

Assembly Bill No. 736

CHAPTER 44

An act to add Section 515.7 to the Labor Code, relating to employment, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 9, 2020. Filed with Secretary of State September 9, 2020.]

LEGISLATIVE COUNSEL'S DIGEST

AB 736, Irwin. Employee classification: professional classification: specified educational employees.

Existing law provides that 8 hours of labor constitutes a day's work. Under existing law, any work in excess of 8 hours in one workday and any work in excess of 40 hours in any one workweek, and the first 8 hours worked on the 7th day of work in any one workweek, is required to be compensated at the rate of no less than 1 ½ times the regular rate of pay for an employee. Existing law also provides that hours worked in excess of 12 hours in one day as well as hours worked in excess of 8 hours on any 7th day of work are to be compensated at the rate of no less than twice the regular rate of pay of an employee. Existing law exempts from these provisions an individual employed as a teacher at a private elementary or secondary academic institution if specified requirements are met.

Existing law, Wage Order No. 4-2001 of the Industrial Welfare Commission, applies to people employed in professional, technical, clerical, mechanical, and similar occupations and addresses wages, hours, and working conditions. The wage order exempts specified persons, including a person who is employed in a professional capacity whose duties meet certain requirements from various portions of the order. Existing law, Wage Order No. 5-2001 of the Industrial Welfare Commission, applies to persons employed in the public housekeeping industry, addresses wages, hours, and working conditions, and also exempts employees in administrative, executive, or professional capacities if their duties meet certain requirements.

This bill would require that an employee employed to provide instruction for a course or laboratory at an independent institution of higher education, as defined, be classified as employed in a professional capacity, and therefore exempt from the wage and hour provisions of Wage Order No. 4-2001, or those of Wage Order No. 5-2001, as well as specified provisions of the Labor Code, if that person meets specified criteria, including being employed in a professional capacity as prescribed, being paid on a salary basis, and receiving one of alternative minimum compensations.

This bill would declare that it is to take effect immediately as an urgency statute.

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

SECTION 1. Section 515.7 is added to the Labor Code, to read:

515.7. (a) If an employee is employed to provide instruction for a course or laboratory at an independent institution of higher education, as defined in subdivision (b) of Section 66010 of the Education Code, the employee shall be classified as employed in a professional capacity under Wage Order No. 4-2001 of the Industrial Welfare Commission, or under Wage Order No. 5-2001 of the Industrial Welfare Commission, and shall be exempt from paragraphs (2), (3), and (9) of subdivision (a) of Section 226, and Sections 510 and 512, when all of the following apply:

(1) The employee is employed in a professional capacity. For the purpose of this section, an employee shall be considered to be employed in a professional capacity under Wage Order No. 4-2001 or Wage Order No. 5-2001, notwithstanding clauses (a) and (d) of subparagraph (3) of paragraph (A) of Section 1 of Wage Order 4 and clauses (a) and (d) of subparagraph (3) of paragraph (B) of Section 1 of Wage Order 5, if:

(A) The employee is primarily engaged in an occupation commonly recognized as a learned or artistic profession; and

(B) The employee customarily and regularly exercises discretion and independent judgment in the performance of duties set forth in subparagraph (A).

(C) For the purposes of this paragraph, “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.

(2) The employee is paid on a salary basis, as defined by Section 541.602 of Title 29 of the Code of Federal Regulations, and receives one of the following minimum compensations:

(A) A monthly salary equivalent to no less than two times the state minimum wage for employment in which the employee is employed for at least 40 hours per week.

(B) When employed per course or laboratory, a salary for a course or laboratory that is calculated on the basis of classroom hours as set forth in subdivision (b).

(C) When employed under a collective bargaining agreement, payment pursuant to that collective bargaining agreement, if the classification of employment in a professional capacity is expressly included in the collective bargaining agreement in clear and unambiguous terms. The requirements of Section 514 that mandate provisions of a collective bargaining agreement shall not apply.

(b) The minimum salary required by subparagraph (B) of paragraph (2) of subdivision (a) shall be calculated using classroom hours as follows:

(1) The minimum payment that is calculated using classroom hours shall encompass payment for all classroom or laboratory time, preparation, grading, office hours, and other course- or laboratory-related work for that course or laboratory and no separate payment shall be required. The following minimum rates shall be used in this calculation:

(A) For each classroom hour in 2020: one hundred seventeen dollars (\$117).

(B) For each classroom hour in 2021: one hundred twenty-six dollars (\$126).

(C) For each classroom hour in 2022: one hundred thirty-five dollars (\$135).

(D) For each classroom hour in 2023 and each year thereafter: a percentage increase to the rate described in subparagraph (C) that is equal to the percentage increase to the state minimum wage calculated in accordance with subdivision (c) of Section 1182.12.

(2) Notwithstanding paragraph (1), if a laboratory, art studio course, clinical course, or other nonlecture course has more classroom hours than a lecture-based course with the same number of units at the institution, the minimum salary required by subparagraph (B) of paragraph (2) of subdivision (a) for the laboratory, art studio course, clinical course, or other nonlecture course shall be that of the lecture-based course with the same number of units.

(3) The minimum rate of pay for per course or laboratory compensation is for course-related work only. Employees shall be compensated separately for other non-course-related work on behalf of the employer, which shall not affect the employee's classification as an exempt employee.

(4) For purposes of this section, "classroom hour" means the time spent in the primary forum of the course or laboratory, regardless of whether the forum is in-person or virtual.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

To ensure the continued ability for non-profit, independent institution of higher education to provide education and training in critical fields of employment, it is necessary for this act to take effect immediately.