employees paid by the hour, specified deductions, net wages, and certain other information. Violation of these requirements is a misdemeanor.

This bill provides that total hours need not be disclosed for salaried employees exempt from payment of overtime compensation.

The bill requires disclosure of the number of piece-rate units and the applicable piece rate for employees paid on that basis, and requires disclosure of all applicable hourly rates and the number of hours worked by the employee at each rate.

10. Existing law provides an employee suffering injury as a result of the employer's knowing or intentional failure to comply with the above disclosure requirement is entitled to recover the greater of actual damages or one hundred dollars ($100), plus costs and reasonable attorney's fees.

This bill revises the liability of employers for knowing or intentional noncompliance with this disclosure requirement to entitle an aggrieved employee to recover the greater of actual damages or penal damages of $100 for each pay period in which the violation occurs up to $10,000, plus costs and reasonable attorney's fees.

The bill authorizes an aggrieved employee to seek recovery in administrative proceedings before the Labor Commissioner or in a civil action.

11. Existing law provides that any employer that violates subdivision (a) of Section 226 shall be subject to:

A civil penalty in the amount of two hundred fifty dollars ($250) per employee per violation in an initial citation.

One thousand dollars ($1,000) per employee for each violation in a subsequent citation.

This bill provides that any employer that violates subdivision (a) of Section 226 shall be subject to:

A civil penalty in the amount of two hundred fifty dollars ($250) per employee per violation in an initial citation

One thousand dollars ($1,000) per employee for each violation in a subsequent citation.

In the event that an employer fails to maintain records that identify each employee to whom wages are paid, the penalties under this section shall be computed by multiplying the number of employees employed on the date the penalty is assessed by the 24 semimonthly pay periods of the immediately preceding 12 months. However, the bill would allow the employer to affirmatively establish that the evidence supports a lesser penalty based upon proof of a lesser number of affected employees.

The civil penalties provided for in this section would be in addition to any other penalty provided by law.

The bill provides that in enforcing this section, the Labor Commissioner shall take into consideration whether the violation was inadvertent and, in his or her discretion, may decide not to penalize an employer for a first violation when that violation was due to a clerical error or inadvertent mistake.

12. Existing law authorizes the Industrial Welfare Commission to adopt orders respecting wages, hours, and working conditions. Under this authority, IWC Wage Orders require meal and rest periods.

This bill makes any employer that requires any employee to work during a meal or rest period mandated by an order of the commission subject to a civil penalty of $50 per violation and liable to the employee for twice the employee's average hourly or piecework pay.

An aggrieved employee could bring an administrative or civil action for recovery of these amounts, and if the employee prevailed in a civil action, the employee would be entitled to recover their attorney's fees.

In addition, this bill would provide that if an employer fails to provide and maintain necessary tools or equipment in violation of an applicable wage order of the Industrial Welfare Commission and an employee purchases the tools or equipment in order to perform his or her work, the employer shall either purchase the tools or equipment from the employee in an amount equal to the price paid by the employee or pay sufficient wages to the employee as stated in the wage order for a period of six months to qualify for an exemption to the wage order.

13. Existing law authorizes the Labor Commissioner to require an employer to deposit a bond if the employer is convicted of violating specified provisions respecting paying employees or if a judgment for unpaid wages against the employer remains unsatisfied for days after expiration of the appeal period with no appeal on file. The bond is conditioned on the employer paying employees for up to six months in compliance with specified laws and payment of any judgment for unpaid wages.

This bill would revise these provisions to make the authorization for a bond requirement applicable to unpaid judgments for interest, penalties, or other demands for compensation within the jurisdiction of the Labor Commissioner, in addition to judgments for unpaid wages. The bond would remain conditioned on payment of such an unsatisfied judgment.

14. Existing law provides that an aggrieved employee, or the State Department of Industrial Relations or its Division of Labor Standards Enforcement, may bring a civil action to recover unpaid minimum wages. In these actions the employee is entitled to additional liquidated damages equal to the unpaid wages and interest thereon.

This bill allows the Labor Commissioner to award liquidated damages, as the court may in a civil action.

15. Existing law provides for the commissioner to issue a civil penalty citation of fifty dollars ($50) for an initial violation of failure to pay minimum wages and two hundred and fifty dollars ($250) for subsequent violations.

Existing law also provides for the commissioner to order payment of minimum wages owed to an employee in a separate proceeding before the Labor Commissioner.

This bill allows that with respect to failure to pay minimum wages, the commissioner may, in the same proceeding, order both payment of wages owed, interest, statutory liquidated damages, and civil penalties.

This bill also adds restitution in an amount sufficient to recover all underpaid wages and interest thereon, as an element of damages.

Comments

1. Stated need for legislation and support

According to the California Teamsters Public Affairs Council, "For too long, California has experienced a downward spiral of labor law enforcement. Unfortunately, this lax enforcement has sent the message to unscrupulous employers that it is permissible to take advantage of vulnerable employees. AB 2509 addresses these problems by restoring the ability of California's workers to receive the wages they worked so hard to earn."

AB 2509 is sponsored by the California Labor Federation, who offers the following in support: "AB 2509 will streamline the Labor Commissioner process. Under AB 2509 the Labor Commissioner would be assured of receiving attorney fees when a worker files a complaint with the Labor Commissioner, wins and the commissioner then represents the worker in a 'de novo' review when the employer appeals to the court. AB 2509 would also allow the Labor Commissioner to request documents via mail; provide the Labor Commissioner an efficient means of calculating penalties for failure to provide itemized wage statements; allow the labor commissioner to re-open a discrimination case on remand from the US department of Labor; provide for a 'one-stop' civil penalty system where both wages and penalties can be recovered at one time; and permit the labor commissioner to order an employer who has failed to satisfy a judgment for unpaid interest and penalties to post a bond. (Currently, the labor commissioner can require the employer to post a bond for unpaid wages.)"

Finally, they assert, "AB 2509 ensures that workers are provided adequate record keeping information. Workers are often provided little information about their wages. This bill will remedy that problem. Under AB 2509 workers will be told about their hourly rate for all hours worked. Stiffer penalties will also be imposed for failing to provide workers information about their wages. According to the Wilson Administration, California loses approximately 3 billion dollars a year in much needed taxes when employers pay workers subminimum wages and cash under the table."

The Golden Gate University School of Law, Women's Employment Rights Clinic, adds that the bond requirement of this bill is needed, based upon their experience that, "(O)nce a person receives a judgment in his or her favor through the labor commissioner process, we find that it is not uncommon for an employee to encounter extreme difficulty recovering the unpaid wages from the employer. In addition, employees often have to wait unnecessary lengths of time for a judgment to be satisfied when an employer files a de novo court appeal. AB 2509 remedies this problem by requiring employers to post bonds, not only for unpaid wages, but also for interest and penalties, as well as requiring any employer who appeals to the superior court to post a bond. AB 2509 also includes a critical provision that imposes penalties for bounced paychecks."

California Rural Legal Assistance Foundation states that, "(A)lthough the federal Migrant and Seasonal Agricultural Worker Protection Act has required since 1983 that farm labor contractors, agricultural growers and agricultural associations provide piece rate pay stub information to workers, and keep such records for three years, there is no comparable state law provision." They add that, in addition to pay stub violations, a recent CRLAF survey found that farm workers were forced to labor during either meal or break periods. "We believe this practice is also widespread, and contributes to increased job place injuries. Although the practice is prohibited under California's wage orders, there are no effective penalties for violations.

"AB 2509 remedies that, and in addition provides the types of private enforcement tools that will help insure future compliance."

2. Opposition

Most of the opposition letters received by this committee reflected concern with the entire package of proposals contained in AB 2509. However, some of the bill's provisions caused particular concern. The California Chamber of Commerce letter is typical of those the Committee received, in saying:

"California Chamber members have serious concerns regarding nearly all of the twenty-nine changes proposed by AB 2509 and their impact on California's employers who even inadvertently violate a wage and hour law. AB 2509 contains many issues of deep concern to businesses throughout California, some of which are:

Authorizing the labor commissioner to create new, different rules of evidence and subpoena process for wage and hour claims;

Eliminating judicial discretion to require non-binding arbitration on appeals;

Reopening of previously dismissed claims when letters criticizing a state program is filed with the U.S. department of Labor.

Mandated private taxpayer payment of civil servant attorneys;

Wage and hour claims permitted in civil court prior to exhaustion of administrative remedies;

New state labor commissioner authority to assess civil damages, including liquidated damages;

New mandated payment of 'restitution' plus civil penalties for failure to pay minimum wage consisting of all under paid wages, any interest owed and statutory liquidated damages."

The Associated General Contractors and Associated General Contractors San Diego add that, "AB 2509 contains provisions similar to AB 1652 (Steinberg) which was vetoed by Governor Davis last year mainly because the provisions were 'excessive' and 'overly broad.' This legislation goes far beyond last year's bill and we fail to understand the justification for it. The Division of Labor Standards Enforcement has received additional funding and augmentations to its staffing in order to allow the Labor Commissioner's office to fulfill its enforcement duties. Now that the Division is fully staffed, it seems reasonable to allow them an opportunity to do their job before increasing penalties and creating new violations."

The California Employment Law Council opposes the bill based, in part, upon the deletion of mandatory arbitration in de novo review of commission decisions, saying, "this legislation would create an exception for appeals from Labor Commissioner orders. This is senseless. Arbitration generally serves a useful purpose because it leads to the resolution of disputes efficiently and quickly, without significant costs, and here a quick resolution by an independent decision maker is even more desirable."

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT: (Verified 8/8/00)

California Professional Firefighters
Golden Gate University, School of Law, Women's Employment Rights Clinic

Equal Rights Advocates

Legal Aid Society of San Francisco, Employment Law Center

Transport Workers Union of America

California Rural Legal Assistance Foundation
California Conference Board of the Amalgamated Transit Union

Engineers and Scientists of California

Region 8 States Council of the United Food & Commercial Workers

Hotel Employees, Restaurant Employees International Union

California Conference of Machinists

Service Employees International Union
California Chapters of the National Electrical Contractors Association

California Legislative Conference of the Plumbing, Heating and Piping Industry

Western Wall and Ceiling Contractors Association

Air Conditioning and Refrigeration Contractors Association
California Association of Sheet Metal and Air Conditioning Contractors, National Association
American Federation of State, County and Municipal Employees, AFL-CIO

California Teamsters, Public Affairs Council

California Labor Federation

La Raza Centro Legal, Inc.

Exotic Dancers Alliance

Asian Law Caucus

Mexican-American Legal Defense and Education Fund

Asian Pacific Legal Center of Southern California

OPPOSITION: (Verified 8/8/00)

Western Growers Association

California Retailers Association

Civil Justice Association of California

California Grocers Association

California Chamber of Commerce

Roofing Contractors Association of California Associated

General Contractors and Associated General Contractors San Diego

Orange County Business Council

Engineering Contractors' Association

Marin Builders' Exchange

Sacramento Builders' Exchange

Fence Contractors' Association

Flasher/Barricade Association

Seismic Gas Valve Manufacturers'

California Manufacturers and Technology Association

California Employment Law Council

San Rafael Chamber of Commerce

California Farm Bureau Federation

ASSEMBLY FLOOR

AYES: Alquist, Aroner, Bock, Calderon, Cardenas, Cardoza, Cedillo, Corbett, Davis, Ducheny, Dutra, Firebaugh, Floyd, Gallegos, Honda, Jackson, Keeley, Knox, Kuehl, Lempert, Longville, Lowenthal, Machado, Migden, Nakano, Reyes, Romero, Scott, Shelley, Steinberg, Strom-Martin, Thomson, Torlakson, Vincent, Washington, Wayne, Wesson, Wiggins, Wildman, Wright, Hertzberg

NOES: Aanestad, Ackerman, Ashburn, Baldwin, Bates, Battin, Baugh, Brewer, Briggs, Campbell, Cox, Cunneen, Florez, Granlund, House, Kaloogian, Leach, Leonard, Maddox, Maldonado, Margett, Mazzoni, McClintock, Olberg, Oller, Robert Pacheco, Rod Pacheco, Pescetti, Runner, Strickland, Thompson, Zettel

NC:kb 8/22/00 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

CA B. An., A.B. 2509 Sen., 8/07/2000

End of Document

EXHIBIT "E"

CA B. An., S.B. 1618 Sen., 5/20/2004

California Bill Analysis, Senate Committee, 2003-2004 Regular Session, Senate Bill 1618

May 20, 2004
California Senate
2003-2004 Regular Session

Appropriations Committee Fiscal Summary

1618 (Battin)

Hearing Date: 5/20/2004

Amended: 4/22/2004 + proposed

Consultant: Nora Lynn

Policy Vote: Labor & IR 8-0

BILL SUMMARY:

SB 1618 requires that employee wage statements show no more than the last four digits of his or her Social Security number or, alternatively, identify the employee with a number other than his or her Social Security number and removes an exemption for state and local governments from other employee wage statement requirements.

Fiscal Impact (in thousands)

Major Provisions	2004-05	2005-06	2006-07	Fund
Enforcement	Minor, if any, costs			General/Local
Penalties	Minor, if any, costs			General/Local

STAFF COMMENTS:

SUSPENSE FILE

SB 1618's elimination of the governmental exemption for wage statement contents exposes a potentially large number of public entities (58 counties and approximately 965 cities and 3,400 special districts as well as the state itself) to enforcement actions by the Labor Commissioner or their employees under the Private Attorneys General Act.

PROPOSED AMENDMENTS: The author proposes amendments (LCR 0410419) to require that all wage statements show no more than the last four digits of an employee's Social Security number or use an alternate employee identification number.

CA B. An., S.B. 1618 Sen., 5/20/2004

EXHIBIT "F"

CA B. An., S.B. 1334 Sen., 8/25/2022

California Bill Analysis, Senate Floor, 2021-2022 Regular Session, Senate Bill 1334

August 25, 2022
California Senate
2021-2022 Regular Session

SENATE RULES COMMITTEE

Office of Senate Floor Analyses

UNFINISHED BUSINESS

Bill No: SB 1334

Author: Bradford (D)

Amended: 8/25/22

Vote: 21

SENATE LABOR, PUB. EMP. & RET. COMMITTEE: 3-1, 4/4/22

AYES: Cortese, Durazo, Newman

NOES: Ochoa Bogh

NO VOTE RECORDED: Laird

SENATE APPROPRIATIONS COMMITTEE: 5-2, 5/19/22

AYES: Portantino, Bradford, Kamlager, Laird, Wieckowski

NOES: Bates, Jones

SENATE FLOOR: 28-9, 5/24/22

AYES: Allen, Atkins, Becker, Bradford, Cortese, Dodd, Durazo, Eggman, Glazer, Gonzalez, Hueso, Hurtado, Kamlager, Laird, Leyva, Limón, McGuire, Min, Newman, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener

NOES: Bates, Borgeas, Dahle, Grove, Jones, Melendez, Nielsen, Ochoa Bogh, Wilk

NO VOTE RECORDED: Archuleta, Caballero, Hertzberg

ASSEMBLY FLOOR: Not available

SUBJECT: Meal and rest periods: hospital employees

SOURCE: California Nurses Association/National Nurses United

DIGEST: This bill extends existing meal and rest period rights and remedies available to private sector employees to those who provide direct patient care or support direct patient care in general acute care hospitals, clinics or public health settings who are directly employed by specified public sector employers.

Assembly Amendments (1) add references to an employee's ability to waive a second meal period by mutual consent with the employer and the ability to provide on-duty meal periods, both consistent with existing labor code and Industrial Welfare Commission Wage Orders; and (2) include "counties" under the definition of "employer" for which the bill's provisions apply.

ANALYSIS:

Existing law:

1) Empowers the Labor Commissioner's office, within the Department of Industrial Relations, with ensuring a just day's pay in every workplace in the State and promote economic justice through robust enforcement of labor laws. (Labor Code §79-107)

2) Defines a full workday as eight hours, and 40 hours as a workweek and requires overtime to be paid at the rate of no less than one and one-half times an employee's regular rate of pay for work performed beyond eight hours in a day or 40 hours in a week. Furthermore, work performed beyond 12 hours in a day is to be compensated at twice the regular rate of pay. (Labor Code §510)

3) Requires, with certain exemptions, that all *private sector* employees be provided a meal period as follows:
   a) 30 minutes every five hours, except if the total work period is no more than 6 hours, the meal period may be waived by mutual consent.
   b) A second 30 minute meal period if working more than 10 hours a day, except if the work period is no more than 12 hours, the second meal period may be waived by mutual consent, but only if the first was not waived. (Labor Code §512)

4) Requires that employers authorize and permit employees to take rest periods based on the total hours worked daily at the rate of 10 minutes net rest time per four hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half hours. Authorized rest period time must be counted as hours worked for which there shall be no deduction from wages. (IWC Wage Orders1-16)

5) Prohibits an employer from requiring an employee to work during a meal or rest or recovery period (cooldown period required for heat illness prevention) mandated pursuant to statute, or applicable regulation, standard, or order of the Industrial Welfare Commission (IWC), the Occupational Safety and Health Board, or the Division of Occupational Safety and Health. (Labor Code §226.7)

6) Provides that, if an employer fails to provide a meal or rest or recovery period as required by state law or applicable regulation, standard or IWC order, the employer must pay the employee *one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.* (Labor Code §226.7)

7) Specifies that unless the employee is relieved of all duty during their meal period, the meal period is considered "on duty" that is counted as hours worked which must be compensated at the employee's regular rate of pay. An "on duty" meal period is permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the employer and employee an on-the-job paid meal period is agreed to. The written agreement must state that the employee may, in writing, revoke the agreement at any time. (IWC Wage Orders 1-16)

This bill:

1) Provides, for purposes of this bill, the following definitions:
   a) "Employee" means an employee who provides direct patient care or supports direct patient care in a general acute care hospital, clinic, or public health setting.
   b) "Employer" means the state, political subdivisions of the state, counties, municipalities, and the Regents of the University of California.

c) "General acute care hospital" means a health facility as defined in subdivision (a) of Section 1250 of the Health and Safety Code.

2) Entitles an employee who provides direct patient care or supports direct patient care in a general acute care hospital, clinic, or public health setting, and who is directly employed by a *public employer* to:

a) One unpaid 30-minute meal period on shifts over five hours and a second unpaid 30-minute meal period on shifts over 10 hours, with the ability to waive the second meal period by mutual consent, as specified in Labor Code Section 512. Additionally, specifies that an on-duty meal period may be provided in accordance with existing IWC Wage Orders No. 4 and 5.

b) A rest period based on the total hours worked daily at the rate of 10 minutes net rest time per four hours or major fraction thereof, as provided by Wage Order No. 4 and Wage Order No. 5 of the Industrial Welfare Commission.

3) Requires an employer, who fails to provide to an employee with a meal period or rest period in accordance with these provisions, to pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the periods are not provided.

4) Exempts from these provisions employees who are covered by a valid collective bargaining agreement that provides for meal and rest periods, and, if the employee does not receive a meal or rest period as required by the agreement, includes a monetary remedy that, at a minimum, is equivalent to those provided for in this bill.

5) Makes legislative findings and declarations regarding the importance of meal and rest periods and draws attention to the disparity between private sector hospital employees who are guaranteed meal and rest periods and a remedy of one hour premium pay for missed meal and rest breaks while such employees in the public sector lack these basic protections, even though they perform the same duties.

Background

As noted above, existing labor code provisions entitle *private sector* employees to an unpaid 30-minute meal period, as specified, and per existing Industrial Wage Orders, to a 10-minute rest period. If the meal or rest periods are not provided, existing law entitles them to one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided. In general, California Labor Code regulates private employment unless a provision explicitly states that it applies to public sector employment. Employees providing patient care in a public health setting and at the University of California may currently be entitled to a meal and rest period; however, these rights would have to be negotiated as part of their collective bargaining agreement. This bill statutorily entitles these workers to a meal and rest period and an extra hour of pay per meal and rest period not provided by the employer - eliminating the need for these rights to be collectively bargained.

Comments

Need for this bill? According to the author, "Section 512, the provision on meal periods, does not state that it applies to public employees and the Appeals Court in Johnson v. Arvin-Edison Water Storage District ruled that it did not. Wage orders may apply to the public sector but the Appeals Court in Gomez v. Regents of the University of Cal. held that Wage Order 4 did not apply to the UC. SB 1334 will explicitly include public sector workers who provide direct patient care, or support direct patient care, in a hospital, clinic, or public health setting in Section 512 of the California Labor Code guaranteeing enforceable missed meal breaks and rest periods for UC Nurses and other public sector workers. Better rested nurses will provide higher quality patient care for Californians."

Related/Prior Legislation

SB 698 (Leyva, Chapter 508, Statutes of 2019) required the University of California to pay their employees on a regular payday, as specified by the Labor Code. According to the Senate Labor, Public Employment and Retirement Committee analysis for SB 698, "This bill's supporters believe that making UC subject to Labor Code provisions requiring timely payment of wages and providing fines and penalties for violations thereof will create pressure to ensure UC puts forward the necessary attention and

resources to ensure UC pays university employees earned wages in a timely fashion. Toward this end, they seek to strip UC of the Labor Code exemption for public employers from certain relevant wage payment protections in the Labor Code."

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Assembly Appropriations Committee:

1) Costs in the low millions of dollars annually to the University of California (UC) system. UC notes it has three bargaining agreements covering approximately 50,000 hospital employees, which all include bargained provisions for meal and rest periods. UC hospitals make a good-faith effort to provide alternative time for an employee to take a missed meal or rest break when patient emergencies arise, but an employee who ultimately misses the meal or rest is compensated for the time worked, not for a full hour as required by this bill.

2) Minor and absorbable costs to the Division of Labor Standards Enforcement (DLSE). DLSE cannot anticipate the extent to which public employers may violate this bill's provisions or how many of those employers' employees may bring a claim to DLSE, but does not estimate significant increased workload to DLSE's claims or enforcement units.

SUPPORT: (Verified 8/26/22)

California Nurses Association/National Nurses United (source)

American Federation of State, County and Municipal Employees, AFL-CIO

California Alliance for Retired Americans

California Board of Registered Nursing

California Conference Board of the Amalgamated Transit Union

California Conference of Machinists

California Labor Federation, AFL-CIO

California School Employees Association

California Teamsters Public Affairs Council

Engineers and Scientists of California, IFPTE Local 20, AFL-CIO

SEIU California

Unite Here International Union, AFL-CIO

Utility Workers Union of America, AFL-CIO

OPPOSITION: (Verified 8/26/22)

None received

ARGUMENTS IN SUPPORT: According to the sponsors, the California Nurses Association/National Nurses United (CNA), "Even before the pandemic, nurses typically took few breaks during shifts and often faced greater workloads because of insufficient staffing. Shift lengths have increased over the years, with shifts of 12 hours or longer becoming ubiquitous in some settings. The use of overtime has also increased and continues to rise. In a recent national survey, 33% of nurses reported working extra shifts or overtime and 15% reported working on-call shifts within the past year. Working under such conditions is likely to cause fatigue—feeling very tired or exhausted, both physically and emotionally—which in turn contributes to poorer

physical and mental health outcomes. Indeed, according to the National Institute for Occupational Safety and Health (NIOSH), shift work and long hours have been associated with sleep disturbances; obesity; musculoskeletal disorders and injury; negative immune system effects; chronic health problems such as cardiovascular disease, gastrointestinal disorders, and diabetes; and mood disturbances such as anxiety and depression. Demanding work schedules that don't allow sufficient rest and recovery time contribute not only to fatigue and injury but also to moral injury. Moral injury among nurses has been linked to caring for sicker patients and having fewer staff to care for them. Such conditions contribute to higher rates of intent to leave and job turnover, problems that have worsened during the COVID-19 pandemic.

"Hospital employees at UC and other public sector healthcare facilities deserve the same meal break and rest period enforceability that the private sector currently enjoys. The pandemic will continue for some time. Let us put in place laws that support our healthcare heroes so that they may continue to provide the lifesaving services we so desperately need."

Prepared by: Alma Perez-Schwab / L., P.E. & R. / (916) 651-1556

8/30/22 18:47:39

CA B. An., S.B. 1334 Sen., 8/25/2022

End of Document

EXHIBIT "G"

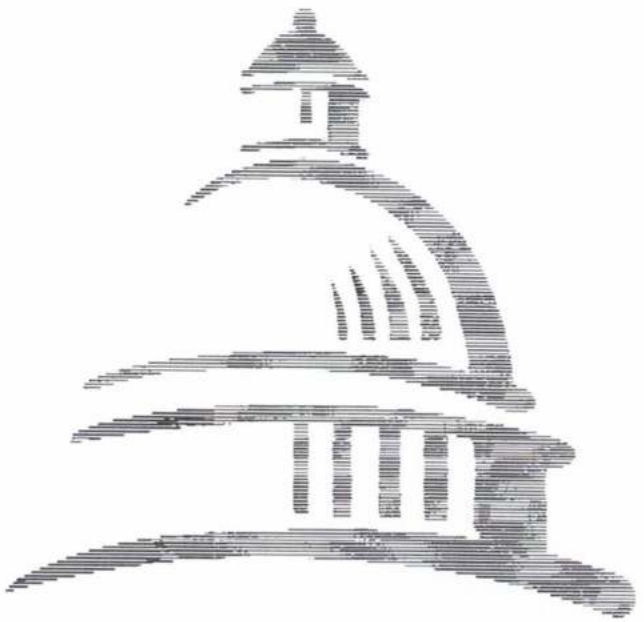
LAO
70 YEARS OF SERVICE

April 11, 2012

Overview of Health Care Districts

LEGISLATIVE ANALYST'S OFFICE

Presented to:
Assembly Accountability and Administrative Review Committee
Hon. Roger Dickinson, Chair



LAO
70 YEARS OF SERVICE

State Law Provides Authority to Establish Health Care Districts

☑ ***Special Districts.*** Special districts are local governments that are legally separate from counties and cities. They deliver specific public services allowed by state law and supported by residents within defined boundaries.

- Special districts may have authority to build public works projects and run programs, and power to impose taxes to raise funds to pay for these services.
- Special districts may have authority to enter into contracts, purchase property, exercise eminent domain, issue debt, and hire staff.

☑ ***Local Health Care Districts Are a Type of Special District.*** In 1945, the Legislature enacted the Local Hospital District Law (later renamed the Local Health Care District Law).

- The law authorized special districts to build and operate hospitals and other health care facilities in underserved areas, and to recruit and support physicians.
- Chapter 696, Statutes of 1994 (SB 1169, Maddy), renamed hospital districts "health care districts," reflecting that health care was increasingly being provided outside of the hospital setting.

☑ ***Health Care Districts Are Governed Locally.*** Each health care district is governed by a locally elected five-member board of directors. Health care districts are also subject to state policies and regulations as applied by each county's Local Agency Formation Commission (LAFCO).

- LAFCOs conduct "municipal service reviews" and oversee the formation, dissolution, and reorganization of all special districts, including health care districts.
- Chapter 109, Statutes of 2011 (AB 912, Gordon), allows LAFCOs—with some exceptions—to dissolve special districts without holding voter elections.

LAO
70 YEARS OF SERVICE

State Law Provides Broad Authority to Health Care Districts

☑ ***State Law Enumerates Various Powers.*** Authority granted to health care districts under current law includes, but is not limited to:

- Operating health care facilities such as hospitals, clinics, skilled nursing facilities (SNF), adult day health centers, nurses' training school, and child care facilities.
- Operating ambulance services within and outside of the district.
- Operating programs that provide chemical dependency services, health education, wellness and prevention, rehabilitation, and aftercare.
- Carrying out activities through corporations, joint ventures, or partnerships.
- Establishing or participating in managed care.
- Contracting with and making grants to provider groups and clinics in the community.
- Other activities that are necessary for the maintenance of good physical and mental health in communities served by the district.

☑ ***State Law Limits Flexibility on Setting Rates.*** Health care districts that contract with providers to provide care for indigent county patients may not set rates paid to providers below the cost of care. The law requires that district board members set rates that, whenever possible, permit provider facilities to operate on a self-supporting basis.

LAO
70 YEARS OF SERVICE

Health Care District Operations Vary Throughout State

☑ ***Health Care Districts Grew in the 1940s and 1950s.*** There are currently 73 health care districts serving 40 counties. Most were established in the first two decades following enactment of the Local Hospital District Law and the federal Hospital Survey and Construction Act.

☑ ***Health Care Districts Vary Regionally.*** Health care districts may overlap county boundaries and can be found in urban, suburban, and rural communities. For example, there are 29 rural health care districts and 19 counties with multiple health care districts.

☑ ***43 Districts Currently Operate Hospitals.*** Small rural districts may have only a few general acute care beds, while larger urban districts may have hundreds of beds with many specialized care units. District hospitals are the only public hospitals in 22 counties.

☑ ***30 Districts Do Not Currently Operate Hospitals.*** Some health care districts have never operated a hospital. In addition, some health care districts that previously operated hospitals until the 1990s no longer operate them.

- Some districts established legally separate nonprofit hospital corporations, and transferred ownership or operation of facilities to public and private systems. Examples include Grossmont Healthcare District and San Gorgonio Memorial Health Care District in San Diego County.
- Some districts have closed their hospitals, such as Beach Cities Health District in Los Angeles County and Bloss Memorial Healthcare District in Merced County.

LAO
70 YEARS OF SERVICE

Health Care Districts Raise Funds Through Various Mechanisms

☑ ***General Taxes.*** Most health care districts receive a share of local property taxes. The share of local property tax going to health care districts varies among districts.

- Palomar Health in San Diego County received $13 million in property tax revenue in 2009, accounting for 3 percent of the district's operating budget.

☑ ***Special Taxes.*** Some health care districts have received two-thirds voter approval to levy special "parcel taxes" for each lot or acre of ground.

- City of Alameda Health Care District was formed in 2002 when voters approved a $296 annual parcel tax to assume operation of Alameda Hospital.

☑ ***Service Charges.*** Health care districts may run hospitals, clinics, SNF, and ambulance services. These activities earn revenue and are entirely or predominately self-supporting through service charges. These are sometimes referred to as enterprise activities.

☑ ***Other Revenues.*** Some health care districts generate revenues from district resources, such as property lease income and interest earnings from investments. They may also receive grants from public and private sources.

☑ ***Debt Financing.*** Health care districts can create debt to borrow money needed for capital projects such as hospital construction. General obligation bonds require two-thirds voter approval to raise property tax rates for district residents to serve as the mechanism to repay the bonds. Revenue bonds are backed by user fees. Districts may also issue promissory notes and receive loans from state and federal governments.

- Directors of the City of Alameda Health Care District have proposed using parcel tax revenues to secure loans for hospital expansion projects.

LAO
70 YEARS OF SERVICE

Some Health Care Districts Have Faced Recent Local Challenges

☑ ***LAFCOs Have Considered Dissolving Health Care Districts.*** Five districts have been dissolved or otherwise reorganized since 2000. Contra Costa County LAFCO is currently considering consolidating Mount Diablo Healthcare District into the City of Concord. Contra Costa LAFCO also considered but did not pursue dissolution of Los Medanos Community Hospital District in 1999. Both districts do not currently operate hospitals.

☑ ***Grand Juries Have Questioned District Practices.*** El Camino Hospital District in Santa Clara County was the subject of a civil grand jury report in 2011. The report raised concerns over whether the district had used property tax or corporation revenues to purchase a healthcare facility outside its boundaries.

☑ ***Financial Issues.*** Seven health care districts have declared bankruptcy since 2000. Other districts may have reserve balances in the tens of millions of dollars. Peninsula Health Care District and Beach Cities Health District have each reported over $45 million in unrestricted net assets (reserves) at the end of June 2011.

- Peninsula Health Care District leases Peninsula Hospital to Mills-Peninsula Health Services (MPHS)—a nonprofit, private health system—and reports that it maintains a portion of reserves to resume control of the hospital in the event that MPHS defaults on hospital reconstruction or fails to provide core medical services.
- Beach Cities Health District's audited financial statements state that reserves may be used to meet the district's ongoing obligations to residents and creditors.

EXHIBIT "H"

CA B. An., A.B. 2374 Sen., 6/26/1996

California Bill Analysis, Senate Committee, 1995-1996 Regular Session, Assembly Bill 2374

June 26, 1996
California Senate
1995-1996 Regular Session

SENATE LOCAL GOVERNMENT COMMITTEE

Senator William A. Craven, Chairman

BILL NO: **AB 2374**

HEARING: 06/26/96

AUTHOR: Bates

FISCAL: No

AMENDED: 06/24/96

CONSULTANT: Ihrke

ALAMEDA COUNTY HOSPITAL AUTHORITY

Background and Existing Law

Current law requires counties to be the "provider of last resort" for all indigent residents. Before a county board of supervisors can reduce health care services and facilities, they must hold a public hearing and make findings that proposed reductions will not have a detrimental impact on the indigent population.

The Legislature authorized Alameda County to establish a separate health authority that manages the Alameda County Alliance for Health, a public/private Medi-Cal Health Maintenance Organization (HMO) that serves uninsured and underinsured patients (AB 2755, Lee, 1994). The County has a Medical Center comprised of three inpatient/outpatient hospital campuses, five County Health Centers, and a number of programs which are supported by these facilities. Highland Hospital (part of the Medical Center) was the primary provider of services for indigent patients who were covered by Medi-Cal. Before managed care, private physicians rarely served Medi-Cal recipients. Since the proliferation of HMOs, however, private hospitals have accepted Medi-Cal patients and have taken away substantial dollars from Highland, which adversely affects the entire Medical Center.

To mitigate fiscal difficulties, the County is pursuing legislation that would authorize the board of supervisors to establish a hospital authority to manage the Medical Center. By allowing an independently appointed hospital board to manage the center, the County could increase health care service options by contracting out for selected services, by reducing the use of civil service county employees, and by making quasi-independent business decisions. State law currently allows health care districts to form nonprofit corporations and transfer all their assets to them. Alameda County wants a similar option for its Medical Center.

Proposed Law

Assembly Bill 2374 authorizes the board of supervisors in Alameda County to establish, by ordinance, a hospital authority separate and apart from the county for the purpose of effecting a transfer of the management, administration, and control of the Alameda County Medical Center as deemed appropriate by the board.

AB 2374 requires the hospital authority's governing board to be appointed by the board of supervisors. The enabling ordinance will specify the board size, qualifications for members, manner of appointment, terms of office, and other matters. **AB 2374** authorizes the hospital authority to receive any state, federal, or other funds that would otherwise be available to a county hospital.

AB 2374 relieves the County of its liabilities or obligations if the hospital authority assumes responsibility for the Medical Center, but the county will not be relieved of its service obligations to indigent residents. Before a transfer of the Medical Center from the County can occur, findings must be made that community services could be more efficiently, effectively, or economically provided by the hospital authority.

AB 2374 requires the hospital authority to be bound by the terms of a memorandum of understanding between the County and health care and management employee organizations. After the memorandum of understanding expires, the hospital authority has the authority to negotiate subsequent agreements with the appropriate employee organizations.

Comments

1. Helping the County help itself. Expanding managed care, changes in medical care practice, and reduced state funding for county health care has resulted in funding problems for the County Medical Center, which experienced an operating deficit in 1995. The ability of Alameda County to meet the needs of its clients at the Medical Center has been challenged, and, by transferring the governing authority of the Medical Center from the board of supervisors to the hospital authority, the County gains needed flexibility to respond to the marketplace while ensuring obligations to the indigent. Moreover, supervisors, who generally do not have expertise in health care issues, would be allowed to defer health care decisions to experts in the field.

2. Providing expertise or dodging bullets? **AB 2374** allows the board of supervisors to appoint members to a hospital authority, which would enable the supervisors to ignore laws that protect civil servants and in-house employment. Supervisors would be distancing themselves from political decisions regarding the Medical Center. The Committee may wish to consider whether appointing a separate governing board is in the County's constituents' best interests.

3. Conflict-of-interest. Current law prohibits local agency employees from holding a political office that might lead to questionable or incompatible actions. A prior version of **AB 2374** specifically prohibited the board of supervisors from appointing persons who are health care providers or employees. After the bill passed the Assembly, it was amended in the Senate so that current providers and employees are not forbidden from serving on the hospital board. Though serving on an appointed board doesn't necessarily present a conflict-of-interest, the Committee may wish to consider if it is appropriate for current county health care employees to be appointed to the hospital board.

4. Deja vu. In 1994, the Legislature authorized Alameda County to create a separate hospital authority to manage its Medi-Cal HMO (AB 2755, Lee, 1994). **AB 2374** authorizes the board of supervisors to establish another hospital authority to manage the County's Medical Center. Legislative Counsel opined that current law does not enable the County to use the HMO hospital authority's governing board to simultaneously serve as the Medical Center's governing board. Moreover, the functions of the HMO's governing board could potentially be in conflict with the Medical Center's governing board. The Committee, however, may wish to consider whether it is advantageous to have one separately appointed hospital authority for both the HMO and Medical Center, if the County wants to save scarce resources.

Assembly Actions:

Health:	12-4
Floor:	53-20

Support and Opposition (06/20/96)

Support: California Mental Health Directors Association, County of Alameda, County Health Executives Association of California, East Bay Hospital Conference.

Opposition: Vote Health Coalition.

CA B. An., A.B. 2374 Sen., 6/26/1996

End of Document

EXHIBIT "I"

CA B. An., S.B. 796 Assem., 9/02/2003

California Bill Analysis, Assembly Floor, 2003-2004 Regular Session, Senate Bill 796

September 2, 2003
California Assembly
2003-2004 Regular Session

SENATE THIRD READING

SB 796 (Dunn)

As Amended September 2, 2003

Majority vote

SENATE VOTE: 21-14

JUDICIARY 9-4 LABOR AND EMPLOYMENT 5-2

Ayes:	Corbett, Dutra, Hancock, Jackson, Lieber, Longville, Montanez, Steinberg, Berg	Ayes:	Koretz, Mullin, Chu, Hancock, Laird
Nays:	Harman, La Malfa, Pacheco, Spitzer	Nays:	Shirley Horton, Houston

APPROPRIATIONS 16-7

Ayes:	Steinberg, Berg, Calderon, Corbett, Correa, Diaz, Goldberg, Leno, Nation, Negrete McLeod, Nunez, Pavley, Ridley-Thomas, Simitian, Wiggins, Yee
Nays:	Bates, Daucher, Haynes, Maldonado, Pacheco,

Runner, Samuelian

SUMMARY: Establishes an alternative "private attorney general" system for labor law enforcement that allows employees to pursue civil penalties for employment law violations. Specifically, this bill enacts the "Labor Code Private Attorneys General Act of 2004" which:

1) Establishes a civil penalty where one is not specifically provided under the Labor Code of $100 for each aggrieved employee per pay period for an initial violation, and $200 for each aggrieved employees per pay period for subsequent violations. The penalty would be $500 per violation for a violator who is not an employer.

2) Specifies that where the Labor and Workforce Development Agency (LWDA) or any of its subdivisions has discretion to assess civil penalties, a court may exercise the same discretion with respect to the civil penalties established by this bill. Moreover, the civil penalties do not apply if the alleged violation is a failure to act by the LWDA or any of its subdivisions.

3) Authorizes aggrieved employees to sue to recover civil penalties under the Labor Code in an action brought on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed. However, no private action may be maintained where the LWDA or any of its subdivisions initiates proceedings against the alleged violator on the same facts and theories and under the same section or sections of the Labor Code.

4) Defines an "aggrieved employee" as any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.

5) Provides that civil penalties recovered against a person that employs one or more employees shall be distributed as follows: 50% to the General Fund (GF), 25% to LWDA for employer and employee education; and, 25% to the aggrieved employees. Civil penalties recovered against persons that do not employ one or more employees are to be divided evenly between GF and LWDA.

6) Provides for the award of reasonable attorney's fees and costs to an aggrieved employee who prevails in such an action. Provides that this bill is not intended to affect the exclusive remedy provided by workers' compensation provisions of existing law.

FISCAL EFFECT: According to the Assembly Appropriations Committee, potential increased penalty revenue to the GF and to LWDA.

COMMENTS: Generally, civil enforcement statutes allow civil penalties to be recovered only by prosecutors, not by private litigants. Private plaintiffs who have been damaged by a statutory violation usually are restricted to traditional damage suits, or where damages are difficult to prove, to "statutory damages" in a specified amount or range.

Arguments in Support: The co-sponsors of this bill, the California Labor Federation, AFL-CIO and the California Rural Legal Assistance Foundation, argue that this bill will address inadequacies in labor law enforcement in two major ways. First, this bill assigns nominal civil fine amounts to the large number of Labor Code provisions, which currently carry criminal, but not civil, penalties. Second, it authorizes the filing of civil actions to recover existing and new civil penalties by aggrieved workers acting as private attorneys general.

The sponsors state that many Labor Code provisions are unenforced because they are punishable only as criminal misdemeanors, with no civil penalty or other sanction attached. Since district attorneys tend to direct their resources to violent crimes and other public priorities, Labor Code violations rarely result in criminal investigations and prosecutions. Proponents also contend that the state's current inability to enforce labor laws effectively is due to inadequate staffing and the continued growth of the underground economy. This inability, coupled with the state's severe budgetary shortfall requires a creative solution that will help the state crack down on labor law violators. Therefore, private actions to enforce the provisions of the Labor Code are necessary to ensure compliance with the law.

In addition, the sponsors claim that recent hiring freezes and elimination of vacant positions announced in response to the budget crisis may dramatically impact LWDA and its enforcement activities.

Arguments in Opposition: Opponents contend that this bill tips the balance of labor law protection in disproportionate favor to the employee to the detriment of already overburdened employers. Several employer groups, including the California Chamber of Commerce, cite the fact that employees are entitled to attorney's fees and costs if they prevail in their action under this bill, yet similar attorney's fees and costs are not provided for prevailing employers. Additionally, opponents cite the fact that there is no requirement imposed upon employees prior to filing civil action such as preliminary claim filing with the Labor Commissioner.

Opponents also expresses concern that this bill will encourage private attorneys to "act as vigilantes" pursuing frivolous violations on behalf of different employees. Opponents liken the danger of this bill to recent alleged abuse of Business and Professions Code Section 17200.

Opponents also contend that California already has a formal administrative procedure to handle these types of claims under the Labor Code that is both economical and efficient.

AB 276 (Koretz), pending in the Assembly, increases various civil penalties under the Labor Code, many of which have not been increased for decades.

Analysis Prepared by: Ben Ebbink / L. & E. / (916) 319-2091

FN: 0003169

CA B. An., S.B. 796 Assem., 9/02/2003

End of Document

EXHIBIT "J"

OFFICIAL NOTICE

INDUSTRIAL WELFARE COMMISSION
ORDER NO. 5-2001
REGULATING
WAGES, HOURS AND WORKING CONDITIONS IN THE

PUBLIC HOUSEKEEPING INDUSTRY

Effective July 1, 2002 as amended

Sections 4(A) and 10(C) amended and republished by the Department of Industrial Relations, effective January 1, 2019, pursuant to SB 3, Chapter 4, Statutes of 2016 and section 1182.13 of the Labor Code

This Order Must Be Posted Where Employees Can Read It Easily

IWC FORM 1105 (Rev. 11/2018)
OSP 06 98763

● Please Post With This Side Showing ●

OFFICIAL NOTICE

Effective July 1, 2002 as amended

Sections 4(A) and 10(C) amended and republished by the Department of Industrial Relations, effective January 1, 2019, pursuant to SB3, Chapter 4, Statutes of 2016 and section 1182.13 of the Labor Code

INDUSTRIAL WELFARE COMMISSION
ORDER NO. 5-2001
REGULATING
WAGES, HOURS AND WORKING CONDITIONS IN THE

PUBLIC HOUSEKEEPING INDUSTRY

TAKE NOTICE: To employers and representatives of persons working in industries and occupations in the State of California: The Department of Industrial Relations amends and republishes the minimum wage and meals and lodging credits in the Industrial Welfare Commission's Orders as a result of legislation enacted (SB 3, Ch. 4, Stats of 2016, amending section 1182.12 of the California Labor Code), and pursuant to section 1182.13 of the California Labor Code. The amendments and republishing make no other changes to the IWC's Orders.

1. APPLICABILITY OF ORDER

This order shall apply to all persons employed in the public housekeeping industry whether paid on a time, piece rate, commission, or other basis, except that:

(A) Except as provided in Sections 1,2,4,10, and 20, the provisions of this order shall not apply to student nurses in a school accredited by the California Board of Registered Nursing or by the Board of Vocational Nurse and Psychiatric Technician Examiners are exempted by the provisions of sections 2789 or 2884 of the Business and Professions Code;

(B) Provisions of sections 3 through 12 shall not apply to persons employed in administrative, executive, or professional capacities. The following requirements shall apply in determining whether an employee's duties meet the test to qualify for an exemption to those sections:

(1) Executive Exemption. A person employed in an executive capacity means any employee:

(a) Whose duties and responsibilities involve the management of the enterprise in which he or she is employed or of a customarily recognized department or subdivision thereof; and

(b) Who customarily and regularly directs the work of two or more other employees therein; and

(c) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; and

(d) Who customarily and regularly exercises discretion and independent judgment; and

(e) Who is primarily engaged in duties which meet the test of the exemption. The activities constituting exempt work and non-exempt work shall be construed in the same manner as such items are construed in the following regulations under the Fair Labor Standards Act effective as of the date of this order: 29 C.F.R. Sections 541.102, 541.104-111, and 541.115-116. Exempt work shall include, for example, all work that is directly and closely related to exempt work and work which is properly viewed as a means for carrying out exempt functions. The work actually performed by the employee during the course of the work week must, first and foremost, be examined and the amount of time the employee spends on such work, together with the employer's realistic expectations and the realistic requirements of the job, shall be considered in determining whether the employee satisfies this requirement.

(f) Such an employee must also earn a monthly salary equivalent to no less than two (2) times the state minimum wage for full-time employment. Full-time employment is defined in Labor Code Section 515(c) as 40 hours per week.

(2) Administrative Exemption. A person employed in an administrative capacity means any employee:

(a) Whose duties and responsibilities involve either:

(i) The performance of office or non-manual work directly related to management policies or general business operations of his employer or his employer's customers; or

(ii) The performance of functions in the administration of a school system, or educational establishment or institution, or of a department of subdivision thereof, in work directly related to the academic instruction or training carried on therein; and

(b) Who customarily and regularly exercises discretion and independent judgment; and

(c) Who regularly and directly assists a proprietor, or an employee employed in a bona fide executive or administrative capacity (as such terms are defined for purposes of this section); or

(d) Who performs under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge; or

(e) Who executes under only general supervision special assignments and tasks; and

(f) Who is primarily engaged in duties which meet the test of the exemption. The activities constituting exempt work and non-exempt work shall be construed in the same manner as such terms are construed in the following regulations under the Fair Labor Standards Act effective as of the date of this order: 29 C.F.R. Sections 541.201-205, 541.207-208, 541.210, and 541.215. Exempt work shall include, for example, all work that is directly and closely related to exempt work and work which is properly viewed as a means for carrying out exempt functions. The work actually performed by the employee during the course of the work week must, first and foremost, be examined and the amount of time the employee spends on such work, together with the employer's realistic expectations and the realistic requirements of the job, shall be considered in determining whether the employee satisfies this requirement.

(g) Such employee must also earn a monthly salary equivalent to no less than two (2) times the state minimum wage for full-time employment. Full-time employment is defined in Labor Code Section 515(c) as 40 hours per week.

(3) Professional Exemption. A person employed in a professional capacity means any employee who meets *all* of the following requirements:

(a) Who is licensed or certified by the State of California and is primarily engaged in the practice of one of the following recognized professions: law, medicine, dentistry, optometry, architecture, engineering, teaching, or accounting; or

(b) Who is primarily engaged in an occupation commonly recognized as a learned or artistic profession. For the purposes of this subsection, "learned or artistic profession" means an employee who is primarily engaged in the performance of:

(i) Work requiring knowledge of an advanced type in a field or science or learning customarily acquired by a prolonged

course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes, or work that is an essential part of or necessarily incident to any of the above work; or

(ii) Work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee or work that is an essential part of or necessarily incident to any of the above work; and

(iii) Whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time.

(c) Who customarily and regularly exercises discretion and independent judgment in the performance of duties set forth in paragraph (a).

(d) Who earns a monthly salary equivalent to no less than two (2) times the state minimum wage for full-time employment. Full-time employment is defined in Labor Code Section 515 (c) as 40 hours per week.

(e) Subparagraph (b) above is intended to be construed in accordance with the following provisions of federal law as they existed as of the date of this Wage Order: 29 C.F.R. Sections 541.207, 541.301(a)-(d), 541.302, 541.306, 541.307, 541.308, and 541.310.

(f) Notwithstanding the provisions of this subparagraph, pharmacists employed to engage in the practice of pharmacy, and registered nurses employed to engage in the practice of nursing, shall not be considered exempt professional employees, nor shall they be considered exempt from coverage for the purposes of this subsection unless they individually meet the criteria established for exemption as executive or administrative employees.

(g) Subparagraph (f) above, shall not apply to the following advanced practice nurses:

(i) Certified nurse midwives who are primarily engaged in performing duties for which certification is required pursuant to Article 2.5 (commencing with Section 2746) of Chapter 6 of Division 2 of the Business and Professions Code.

(ii) Certified nurse anesthetists who are primarily engaged in performing duties for which certification is required pursuant to Article 7 (commencing with Section 2825) of Chapter 6 of Division 2 of the Business and Professions Code.

(iii) Certified nurse practitioners who are primarily engaged in performing duties for which certification is required pursuant to Article 8 (commencing with Section 2834) of Chapter 6 of Division 2 of the Business and Professions Code.

(iv) Nothing in this subparagraph shall exempt the occupations set forth in clauses (i), (ii), and (iii) from meeting the requirements of subsection 1(B)(3)(a)-(d), above.

(h) Except as provided in subparagraph (i), an employee in the computer software field who is paid on an hourly basis shall be exempt, if *all* of the following apply:

(i) The employee is primarily engaged in work that is intellectual or creative and requires the exercise of discretion and independent judgment.

(ii) The employee is primarily engaged in duties that consist of one or more of the following:

—The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications.

— The design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to, user or system design specifications.

—The documentation, testing, creation, or modification of computer programs related to the design of software or hardware for computer operating systems.

(iii) The employee is highly skilled and is proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming, and software engineering. A job title shall not be determinative of the applicability of this exemption.

(iv) The employee's hourly rate of pay is not less than forty-one dollars ($41.00). The Office of Policy, Research and Legislation shall adjust this pay rate on October 1 of each year to be effective on January 1 of the following year by an amount equal to the percentage increase in the California Consumer Price Index for Urban Wage Earners and Clerical Workers.*

(i) The exemption provided in subparagraph (h) does not apply to an employee if *any* of the following apply:

(i) The employee is a trainee or employee in an entry-level position who is learning to become proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming, and software engineering.

(ii) The employee is in a computer-related occupation but has not attained the level of skill and expertise necessary to work independently and without close supervision.

(iii) The employee is engaged in the operation of computers or in the manufacture, repair, or maintenance of computer hardware and related equipment.

(iv) The employee is an engineer, drafter, machinist, or other professional whose work is highly dependent upon or facilitated by the use of computers and computer software programs and who is skilled in computer-aided design software, including CAD/CAM, but who is not in a computer systems analysis or programming occupation.

(v) The employee is a writer engaged in writing material, including box labels, product descriptions, documentation, promotional material, setup and installation instructions, and other similar written information, either for print or for onscreen media or who writes or provides content material intended to be read by customers, subscribers, or visitors to computer-related media such as the World Wide Web or CD-ROMs.

(vi) The employee is engaged in *any* of the activities set forth in subparagraph (h) for the purpose of creating imagery for effects used in the motion picture, television, or theatrical industry.

(C) Except as provided in Sections 1, 2, 4, 10, and 20, the provisions of this order shall not apply to any employees directly employed by the State or any political subdivision thereof, including any city, county, or special district.

(D) The provisions of this order shall not apply to outside salespersons.

(E) Provisions of this order shall not apply to any individual who is the parent, spouse, child, or legally adopted child of the employer.

(F) The provisions of this order shall not apply to any individual participating in a national service program, such as AmeriCorps, carried out using assistance provided under Section 12571 of Title 42 of the United States Code. (See Stats. 2000, ch. 365, amending Labor Code § 1171.)

2. DEFINITIONS

(A) An "alternative workweek schedule" means any regularly scheduled workweek requiring an employee to work more than eight (8) hours in a 24-hour period.

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* Pursuant to Labor Code section 515.5, subdivision (a)(4), the Office of Policy, Research and Legislation, Department of Industrial Relations, has adjusted the minimum hourly rate of pay specified in this subdivision to be $49.77, effective January 1, 2007. This hourly rate of pay is adjusted on October 1 of each year to be effective on January 1, of the following year, and may be obtained at www.dir.ca.gov/IWC or by mail from the Department of Industrial Relations.

(B) "Commission" means the Industrial Welfare Commission of the State of California.

(C) "Division" means the Division of Labor Standards Enforcement of the State of California.

(D) "Emergency" means an unpredictable or unavoidable occurrence at unscheduled intervals requiring immediate action.

(E) "Employ" means to engage, suffer, or permit to work.

(F) "Employee" means any person employed by an employer, and includes any lessee who is charged rent, or who pays rent for a chair, booth, or space and

(1) who does not use his or her own funds to purchase requisite supplies, and

(2) who does not maintain an appointment book separate and distinct from that of the establishment in which the space is located, and

(3) who does not have a business license where applicable.

(G) "Employees in the Healthcare Industry" means any of the following:

(1) Employees in the healthcare industry providing patient care; or

(2) Employees in the healthcare industry working in a clinical or medical department, including pharmacists dispensing prescrip tions in any practice setting; or

(3) Employees in the healthcare industry working primarily or regularly as a member of a patient care delivery team

(4) Licensed veterinarians, registered veterinary technicians and unregistered animal health technicians providing patient care.

(H) "Employer" means any person as defined in Section 18 of the Labor Code, who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person.

(I) "Healthcare Emergency" consists of an unpredictable or unavoidable occurrence at unscheduled intervals relating to healthcare delivery, requiring immediate action.

(J) "Healthcare Industry" is defined as hospitals, skilled nursing facilities, intermediate care and residential care facilities, convalescent care institutions, home health agencies, clinics operating twenty-four (24) hours per day, and clinics performing surgery, urgent care, radiology, anesthesiology, pathology, neurology or dialysis.

(K) "Hours worked" means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so, and in the case of an employee who is required to reside on the employment premises, that time spent carrying out assigned duties shall be counted as hours worked. Within the health care industry, the term "hours worked" means the time during which an employee is suffered or permitted to work for the employer, whether or not required to do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act.

(L) "Minor" means, for the purpose of this Order, any person under the age of 18 years.

(M) "Outside Salesperson" means any person, 18 years of age or over, who customarily and regularly works more than half the working time away from the employer's place of business selling tangible or intangible items or obtaining orders or contracts for products, services or use of facilities.

(N) "Personal attendant" includes baby sitters and means any person employed by a non-profit organization covered by this order to supervise, feed or dress a child or person who by reason of advanced age, physical disability or mental deficiency needs supervision. The status of "personal attendant" shall apply when no significant amount of work other than the foregoing is required.

(O) "Primarily" as used in Section 1, Applicability, means more than one-half the employee's work time.

(P) "Public Housekeeping Industry" means any industry, business, or establishment which provides meals, housing, or maintenance services whether operated as a primary business or when incidental to other operations in an establishment not covered by an industry order of the Commission, and includes, but is not limited to the following:

(1) Restaurants, night clubs, taverns, bars, cocktail lounges, lunch counters, cafeterias, boarding houses, clubs, and all similar establishments where food in either solid or liquid form is prepared and served to be consumed on the premises;

(2) Catering, banquet, box lunch service, and similar establishments which prepare food for consumption on or off the premises;

(3) Hotels, motels, apartment houses, rooming houses, camps, clubs, trailer parks, office or loft buildings, and similar establishments offering rental of living, business, or commercial quarters;

(4) Hospitals, sanitariums, rest homes, child nurseries, child care institutions, homes for the aged, and similar establishments offering board or lodging in addition to medical, surgical, nursing, convalescent, aged, or child care;

(5) Private schools, colleges, or universities, and similar establishments which provide board or lodging in addition to educational facilities;

(6) Establishments contracting for development, maintenance or cleaning of grounds; maintenance or cleaning of facilities and/or quarters of commercial units and living units; and

(7) Establishments providing veterinary or other animal care services.

(Q) "Shift" means designated hours of work by an employee, with a designated beginning time and quitting time.

(R) "Split shift" means a work schedule which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods.

(S) "Teaching" means, for the purpose of section 1 of this Order, the profession of teaching under a certificate from the Commission for Teacher Preparation and Licensing or teaching in an accredited college or university.

(T) "Wages" include all amounts of labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.

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

(V) "Workweek" and "week" mean any seven (7) consecutive days, starting with the same calendar day each week. "Workweek" is a fixed and regularly recurring period of 168 hours, seven (7) consecutive 24-hour periods.

3. HOURS AND DAYS OF WORK

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half ($1^1/_2$) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half ($1^1/_2$) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7^{th}) consecutive day of work in a workweek; and

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7^{th}) consecutive day of work in a workweek.

(c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

(2) Employees with direct responsibility for children who are under 18 years of age or who are not emancipated from the foster care

system and who, in either case, are receiving 24 hour residential care, may, without violating any provision of this section, be compensated as follows:

(a) An employee who works in excess of 40 hours in a workweek shall be compensated at one and one-half (1½) times the employee's regular rate of pay for all hours over 40 hours in the workweek.

(b) An employee shall be compensated at two (2) times the employee's regular rate of pay for all hours in excess of 48 hours in the workweek.

(c) An employee shall be compensated at two (2) times the employee's regular rate of pay for all hours in excess of 16 in a workday.

(d) No employee shall work more than 24 consecutive hours until said employee receives not less than eight (8) consecutive hours off-duty immediately following the 24 consecutive hours of work. Time spent sleeping shall not be included as hours worked.

(e) Section (A)(2) above shall apply to employees of 24 hour non-medical out of home licensed residential facilities of 15 beds or fewer for the developmentally disabled, elderly, and mentally ill adults.

This section, (3)(A)(2)(e), shall sunset on July 1, 2005.

(B) Alternative Workweek Schedules

(1) No employer shall be deemed to have violated the daily overtime provisions by instituting, pursuant to the election procedures set forth in this wage order, a regularly scheduled alternative workweek schedule of not more than ten (10) hours per day within a 40 hour workweek without the payment of an overtime rate of compensation. All work performed in any workday beyond the schedule established by the agreement up to twelve (12) hours a day or beyond 40 hours per week shall be paid at one and one-half (1½) times the employee's regular rate of pay. All work performed in excess of twelve (12) hours per day and any work in excess of eight (8) hours on those days worked beyond the regularly scheduled number of workdays established by the alternative workweek agreement shall be paid at double the employee's regular rate of pay. Any alternative workweek agreement adopted pursuant to this section shall provide for not less than four (4) hours of work in any shift. Nothing in this section shall prohibit an employer, at the request of the employee, to substitute one day of work for another day of the same length in the shift provided by the alternative workweek agreement on an occasional basis to meet the personal needs of the employee without the payment of overtime. No hours paid at either one and one-half (1½) or double the regular rate of pay shall be included in determining when 40 hours have been worked for the purpose of computing overtime compensation.

(2) If an employer, whose employees have adopted an alternative workweek agreement permitted by this order requires an employee to work fewer hours than those that are regularly scheduled by the agreement, the employer shall pay the employee overtime compensation at a rate of one and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours, and double the employee's regular rate of pay for all hours worked in excess of 12 hours for the day the employee is required to work the reduced hours.

(3) 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.

(4) 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.

(5) An employer shall make a reasonable effort to find a work schedule not to exceed eight (8) 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 workweek schedule established as the result of that election.

(6) An employer shall be permitted, but not required, to provide a work schedule not to exceed eight (8) hours in a workday to accommodate any employee who is hired after the date of the election and who is unable to work the alternative workweek schedule established by the election.

(7) Arrangements adopted in a secret ballot election held pursuant to this order prior to 1998, or under the rules in effect prior to 1998, and before the performance of the work, shall remain valid after July 1, 2000 provided that the results of the election are reported by the employer to the Office of Policy, Research and Legislation by January 1, 2001, in accordance with the requirements of Section C below (Election Procedures). If an employee was voluntarily working an alternative workweek schedule of not more than ten (10) hours a day as of July 1, 1999, that alternative workweek was based on an individual agreement made after January 1, 1998 between the employee and employer, and the employee submitted, and the employer approved, a written request on or before May 30, 2000 to continue the agreement, the employee may continue to work that alternative workweek schedule without payment of an overtime rate of compensation for the hours provided in the agreement. An employee may revoke his or her voluntary authorization to continue such a schedule with 30 days written notice to the employer. New arrangements can only be entered into pursuant to the provisions of this section. Notwithstanding the foregoing, if a health care industry employer implemented a reduced rate for 12 hour shift employees in the last quarter of 1999 and desires to re-implement a flexible work arrangement that includes 12 hour shifts at straight time for the same work unit, the employer must pay a base rate to each affected employee in the work unit that is no less than that employee's base rate in 1999 immediately prior to the date of the rate reduction.

(8) Notwithstanding the above provisions regarding alternative workweek schedules, no employer of employees in the healthcare industry shall be deemed to have violated the daily overtime provisions by instituting, pursuant to the election procedures set forth in this wage order a regularly scheduled alternative workweek schedule that includes work days exceeding ten (10) hours but not more than 12 hours within a 40-hour workweek without the payment of overtime compensation, provided that:

(a) An employee who works beyond 12 hours in a workday shall be compensated at double the employee's regular rate of pay for all hours in excess of (12);

(b) An employee who works in excess of 40 hours in a workweek shall be compensated at one and one-half (1½) times the employee's regular rate of pay for all hours over 40 hours in the workweek;

(c) Any alternative workweek agreement adopted pursuant to this section shall provide for not less than four (4) hours of work in any shift.

(d) The same overtime standards shall apply to employees who are temporarily assigned to a work unit covered by this sub-section;

(e) Any employer who instituted an alternative workweek schedule pursuant to this subsection shall make a reasonable effort to find another work assignment for any employee who participated in a valid election prior to 1998 pursuant to the provisions of Wage Orders 4 and 5 and who is unable to work the alternative workweek schedule established.

(f) An employer engaged in the operation of a licensed hospital or in providing personnel for the operation of a licensed hospital who institutes, pursuant to a valid order of the Commission, a regularly scheduled alternative workweek that includes no more than three (3) 12-hour workdays, shall make a reasonable effort to find another work assignment for any employee who participated in the vote which authorized the schedule and is unable to work the 12-hour shifts. An employer shall not be required to offer a different work assignment to an employee if such a work assignment is not available or if the employee was hired after the adoption of the 12 hour, three (3) day alternative workweek schedule.

(9) No employee assigned to work a 12 hour shift established pursuant to this Order shall be required to work more than 12 hours in any 24 hour period unless the Chief Nursing Officer or authorized executive declares that:

(a) A "healthcare emergency", as defined, exists in this Order, and

(b) All reasonable steps have been taken to provide required staffing, and

(c) Considering overall operational status needs, continued overtime is necessary to provide required staffing.

(10) Provided further that no employee shall be required to work more than 16 hours in a 24-hour period unless by voluntary mutual agreement of the employee and employer, and no employee shall work more than 24 consecutive hours until said employee receives not less than eight (8) consecutive hours off-duty immediately following the 24 consecutive hours of work.

(11) Notwithstanding subsection (B)(9) above, an employee may be required to work up to 13 hours in any 24-hour period if the employee scheduled to relieve the subject employee does not report for duty as scheduled and does not inform the employer more than two (2) hours in advance of that scheduled shift that he/she will not be appearing for duty as scheduled.

(C) Election Procedures

Election procedures for the adoption and repeal of alternative workweek schedules require the following:

(1) Each proposal for an alternative workweek schedule shall be in the form of a written agreement proposed by the employer. The proposed agreement 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 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. If the employer proposes a menu of work schedule options, the employee may, with the approval of the employer, move from one menu option to another.

(2) In order to be valid, the proposed alternative workweek schedule must be adopted in a secret ballot election, before the performance of work, by at least a two-thirds (2/3) vote of the affected employees in the work unit. The election shall be held during regular working hours at the employees' work site. For purposes of this subsection, "affected employees in the work unit" may include all employees in a readily identifiable work unit, such as a division, a department, a job classification, a shift, a separate physical location, or a recognized subdivision of any such work unit. A work unit may consist of an individual employee as long as the criteria for an identifiable work unit in this subsection is met.

(3) Prior to the secret ballot vote, any employer who proposed to institute an alternative workweek schedule shall have made a disclosure in writing to the affected employees, including the effects of the proposed arrangement on the employees' wages, hours, and benefits. Such a disclosure shall include meeting(s), duly noticed, held at least fourteen (14) days prior to voting, for the specific purpose of discussing the effects of the alternative workweek schedule. An employer shall provide that disclosure in a non-English language, as well as in English, if at least five (5) percent of the affected employees primarily speak that non-English language. The employer shall mail the written disclosure to employees who do not attend the meeting. Failure to comply with this paragraph shall make the election null and void.

(4) Any election to establish or repeal an alternative workweek schedule shall be held at the work site of the affected employees. The employer shall bear the costs of conducting any election held pursuant to this section. 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.

(5) Any type of alternative workweek schedule that is authorized by the Labor Code may be repealed by the affected employees. Upon a petition of one-third (1/3) of the affected employees, a new secret ballot election shall be held and a two-thirds (2/3) vote of the affected employees shall be required to reverse the alternative workweek schedule. The election to repeal the alternative workweek schedule shall be held not more than 30 days after the petition is submitted to the employer, except that the election shall be held not less than 12 months after the date that the same group of employees voted in an election held to adopt or repeal an alternative workweek schedule. However, where an alternative workweek schedule was adopted between October 1, 1999 and October 1, 2000, a new secret ballot election to repeal that alternative workweek schedule shall not be subject to the 12-month interval between elections. The election shall take place during regular working hours at the employees' work site. If the alternative workweek schedule is revoked, the employer shall comply within 60 days. Upon proper showing of undue hardship, the Division of Labor Standards Enforcement may grant an extension of time for compliance.

(6) Only secret ballots may be cast by affected employees in the work unit at any election held pursuant to this section. The results of any election conducted pursuant to this section shall be reported by the employer to the Office of Policy, Research and Legislation within 30 days after the results are final, and the report of election results shall be a public document. The report shall include the final tally of the vote, the size of the unit, and the nature of the business of the employer.

(7) Employees affected by a change in the 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.

(8) Employers shall not intimidate or coerce employees to vote either in support of or in opposition to a proposed alternative workweek. No employees shall be discharged or discriminated against for expressing opinions concerning the alternative workweek election or for opposing or supporting its adoption or repeal. However, nothing in this section shall prohibit an employer from expressing his/her position concerning that alternative workweek to the affected employees. A violation of this subsection shall be subject to Labor Code section 98 et seq.

(D) No employer engaged in the operation of a hospital or an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises shall be deemed to have violated any provision of this section if, pursuant to an agreement or understanding arrived at between the employer and employee before performance of work, a work period of 14 consecutive days is accepted in lieu of the workweek of seven (7) consecutive days for purposes of overtime computation and if, for any employment in excess of 80 hours in such 14 day period, the employee receives compensation at a rate not less than one and one-half (1½) times the regular rate at which the employee is employed.

(E) This section does not apply to organized camp counselors who are not employed more than 54 hours and not more than six (6) days in any workweek except under the conditions set forth below. This section shall also not apply to personal attendants as defined in Section 2 (N), nor to resident managers of homes for the aged having less than eight (8) beds; provided that persons employed in such occupations shall not be employed more than 40 hours nor more than six (6) days in any workweek, except under the following conditions:

In the case of emergency, employees may be employed in excess of forty (40) hours or six (6) days in any workweek provided the employee is compensated for all hours in excess of 40 hours and days in excess of six (6) days in the workweek at not less than one and one-half (1½) times the employee's regular rate of pay. However, regarding organized camp counselors, in case of emergency they may be employed in excess of 54 hours or six (6) days, provided that they are compensated at not less than one and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of 54 hours and six (6) days in the workweek.

(F) One and one-half (1½) times a minor's regular rate of pay shall be paid for all work over 40 hours in any workweek except minors 16 or 17 years old who are not required by law to attend school and may therefore be employed for the same hours as an adult are subject to subsection (A), (B), (C), or (D) above.

(**VIOLATIONS OF CHILD LABOR LAWS** are subject to civil penalties of from $500 to $10,000 as well as to criminal penalties. Refer to California Labor Code sections 1285 to 1312 and 1390 to 1399 for additional restrictions on the employment of minors and for descriptions of criminal and civil penalties for violation of the child labor laws. Employers should ask school districts about any required work permits.)

(G) An employee may be employed on seven (7) workdays in a workweek when the total hours of employment during such workweek do not exceed 30 and the total hours of employment in any one workday thereof do not exceed six (6)

(H) If a meal period occurs on a shift beginning or ending at or between the hours of 10 p.m. and 6 a.m., facilities shall be available for.

securing hot food and drink or for heating food or drink, and a suitable sheltered place shall be provided in which to consume such food or drink.

(I) The provisions of this section are not applicable to employees whose hours of service are regulated by:

(1) The United States Department of Transportation Code of Federal Regulations, title 49, sections 395.1 to 395.13, Hours of Service of Drivers, or

(2) Title 13 of the California Code of Regulations, subchapter 6.5, section 1200 and following sections, regulating hours or drivers.

(J) The daily overtime provisions of subsection (A) above shall not apply to ambulance drivers and attendants scheduled for 24 hours shifts of duty who have agreed in writing to exclude from daily time worked not more than three (3) meal periods of not more than one hour each and a regularly scheduled uninterrupted sleeping period of not more than eight (8) hours. The employer shall provide adequate dormitory and kitchen facilities for employees on such a schedule.

(K) The provisions of Labor Code Sections 551 and 552 regarding one (1) day's rest in seven (7) shall 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, however, that in each calendar month, the employee shall receive the equivalent of one (1) day's rest in seven (7).

(L) Except as provided in subsections (F) and (K), this section 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.

(M) Notwithstanding subsection (L) above, where the employer and a labor organization representing employees of the employer have entered into a valid collective bargaining agreement pertaining to the hours of work of the employees, the requirement regarding the equivalent of one (1) day's rest in seven (7) (see subsection (K) above) shall apply, unless the agreement expressly provides otherwise.

(N) 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 one (1) day or 40 hours of work in one (1) workweek. If an employee knows in advance that he or she will be requesting make up time for a personal obligation that will recur at a fixed time over a succession of weeks, the employee may request to make up work time for up to four (4) weeks in advance; provided, however, that the make up work must be performed in the same week that the work time was lost. 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. While an employer may inform an employee of this make up time option, the 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 workweek pursuant to this Section.

4. MINIMUM WAGES

(A) Every employer shall pay to each employee wages not less than the following:

(1) Any employer who employs 26 or more employees shall pay to each employee wages not less than the following:

(a) Ten dollars and fifty cents ($10.50) per hour for all hours worked, effective January 1, 2017;
(b) Eleven dollars ($11.00) per hour for all hours worked, effective January 1, 2018;
(c) Twelve dollars ($12.00) per hour for all hours worked, effective January 1, 2019; and
(d) Thirteen dollars ($13.00) per hour for all hours worked, effective January 1, 2020.

(2) Any employer who employs 25 or fewer employees shall pay to each employee wages not less than the following:

(a) Ten dollars ($10.00) per hour for all hours worked, effective January 1, 2016 through December 31, 2017;
(b) Ten dollars and fifty cents ($10.50) per hour for all hours worked, effective January 1, 2018;
(c) Eleven dollars ($11.00) per hour for all hours worked, effective January 1, 2019; and
(d) Twelve dollars ($12.00) per hour for all hours worked, effective January 1, 2020.

Employees treated as employed by a single qualified taxpayer pursuant to Revenue and Taxation Code section 23626 are treated as employees of that single taxpayer. LEARNERS. Employees during their first one hundred and sixty (160) hours of employment in occupations in which they have no previous similar or related experience, may be paid not less than 85 percent of the minimum wage rounded to the nearest nickel.

(B) Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.

(C) When an employee works a split shift, one hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment.

(D) The provisions of this section shall not apply to apprentices regularly indentured under the State Division of Apprenticeship Standards.

5. REPORTING TIME PAY

(A) Each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled 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.

(B) If an employee is required to report for work a second time in any one workday and is furnished less than two hours of work on the second reporting, said employee shall be paid for two hours at the employee's regular rate of pay, which shall not be less than the minimum wage.

(C) The foregoing reporting time pay provisions are not applicable when:

(1) Operations cannot commence or continue due to threats to employees or property; or when recommended by civil authorities; or

(2) Public utilities fail to supply electricity, water, or gas, or there is a failure in the public utilities, or sewer system; or

(3) The interruption of work is caused by an Act of God or other cause not within the employer's control.

(CI) This section shall not apply to an employee on paid standby status who is called to perform assigned work at a time other than the employee's scheduled reporting time.

6. LICENSES FOR DISABLED WORKERS

(A) A license may be issued by the Division authorizing employment of a person whose earning capacity is impaired by physical disability or mental deficiency at less than the minimum wage. Such licenses shall be granted only upon joint application of employer and employee and employee's representative if any.

(B) A special license may be issued to a nonprofit organization such as a sheltered workshop or rehabilitation facility fixing special minimum rates to enable the employment of such persons without requiring individual licenses of such employees.

(C) All such licenses and special licenses shall be renewed on a yearly basis or more frequently at the discretion of the Division. (See California Labor Code, Sections 1191 and 1191.5.)

7. RECORDS

(A) Every employer shall keep accurate information with respect to each employee including the following:

(1) Full name, home address, occupation and social security number.

(2) Birth date, if under 18 years, and designation as a minor.

(3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.

(4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.

(5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.

(6) 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.

(B) Every employer shall semimonthly or at the time of each payment of wages 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.

(C) All required 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 for at least three years at the place of employment or at a central location within the State of California. An employee's records shall be available for inspection by the employee upon reasonable request.

(D) Clocks shall be provided in all major work areas or within reasonable distance thereto insofar as practicable.

8. CASH SHORTAGE AND BREAKAGE

No employer shall make any deduction from the wage or require any reimbursement from an employee for any cash shortage, breakage, or loss of equipment, unless it can be shown that the shortage, breakage, or loss is caused by a dishonest or willful act, or by the gross negligence of the employee.

9. UNIFORMS AND EQUIPMENT

(A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer. The term "uniform" includes wearing apparel and accessories of distinctive design or color.

NOTE: This section shall not apply to protective apparel regulated by the Occupational Safety and Health Standards Board.

(B) When tools or equipment are required by the employer 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 provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft. Notwithstanding any other provision of this section, employees in beauty salons, schools of beauty culture offering beauty care to the public for a fee, and barber shops may be required to furnish their own manicure implements, curling irons, rollers, clips, haircutting scissors, combs, blowers, razors, and eyebrow tweezers. This subsection (B) shall not apply to apprentices regularly indentured under the State Division of Apprenticeship Standards.

NOTE: This section shall not apply to protective equipment and safety devices on tools regulated by the Occupational Safety and Health Standards Board.

(C) A reasonable deposit may be required as security for the return of the items furnished by the employer under provisions of subsections (A) and (B) of this section upon issuance of a receipt to the employee for such deposit. Such deposits shall be made pursuant to Section 400 and following of the Labor Code or an employer with the prior written authorization of the employee may deduct from the employee's last check the cost of an item furnished pursuant to (A) and (B) above in the event said item is not returned. No deduction shall be made at any time for normal wear and tear. All items furnished by the employer shall be returned by the employee upon completion of the job.

10. MEALS AND LODGING

(A) "Meal" means an adequate, well-balanced serving of a variety of wholesome, nutritious foods.

(B) "Lodging" means living accommodations available to the employee for full-time occupancy which are adequate, decent, and sanitary according to usual and customary standards. Employees shall not be required to share a bed.

(C) Meals or lodging may not be credited against the minimum wage without a voluntary written agreement between the employer and the employee. When credit for meals or lodging is used to meet part of the employer's minimum wage obligation, the amounts so credited may not be more than the following:

EFFECTIVE:	**JANUARY 1, 2017**		**JANUARY 1, 2018**		**JANUARY 1, 2019**		**JANUARY 1, 2020**	
For an employer who employs:	**26 or More Employees**	**25 or Fewer Employees**	**26 or More Employees**	**25 or Fewer Employees**	**26 or More Employees**	**25 or Fewer Employees**	**26 or More Employees**	**25 or Fewer Employees**
LODGING								
Room occupied alone	$49.38/ week	$47.03/ week	$51.73/ week	$49.38/ week	$56.43/ week	$51.73/ week	$61.13/ week	$56.43/ week
Room shared	$40.76/ week	$38.82/ week	$42.70/ week	$40.76/ week	$46.58/ week	$42.70/ week	$50.46/ week	$46.58/ week
Apartment — two thirds (2/3) of the ordinary rental value, and in no event more than	$593.05/ month	$564.81/ month	$621.29/ month	$593.05/ month	$677.75/ month	$621.28/ month	$734.21/ month	$677.75/ month
Where a couple are both employed by the employer, two thirds (2/3) of the ordinary rental value, and in no event more than	$877.27/ month	$835.49/ month	$919.04/ month	$877.26/ month	$1002.56/ month	$919.02/ month	$1086.07/ month	$1002.56/ month
MEALS								
Breakfast	$3.80	$3.62	$3.98	$3.80	$4.34	$3.98	$4.70	$4.34
Lunch	$5.22	$4.97	$5.47	$5.22	$5.97	$5.47	$6.47	$5.97
Dinner	$7.09	$6.68	$7.35	$7.01	$8.01	$7.34	$8.68	$8.01

(D) Meals evaluated, as part of the minimum wage, must be bona fide meals consistent with the employee's work shift. Deductions shall not be made for meals not received nor lodging not used.

(E) If, as a condition of employment, the employee must live at the place of employment or occupy quarters owned or under the control of the employer, then the employer may not charge rent in excess of the values listed herein.

11. MEAL PERIODS

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6)

hours will complete the day's work the meal period may be waived by mutual consent of the employer and employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an 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. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

(B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the meal period is not provided.

(C) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

(D) Notwithstanding any other provision of this order, employees in the health care industry who work shifts in excess of eight (8) total hours in a workday may voluntarily waive their right to one of their two meal periods. In order to be valid, any such waiver must be documented in a written agreement that is voluntarily signed by both the employee and the employer. The employee may revoke the waiver at any time by providing the employer at least one day's written notice. The employee shall be fully compensated for all working time, including any on-the-job meal period, while such a waiver is in effect.

(E) Employees with direct responsibility for children who are under 18 years of age or who are not emancipated from the foster care system and who, in either case, are receiving 24 hour residential care, and employees of 24 hour residential care facilities for the elderly, blind or developmentally disabled individuals may be required to work on-duty meal periods without penalty when necessary to meet regulatory or approved program standards and one of the following two conditions is met:

(1) (a) The residential care employees eats with residents during residents' meals and the employer provides the same meal at no charge to the employee; or

(b) The employee is in sole charge of the resident(s) and, on the day shift, the employer provides a meal at no charge to the employee.

(2) An employee, except for the night shift, may exercise the right to have an off-duty meal period upon 30 days' notice to the employer for each instance where an off-duty meal is desired, provided that, there shall be no more than one off-duty meal period every two weeks.

12. REST PERIODS

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half ($3\frac{1}{2}$) hours. Authorized rest period time shall be counted, as hours worked, for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

(C) However, employees with direct responsibility for children who are under 18 years of age or who are not emancipated from the foster care system and who, in either case, are receiving 24 hour residential care and employees of 24 hour residential care facilities for elderly, blind or developmentally disabled individuals may, without penalty, require an employee to remain on the premises and maintain general supervision of residents during rest periods if the employee is in sole charge of residents. Another rest period shall be authorized and permitted by the employer when an employee is affirmatively required to interrupt his/her break to respond to the needs of residents.

13. CHANGE ROOMS AND RESTING FACILITIES

(A) Employers shall provide suitable lockers, closets, or equivalent for the safekeeping of employees' outer clothing during working hours, and when required, for their work clothing during non-working hours. When the occupation requires a change of clothing, change rooms or equivalent space shall be provided in order that employees may change their clothing in reasonable privacy and comfort. These rooms or spaces may be adjacent to but shall be separate from toilet rooms and shall be kept clean.

NOTE: This section shall not apply to change rooms and storage facilities regulated by the Occupational Safety and Health Standards Board.

(B) Suitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours.

14. SEATS

(A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.

(B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

15. TEMPERATURE

(A) The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed.

(B) If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort. Where the nature of the employment requires a temperature of less than 60° F., a heated room shall be provided to which employees may retire for warmth, and such room shall be maintained at not less than 68°.

(C) A temperature of not less than 68° shall be maintained in the toilet rooms, resting rooms, and change rooms during hours of use.

(D) Federal and State energy guidelines shall prevail over any conflicting provision of this section.

16. ELEVATORS

Adequate elevator, escalator or similar service consistent with industry-wide standards for the nature of the process and the work performed shall be provided when employees are employed four floors or more above or below ground level.

17. EXEMPTIONS

If, in the opinion of the Division after due investigation, it is found that the enforcement of any provision contained in Section 7, Records; Section 12, Rest Periods; Section 13, Change Rooms and Resting Facilities; Section 14, Seats; Section 15, Temperature; or Section 16, Elevators, would not materially affect the welfare or comfort of employees and would work an undue hardship on the employer, exemption may be made at the discretion of the Division. Such exemptions shall be in writing to be effective and may be revoked after reasonable notice is given in writing. Application for exemption shall be made by the employer or by the employee and/or the employee's representative to the Division in writing. A copy of the application shall be posted at the place of employment at the time the application is filed with the Division.

18. FILING REPORTS
(See California Labor Code, Section 1174(a))

19. INSPECTION
(See California Labor Code, Section 1174)

20. PENALTIES
(See Labor Code, Section 1199)

(A) In addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty of:

(1) Initial Violation — $50.00 for each underpaid employee for each pay period during which the employee was underpaid in addition to the amount which is sufficient to recover unpaid wages.

(2) Subsequent Violations — $100.00 for each underpaid employee for each pay period during which the employee was underpaid in addition to an amount which is sufficient to recover unpaid wages.

(3) The affected employee shall receive payment of all wages recovered.

(B) The Labor Commissioner may also issue citations pursuant to Labor Code § 1197.1 for non-payment of wages for overtime work in violation of this order.

21. SEPARABILITY
If the application of any provision of this Order, or any section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Order should be held invalid or unconstitutional or unauthorized or prohibited by statute, the remaining provisions thereof shall not be affected thereby, but shall continue to be given full force and effect as if the part so held invalid or unconstitutional had not been included herein.

22. POSTING OF ORDER
Every employer shall keep a copy of this Order posted in an area frequented by employees where it may be easily read during the workday. Where the location of work or other conditions make this impractical, every employer shall keep a copy of this Order and make it available to every employee upon request.

QUESTIONS ABOUT ENFORCEMENT of the Industrial Welfare Commission orders and reports of violations should be directed to the Labor Commissioner's Office. A listing of offices is on the back of this wage order. For the address and telephone number of the office nearest you, information can be found on the internet at http://www.dir.ca.gov/DLSE/dlse.html or under a search for "California Labor Commissioner's Office" on the internet or any other directory. The Labor Commissioner has offices in the following cities: Bakersfield, El Centro, Fresno, Long Beach, Los Angeles, Oakland, Redding, Sacramento, Salinas, San Bernardino, San Diego, San Francisco, San Jose, Santa Ana, Santa Barbara, Santa Rosa, Stockton, Van Nuys.

SUMMARIES IN OTHER LANGUAGES

The Department of Industrial Relations will make summaries of wage and hour requirements in this Order available in Spanish, Chinese and certain other languages when it is feasible to do so. Mail your request for such summaries to the Department at: P.O. Box 420603, San Francisco, CA 94142-0603.

RESUMEN EN OTROS IDIOMAS

El Departamento de Relaciones Industriales confeccionará un resumen sobre los requisitos de salario y horario de esta Disposición en español, chino y algunos otros idiomas cuando sea posible hacerlo. Envíe por correo su pedido por dichos resúmenes al Departamento a: P.O. Box 420603, San Francisco, CA 94142-0603.

其它文字的摘錄

工業關係署將摘錄本規則中有關工資和工時的規定，用西班牙文、中文印出。其它文字如有需要，也將按排辦理。如果您有需要，可以來信索閱，請寄到：

Department of Industrial Relations
P.O. Box 420603
San Francisco, CA 94142-0603

All complaints are handled confidentially. For further information or to file your complaints, contact the State of California at the following department offices:

California Labor Commissioner's Office, also known as, **Division of Labor Standards Enforcement (DLSE)**

BAKERSFIELD
Labor Commissioner's Office/DLSE
7718 Meany Ave.
Bakersfield, CA 93308
661-587-3060

EL CENTRO
Labor Commissioner's Office/DLSE
1550 W. Main St.
El Centro, CA 92643
760-353-0607

FRESNO
Labor Commissioner's Office/DLSE
770 E. Shaw Ave., Suite 222
Fresno, CA 93710
559-244-5340

LONG BEACH
Labor Commissioner's Office/DLSE
300 Oceangate, 3rd Floor
Long Beach, CA 90802
562-590-5048

LOS ANGELES
Labor Commissioner's Office/DLSE
320 W. Fourth St., Suite 450
Los Angeles, CA 90013
213-620-6330

OAKLAND
Labor Commissioner's Office/DLSE
1515 Clay Street, Room 801
Oakland, CA 94612
510-622-3273

OAKLAND – HEADQUARTERS
Labor Commissioner's Office/DLSE
1515 Clay Street, Room 401
Oakland, CA 94612
510-285-2118
DLSE2@dir.ca.gov

REDDING
Labor Commissioner's Office/DLSE
250 Hemsted Drive, 2nd Floor, Suite A
Redding, CA 96002
530-225-2655

SACRAMENTO
Labor Commissioner's Office/DLSE
2031 Howe Ave, Suite 100
Sacramento, CA 95825
916-263-1811

SALINAS
Labor Commissioner's Office/DLSE
950 E. Blanco Rd., Suite 204
Salinas, CA 93901
831-443-3041

SAN BERNARDINO
Labor Commissioner's Office/DLSE
464 West 4th Street, Room 348
San Bernardino, CA 92401
909-383-4334

SAN DIEGO
Labor Commissioner's Office/DLSE
7575 Metropolitan, Room 210
San Diego, CA 92108
619-220-5451

SAN FRANCISCO
Labor Commissioner's Office/DLSE
455 Golden Gate Ave. 10th Floor
San Francisco, CA 94102
415-703-5300

SAN JOSE
Labor Commissioner's Office/DLSE
100 Paseo De San Antonio, Room 120
San Jose, CA 95113
408-277-1266

SANTA ANA
Labor Commissioner's Office/DLSE
2 MacArthur Place, Ste. 800
Santa Ana, CA 92707
714-558-4910

SANTA BARBARA
Labor Commissioner's Office/DLSE
411 E. Canon Perdido, Room 3
Santa Barbara, CA 93101
805-568-1222

SANTA ROSA
Labor Commissioner's Office/DLSE
50 "D" Street, Suite 360
Santa Rosa, CA 95404
707-576-2362

STOCKTON
Labor Commissioner's Office/DLSE
31 E. Channel Street, Room 317
Stockton, CA 95202
209-948-7771

VAN NUYS
Labor Commissioner's Office/DLSE
6150 Van Nuys Boulevard, Room 206
Van Nuys, CA 91401
818-901-5315

EMPLOYERS: Do not send copies of your alternative workweek election ballots or election procedures.

Only the results of the alternative workweek election shall be mailed to:

Department of Industrial Relations
Office of Policy, Research and Legislation
P.O. Box 420603
San Francisco, CA 94142-0603
(415) 703-4780

Prevailing Wage Hotline (415) 703-4774

EXHIBIT "K"

CA FPPC Op. 75-044 (Cal.Fair.Pol.Prac.Com.), 1 FPPC Op. 1, 1975 WL 37312

California Fair Political Practices Commission

IN THE MATTER OF: OPINION REQUESTED BY JOHN W. WITT, CITY ATTORNEY OF SAN DIEGO

No. 75-044
February 21, 1975

*1 BY THE COMMISSION: We have been asked the following question by John W. Witt, the City Attorney of the City of San Diego:

Are city governments included in the definition of "person" found in Section 82047 of the Act?

An answer to the foregoing question is necessary with respect to my duties and those of my clients under the Act.

We understand that the question has specific reference to the word "person" as it is used in Government Code Section 86108,[1] and this opinion is limited to a construction of that section.

Memoranda urging a negative answer to the question have been received from John W. Witt, City Attorney of San Diego, from John P. Fraser, representing the Association of California Water Agencies, from Jerald E. Wheat of the Los Angeles County Counsel's office and from David Beatty of the League of California Cities. A memorandum citing authorities but not urging a specific result was submitted by Chris Funk, formerly of the Commission's staff. A public hearing on the pending opinion request was conducted by the Commission on February 20, 1975.

CONCLUSION

Local government agencies are "persons" within the meaning of Section 86108, and local government agencies which employ lobbyists or which make payments to influence legislative or administrative action of two hundred fifty dollars ($250) or more in value in any month, unless all of the payments are of the type described in Section 82045(c), are required to file statements under Section 86109.

ANALYSIS

I.

Section 86108 requires the following "persons," subject to certain exceptions discussed below, to file periodic disclosure statements:
(a) Any person who employs or contracts for the services of one or more lobbyists, whether independently or jointly with other persons; and

(b) Any person who directly or indirectly makes payments to influence legislative or administrative action of two hundred fifty dollars ($250) or more in value in any month, ...

The question presently before the Commission is whether a local government agency[2] (specifically a city) which otherwise qualifies under Section 86108, is a "person" within the meaning of that section.

The word "person" is defined in Section 82047 as follows:
"Person" means an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, and any other organization or group of persons acting in concert.

This definition is similar to other relatively recent definitions of "person" contained elsewhere in the California statutes. See, e.g., Labor Code Section 18; Government Code Section 17.[3] Although it may be debated whether local government agencies are "corporations"[4] or "organizations," it will be seen below that the courts generally have considered questions such as the one before us by analyzing the goals and intent of the statute as a whole, rather than by closely scrutinizing the components of whatever definition of "person" may be applicable. E.g., Ohio v. Helvering, 292 U.S. 360 (1934); Bing v. City of Duarte, 65 C.2d 627 (1967). We find nothing in the definition of "person" in Section 82047 which conclusively resolves the question before us.

II.

***2** In a memorandum of points and authorities arguing that local government agencies are not "persons" under Section 86108, the Los Angeles County Counsel's Office has urged that since "person" and "local government agency" are both defined in the Political Reform Act, the two definitions must be mutually exclusive. The only case cited to support this assertion, Beaudry v. Valdez, 32 Cal. 269 (1867), holds merely that upon analysis the definitions contained in the particular statute then before the Court were intended to be mutually exclusive.

Manifestly, there can be no general rule that separately defined terms must be mutually exclusive, for it is common in statutes to define a generic term and then define other terms which represent specific instances of the first. For example, in the Political Reform Act, the term "public official" (Section 82048) does not exclude "agency official" (Section 82004), "elected state officer" (Section 82021), or "legislative official" (Section 82038). Nor has it been contended that "person" (Section 82047) excludes "business entity" (Section 82005). The question whether the terms "person" and "local government agency" are mutually exclusive is merely a restatement of the question before us, and must be answered by analysis of the Act in light of the relevant case law, not by mechanical application of old maxims of statutory interpretation of dubious validity.

III.

In memoranda submitted to us it has been argued that "a public agency is generally not deemed to be included within the ambit of a general statute unless specifically mentioned," and specifically "that the word 'person' is never held to mean a governmental agency." A survey of the cases, however, will show that to the extent these principles were ever valid, they have long since become outmoded.

In the 19th Century courts generally construed the word "person" to exclude the United States, e.g., United States v. Fox, 94 U.S. 315 (1876), because of the "familiar principle that the King is not bound by any act of Parliament unless he be named therein by special and particular words." Dollar Savings Bank v. United States, 86 U.S. 227 (1873). Even then, the doctrine was regarded as a "rule of construction" and was not always followed. Green v. United States, 76 U.S. 655 (1869).

The doctrine was followed in the California courts, not only with respect to the state but also local government units, e.g., Whittaker v. Tuolumne County, 96 Cal. 100 (1892); In re Miller's Estate, 5 Cal.2d 588 (1936). In most cases, however, the courts after reciting the doctrine made a determination that the specific statute in question was not intended to be applicable to government agencies. E.g., Berton v. All Persons, 176 Cal. 610 (1917); Courtney v. Byram, 54 C.A.2d 769 (1942).

In 1941, however, the California Supreme Court ruled that a statute authorizing the State Department of Public Works to require any "person" to relocate a pipeline to permit construction of a state highway could be used against a municipal water district. State of California v. Marin Municipal Water District, 17 Cal.2d 699 (1941). The court said:

***3** It is a well established doctrine that general words in a statute will not be construed to limit the otherwise valid power of the state or its subdivisions unless that result was specifically intended by the legislature.
Id. at 704 (Emphasis added.)

The following year the Court undercut the old doctrine even more explicitly in Hoyt v. Bd. of Civil Service Commissioners, 21 Cal.2d 399 (1942). In that case the Court overruled Bayshore Sanitary District v. San Mateo Cy., 48 C.A.2d 337 (1941), and other lower court decisions, by holding that declaratory judgments could be sought against governmental agencies.
In the Bayshore case, ... after noting that the statute authorizes the bringing of such an action by one "person" against "another" person, the court relied upon a general doctrine of statutory construction in concluding that the word "person" should not be held to include any political subdivision of the state in the absence of an express indication that such was the legislative intent. This general rule of statutory construction, which is supported by numerous cases, is founded upon the principle that statutory language should not be interpreted to apply to agencies of government, in the absence of a specific expression of legislative intent, where the results of such a construction would be to infringe sovereign governmental powers.... Where, however, no impairment of sovereign powers would result, the reason underlying this rule of construction ceases to exist and the Legislature may properly be held to have intended that the statute apply to governmental bodies even though it used general, statutory language only.
21 C.2d at 402 (Emphasis added.)

In Hoyt, the Court indicated that there was no longer even a "rule of construction" with respect to the inclusion of governments in statutes using the word "person," unless the statute would infringe on the "sovereignty" of the governmental unit. Since the Hoyt decision the California courts have generally interpreted statutes applicable to "persons" on a case-by-case basis, taking into consideration the purposes of the statute and any other indicia of legislative intent. In Nutter v. City of Santa Monica, 74 C.A.2d 292 (1946), the Court found no legislative intent to include governments in a general collective bargaining statute, saying:
Where a statute is not expressly made applicable to government, it is for the courts to determine whether the Legislature intended it to apply to government. In making that determination, it is proper to consider all matters which, under the rules of statutory interpretation, shed light upon the legislative intention. It is well established that general terms of a statute will not be construed as including government if the statute would operate to trench upon sovereign rights, injuriously affect the capacity to perform state functions or establish a right of action against the state.
***4** Id. at 300

In numerous subsequent decisions the courts have construed general statutes to apply to governments in accord with the principles of State v. Marin Mun. Water Dist., 17 C.2d 699 (1941), and Hoyt v. Bd. of Civil Services Commissioners, 21 C.2d 399 (1942). The state has been held a "person" able to bring actions for damages under the Unfair Practices Act, People v. Centr–O–Mart, 34 C.2d 702 (1950); an irrigation district has been held a "person" subject to suit under a quo warranto statute, San Ysidro Irrigation District v. Superior Court, 56 C.2d 708 (1961); the state has been held a "person" subject to suit in wrongful death actions, Flournoy v. State, 57 C.2d 497 (1962); and the state has been held a "person" placed on notice by recordation of contracts, Bing v. City of Duarte, 65 C.2d 627 (1967).

The foregoing developments have been paralleled at the federal level. In Ohio v. Helvering, 292 U.S. 360 (1934), an excise tax imposed on "persons" who sold alcoholic beverages was held applicable to a state-owned liquor monopoly. The Court said:
Whether the word "person" or "corporation" includes a state or the United States depends upon the connection in which the word is found.
292 U.S. at 370.

In United States v. California, 297 U.S. 175 (1936), the Court ruled that a state which operated a railroad was subject to the federal Safety Appliance Act. Referring to the old doctrine that a general statute is not applicable to the sovereign, the Court said:
The presumption is an aid to consistent construction of statutes of the enacting sovereign when their purpose is in doubt, but it does not require that the aim of a statute fairly to be inferred be disregarded because not explicitly stated.... Language and objectives so plain are not to be thwarted by resort to a rule of construction whose purpose is but to resolve doubts, and whose application in the circumstances would be highly artificial.
297 U.S. at 186–187.

In United States v. Cooper Corp., 312 U.S. 600 (1941), and Georgia v. Evans, 316 U.S. 159 (1942), the Court considered Section 7 of the Sherman Act, which permits an aggrieved "person" to seek treble damages for antitrust violations. In Cooper, the question raised was whether the United States was a "person" who could seek damages. After noting the old doctrine, the Court said:
The purpose, the subject matter, the context, the legislative history, and the executive interpretation of the statute are aids to construction which may indicate an intent, by the use of the term ["person"], to bring state or nation within the scope of the law.
312 U.S. at 605.

The Court ruled that the use of the word "person" was not in itself evidence of intent to include the United States, and other tests indicated a contrary intent. In Georgia v. Evans, however, the Court ruled that a state was a "person" able to seek treble damages under the Sherman Act. The Court applied essentially the same test as in Cooper, saying
***5** Whether the word "person" or "corporation" includes a State or the United States depends upon its legislative environment.
316 U.S. at 161.

In analyzing the "legislative environment" of the word "person" in the Sherman Act, the Court found that the considerations which had led to the exclusion of the United States in Cooper were not present in the case of the states.

These federal cases, while not binding for interpretation of a California statute, are worthy of consideration, particularly since their thrust is similar to the California decisions, and they have been cited approvingly by the California courts, e.g., Hoyt v. Bd. of Civil Service Commissioners, 21 C.2d 399, 405 (1942).

From the foregoing survey of cases, it may be concluded that the use of the word "person" in Section 86108 does not, in itself, dictate the inclusion or exclusion of local government agencies from its coverage. There may be a presumption of exclusion if inclusion would "trench upon sovereign rights, injuriously affect the capacity to perform state functions or establish a right of action" against the agency, Nutter v. City of Santa Monica, 74 C.A.2d 292, 300 (1946). In any event, the decision must finally turn on legislative intent, as it may be gleaned from the language and purposes of the statute.

IV

"Persons" who qualify under Section 86108 are not in any manner prohibited from communicating with state officials or attempting to influence legislative or administrative action. "Lobbyists" under the Political Reform Act are prohibited from certain activities by Sections 86202, 86203, and 86205, but neither these nor any other substantive regulations are imposed on persons qualifying under Section 86108. The only provisions affecting such persons are those requiring disclosure of expenditures and other information relative to lobbying activities. Such disclosure is not in any respect an infringement on the "sovereign rights" of local government agencies; nor does it injuriously affect the capacity of such agencies to perform their

public functions, or establish a right of action against such agencies. Accordingly, under the case law previously surveyed, we do not believe there is any presumption that local government agencies are either included or excluded. Even if there is a presumption of exclusion, however, we believe that for the following reasons the intent to include such agencies as "persons" in Section 86108 is clear enough to override the presumption.

We need not consider what the result would be if Chapter 6 of the Act, relating to lobbyists, were silent with respect to local government agencies. To the contrary, the Act makes it clear beyond doubt that local government is generally within the coverage of the lobbyist regulations. This is accomplished in Section 86300(a), which excludes from coverage:
Any elected public official acting in his official capacity, or any employee of the State of California acting within the scope of his employment.

***6** By excluding all state employees but only elected local officials, the Act unmistakably includes non-elected local officials. It is clear, then, that non-elected local officials who qualify under the definition of "lobbyist," see Section 82039, must file disclosure statements under Section 86107.

The disclosure provisions applicable to lobbyists (Section 86107) and to employers of lobbyists (Section 86109) are closely related. For example, salary, fees, and reimbursements are reported by the lobbyist who receives them under Section 86107(a) and by the employer who makes them under Section 86109(h). Expenditures for lobbying purposes are reported by the lobbyist if he incurs them (Sections 86106 and 86107(b)), and otherwise by the employer (Section 86109(c)). A citizen seeking to obtain a complete picture of a given lobbying operation must examine together the lobbyist's statement and the employer's statement. For these reasons, the fact that the lobbyists employed by local government agencies must file disclosure statements creates a stong inference that statements must be filed by the agencies which employ them. One purpose of disclosure by lobbyists and their employers, as well as by others who spend large sums to influence legislative or administrative action, is to inform the public of the resources being spent to influence government. To partially exclude local government from coverage would significantly detract from this purpose. Although the lobbyist employed by a city would have to report expenses he incurs directly, there would be no reporting of the possibly larger sums spent by the city for the lobbyist's support. Expenditures to influence legislative or administrative action by a city which employs no lobbyists would go totally unreported.

It is no answer to say that expenditures by local government are already matters of public record. Unless local government agencies file the disclosure statements under the Political Reform Act it will be difficult or impossible for the ordinary citizen to obtain a timely, separate and comprehensive accounting of the moneys spent by local government for lobbying purposes.

These considerations are confirmed by the specific statement in Section 86108 that its coverage is subject to the exceptions in Section 86300. We believe this is a clear statement of intent that the only limitations on Section 86108 should be those expressed in Section 86300. With respect to governments, Section 86300 contains a total exclusion for state government, but for local government only a limited exclusion for elected officials. We conclude that local government agencies are "persons" within the meaning of Section 86108, and that local government agencies which employ lobbyists or which make payments to influence legislative or administrative action of $250 or more in value in any month, unless all of the payments are of the type described in Section 82045 (c), are required to file statements under Section 86109. We intimate no views as to whether payments which are made in connection with the activities of an elected public official acting in his official capacity need not be considered, however, for purposes of Section 86108, by reason of the exemption contained in Section 86300.

***7** Approved by the Commission on February 21, 1975. Concurring: Lowenstein, Miller, Waldie, Waters. Commissioner Carpenter did not participate in the deliberations or adoption of this opinion.

Daniel H. Lowenstein
Chairman

Footnotes

1 All statutory references are to the Government Code unless otherwise noted.

2 See Section 82041.

3 For example of older definitions of "person," see Civil Code Section 14; Penal Code Section 7.

4 Cities are commonly referred to as "municipal corporations."

CA FPPC Op. 75-044 (Cal.Fair.Pol.Prac.Com.), 1 FPPC Op. 1, 1975 WL 37312

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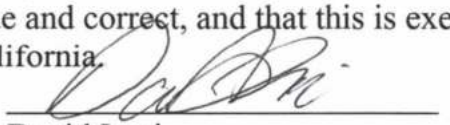
PROOF OF SERVICE

STONE, KUNWAR, all others similarly situated v. ALAMEDA HEALTH SYSTEM, A Public Hospital Authority
California Supreme Court Case No.S279137

I am employed in the County of Santa Cruz, California. I am over the age of 18 years and not a party to the within entitled action. My business address is 311 Bonita Drive, Aptos, California 95003. On September 15, 2023, I served the attached ***PLAINTIFF/APPELLANT'S MOTION FOR JUDICIAL NOTICE*** in the above-captioned matter to the following persons:

Geoff Spellberg, Ryan McGinley-Stempel Anastasia Bondarchuk Renne Public Law Group 350 Sansome Street, Suite 300 San Francisco, Calif. 94104 ***By Electronic Service*** gspellberg@publiclawgroup.com rmcginleystempel@publiclawgroup.com abondarchuk@publiclawgroup.com	First District Court of Appeal Division 5 350 McAllister Street San Francisco, CA 94102 ***By Electronic Service***
Alameda County Superior Court René C. Davidson Courthouse Civil Division 1225 Fallon Street, Room 109 Oakland, California 94612 ***By U.S. Mail***	

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this is executed on September 15, 2023, in Aptos, California.



David Imai

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **STONE v. ALAMEDA HEALTH SYSTEM**
Case Number: **S279137**
Lower Court Case Number: **A164021**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **davidimai@sbcglobal.net**

3. I served by email a copy of the following document(s) indicated below:

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Bobette Tolmer Renne Public Law Group	btolmer@publiclawgroup.com	e-Serve	9/15/2023 3:43:07 PM
Arthur Hartinger Renne Public Law Group, LLP 121521	ahartinger@publiclawgroup.com	e-Serve	9/15/2023 3:43:07 PM
Ryan McGinley-Stempel Renne Public Law Group 296182	rmcginleystempel@publiclawgroup.com	e-Serve	9/15/2023 3:43:07 PM
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

9/15/2023
Date

/s/David Imai

Signature

Imai, David (142822)

Last Name, First Name (PNum)

Law Office of David Y. Imai

Law Firm