
THIRD READING

Bill No: AB 1066
Author: Gonzalez (D), Bonta (D), Cristina Garcia (D), Roger Hernández (D),
Jones-Sawyer (D), McCarty (D), and Thurmond (D), et al.
Amended: 8/17/16 in Senate
Vote: 21

PRIOR VOTES NOT RELEVANT

SENATE LABOR & IND. REL. COMMITTEE: 4-1, 6/29/16
AYES: Mendoza, Jackson, Leno, Mitchell
NOES: Stone

SENATE APPROPRIATIONS COMMITTEE: 5-2, 8/11/16
AYES: Lara, Beall, Hill, McGuire, Mendoza
NOES: Bates, Nielsen

SUBJECT: Agricultural workers: wages, hours, and working conditions

SOURCE: United Farm Workers

DIGEST: This bill removes an exemption in current law that would extend the payment of overtime compensation to agricultural employees after eight hours of work in a day or 40 in a week in a phased in implementation.

Senate Floor Amendments of 8/17/16 delay implementation of these provisions for small businesses of 25 or fewer employees by three years; and specify that the Governor's authority to suspend the scheduled overtime phase in will end upon the phase in completion, previously in the bill, or January 1, 2025.

ANALYSIS:

Existing law:

- 1) Defines a full workday as eight hours, and 40 hours as a workweek. Overtime wage rates must be paid for time worked beyond eight a day and 40 a week.

- 2) Requires, with some exceptions, the payment of overtime as follows:
 - Work in excess of eight hours a day and over 40 hours a workweek, and the first eight hours on the 7th day in a workweek shall be compensated at the rate of no less than 1 ½ times the regular rate of pay.
 - Work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay.
 - Work in excess of eight hours on any 7th day of a workweek shall be compensated at no less than twice the regular rate of pay.
- 3) Specifies that every person employed in any occupation of labor is entitled to one day's rest in seven and no employer shall cause his/her employees to work more than six days in seven.
- 4) Provides that employers who violate these provisions are guilty of a misdemeanor.
- 5) Exempts any person employed in an agricultural occupation from all these provisions. (Labor Code §554)
- 6) Establishes the Industrial Welfare Commission (IWC) to adopt or amend working condition orders consistent with existing law.
- 7) Provides that, under the IWC Wage Order 14, employees working in an agricultural occupation, as defined, are entitled to overtime as follows:
 - Any work in excess of 10 hours in any one workday or more than six days in any workweek, and the first eight hours worked on the 7th day must be paid at 1 ½ times the employee's regular rate of pay;
 - All hours worked over eight on the 7th day of work must be paid at double the employee's regular rate of pay.

This bill:

- 1) Provides that, beginning January 1, 2019, any person employed in an agricultural occupation shall not be employed more than 9 ½ hours in any one workday or more than 55 hours in any one workweek, unless he/she receives 1½ times that employee's regular rate of pay for all hours worked over 9 ½ in a workday or over 55 in a week. Employers of 25 or fewer employees commencing January 1, 2022.

- 2) Provides that, beginning January 1, 2020, any person employed in an agricultural occupation shall not be employed more than nine hours in any one workday or more than 50 hours in any one workweek, unless he/she receives 1 ½ times that employee's regular rate of pay for all hours worked over nine in a workday or over 50 in a week. Employers of 25 or fewer employees commencing January 1, 2023.
- 3) Provides that, beginning January 1, 2021, any person employed in an agricultural occupation shall not be employed more than 8 ½ hours in any one workday or more than 45 hours in any one workweek, unless he/she receives 1 ½ times that employee's regular rate of pay for all hours worked over 8 ½ in a workday or over 45 in a week. Employers of 25 or fewer employees commencing January 1, 2024.
- 4) Provides that, beginning January 1, 2022, any person employed in an agricultural occupation shall not be employed more than eight hours in any one workday or more than 40 hours in any one workweek, unless he/she receives 1 ½ times that employee's regular rate of pay for all hours worked over eight in a workday or over 40 in a week. Employers of 25 or fewer employees commencing January 1, 2025.
- 5) Provides that the term “employed in an agricultural occupation” has the same meaning as the IWC wage order definition for Agricultural Occupations.
- 6) Provides that, beginning January 1, 2022, any person employed in an agricultural occupation who works in excess of 12 hours in one day shall be compensated at the rate of no less than twice the employee's regular pay rate. Employers of 25 or fewer employees commencing January 1, 2025.
- 7) Provides that, except as specified, all other provisions of existing law regarding compensation for overtime work shall apply to workers in an agricultural occupation beginning January 1, 2017.
- 8) Authorizes the Governor to temporarily suspend the scheduled phase-in of overtime requirements set forth above if the Governor suspends scheduled minimum wage increases for specified "economic conditions" under provisions of law enacted this year pursuant to SB 3 (Leno, Chapter 4, Statutes of 2016).
- 9) Requires, if the Governor makes a determination to temporarily suspend the scheduled overtime phase in, all implementation dates to be postponed by an additional year. This authority shall end upon the final phase-in of overtime provisions, but not later than January 1, 2022.

- 10) Specifies that the Governor's authority to suspend the scheduled overtime requirements shall end upon the phase in completion, as specified, or January 1, 2025, whichever occurs first.
- 11) Requires the Department of Industrial Relations (DIR) to update IWC Wage Order 14 to be consistent with the requirements in this bill, except that any existing provisions providing greater protections or benefits to agricultural employees shall continue in full force and effect.
- 12) Makes related legislative findings and declarations.

Background

In 1938, Congress passed the Fair Labor Standards Act (FLSA), which established minimum requirements for labor laws in all states. The FLSA establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in federal, state, and local governments. The overtime provisions of the FLSA were not extended to agricultural employees. However, as with all provisions with the FLSA, states are allowed to exceed the requirements laid out in the federal law.

The issue of overtime for agricultural employees in California was first dealt with in 1941. Previously, the law had been silent on this subject. But, in 1941, the Legislature exempted all agricultural employees from the statutory requirements of overtime, similar to the FLSA. This statutory exemption was retained when the eight-hour day was codified in 1999.

This statutory exemption, however, did not prohibit the IWC from legally promulgating overtime provisions beyond the traditional eight-hour standard of California law. Currently, the applicable wage order for agricultural employees requires the payment of overtime wages when an agricultural employee works longer than 10 hours in a single day, and more than six days during any workweek.

Related/Prior Legislation

AB 2757 (Gonzalez, 2016) was almost identical to this bill and failed passage on the Assembly Floor. The contents of AB 2757 were amended into this bill (AB 1066) and additionally added co-authors and clarified that any provisions of the existing IWC Wage Order for Agricultural Occupations that provide greater protections or benefits shall continue in full force and effect.

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

According to the Senate Appropriations Committee, the DIR indicates that it would incur administrative costs in the range of \$326,000 to \$586,000 in the first year, and \$311,000 to \$563,000 annually thereafter (Labor Enforcement and Compliance Fund).

SUPPORT: (Verified 8/18/16)

United Farm Workers (source)
California State Treasurer John Chiang
Alameda Labor Council
Alliance San Diego
American Civil Liberties Union of California
American Federation of State, County and Municipal Employees
Amigos de los Rios
Asian Americans Advancing Justice-California
Audubon California
Azul
California Catholic Conference
California Coastal Protection Network
California Employment Lawyers Association
California Environmental Justice Alliance
California Immigrant Policy Center
California Labor Federation
California League of Conservation Voters
California Rural Legal Assistance Foundation
California Teachers Association
Center for Biological Diversity
Center for Environmental Health
Center on Race, Poverty & the Environment
Coalition for Humane Immigrant Rights of Los Angeles
Coastal Environmental Rights Foundation
Committees for Land, Air, Water and Species
Consumer Attorneys of California
Courage Campaign
Dolores Huerta Foundation
Don Saylor, Yolo County Supervisor
Endangered Habitats League
Environment California
Environmental Center of San Diego
Equality California
Farmworker Justice

Food Empowerment Project
Friends Committee on Legislation
La Cooperativa Campesina de California
Latino Coalition for a Healthy California
League of United Latin American Citizens-California Chapter
Lutheran Office of Public Policy CA
Mayor Eric Garcetti, City of Los Angeles
Mexican American Legal Defense and Educational Fund
National Association for the Advancement of Colored People-California
National Association of Social Workers-California Chapter
Natural Resources Defense Council
Pesticide Action Network
Progressive Women of Napa Valley
Religious Action Center of Reform Judaism
Sacramento Central Labor Council
Sacramento Jewish Community Relations Council
Save Our Shores
Service Employees International Union
Sierra Club California
Southern California Watershed Alliance
The Center of Policy Initiatives
The Kern, Inyo, and Mono Counties Central Labor Council
The League of United Latin American Citizens California Chapters
Trust for Public Land
United Food & Commercial Workers Union-Western States Council
Voices for Progress
Western Center on Law and Poverty

OPPOSITION: (Verified 8/18/16)

African American Farmers of California
Agricultural Council of California
Alhambra Chamber of Commerce
Almond Hullers & Processors Association
Association of California Egg Farmers
California Agricultural Aircraft Association
California Association of Ag and Labor
California Association of Nurseries & Garden Centers
California Association of Wheat Growers
California Association of Wheat Growers
California Association of Winegrape Growers

California Blueberry Association
California Cattlemen's Association
California Chamber of Commerce
California Citrus Mutual
California Cotton Ginners Association
California Cotton Growers Association
California Dairies, Inc.
California Farm Bureau Federation
California Fresh Fruit Association
California League of Food Processors
California Manufacturers & Technology Association
California Pear Growers Association
California Producer Handler-Association
California Seed Association
California State Floral Association
California Tomato Growers Association
California Trucking Association
Community Alliance with Family Farmers
Family Winemakers of California
Far West Equipment Dealers Association
Gilroy Chamber of Commerce
Lodi Chamber of Commerce
Milk Producers Council
National Federation of Independent Business
Nisei Farmers League
Ventura County Agricultural Processors Association
Western Agricultural Processors Association
Western Growers Association
Western Plant Health Association
Western United Dairymen
Wine Institute

ARGUMENTS IN SUPPORT: The author argues that even though California's farmworkers perform some of the most physically-demanding jobs with pay and working conditions at levels that most Americans would not tolerate, they continue to be excluded from overtime laws enjoyed by most American workers. Proponents argue that this exclusion can no longer be justified or tolerated.

Proponents argue that California agriculture is a wealthy, mature industry that benefits from this unfair overtime exclusion subsidy that is no longer justified. They note that in its 2014 agricultural industry report, the California Department of

Food and Agriculture found that the state's 76,000+ farms and ranches had combined revenue of approximately \$54 billion. Proponents argue that the agricultural industry has been profitable despite the fact that farmworkers are earning an annual average salary of \$14,000, and roughly 30 percent of households with farmworker income are below the poverty line and 73 percent earn less than 200 percent of poverty (a threshold used in many public assistance programs). They argue that it is time for California to support and extend fair overtime compensation to hundreds and thousands of agricultural workers.

ARGUMENTS IN OPPOSITION: A coalition of California agricultural producers are opposed to this bill, arguing the following:

- This bill will hurt farmworkers: \$1.5 billion in reduced wages; \$4,500 in reduced income per farmworker; 16% reduction in farmworker income.
- This bill will hurt farm production: \$5.4 billion loss in crop production; the removal of 1.25 million farmed acres; 7.2% decrease in crop production.
- This bill will hurt the economy: up to 78,000 lost farm, processing, transport, and support industry jobs; \$7.8 billion in lost income statewide.
- Farmers in California must compete with farmers in other states and countries that already have far lower wage costs.
- California is already at a competitive disadvantage as it is one of only a few states that require any overtime pay for agricultural workers, and our requirement for daily overtime is already the most expensive. This bill will exacerbate this disadvantage.

Opponents also note that this bill cannot be viewed in isolation and argues that California saddles its farmers with the highest regulatory costs and compliance burdens in the nation. They argue that this bill will end up hitting many workers in their wallet as farmers may be forced to pay higher overtime costs during peak harvest, but for the tens of thousands of workers who are employed year round the pressures of cost avoidance will translate to fewer hours worked as farmers add additional employees to avoid overtime costs.

Prepared by: Alma Perez-Schwab/ L. & I.R. / (916) 651-1556
8/19/16 15:26:41

**** END ****