S241655

In The Supreme Court of the State of California

JAZMINA GERARD, KRISTIANE McELROY AND JEFFREY CARL
Plaintiffs and Appellants,

v.

ORANGE COAST MEMORIAL MEDICAL CENTER
Defendant and Respondent.

On Review From The Court Of Appeal For the Fourth Appellate District, Division Three
4th Civil No. G048039

After An Appeal From the Superior Court of Orange County
Honorable Nancy Wieben Stock, Judge
Case Number 30-2008-00096591

COMPILATION OF EXHIBITS FOR RESPONDENT ORANGE COAST MEMORIAL MEDICAL CENTER'S MOTION FOR JUDICIAL NOTICE

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EXHIBIT A

Pete Wilson, Governor, State of California

DEPARTMENT OF INDUSTRIAL RELATIONS
INDUSTRIAL WELFARE COMMISSION
455 Golden Gate Avenue
San Francisco, CA 94102

ADDRESS REPLY:
P.O. Box 420603
San Francisco, CA 94142-0603

June 30, 1993

NOTICE TO EMPLOYERS AND REPRESENTATIVES OF PERSONS WORKING IN THE HEALTH CARE INDUSTRY

On June 29, 1993, the Industrial Welfare Commission (IWC) amended Order 4-89, regulating Professional, Technical, Clerical, Mechanical, and Similar Occupations, and Order 5-89, regulating the Public Housekeeping Industry. The amendments, effective August 21, 1993, apply only to persons employed in the health care industry and their employers.

The IWC made changes to Section 2, *Definitions*, Section 3, *Hours and Days of Work*, and Section 11, *Meal Periods*, under the special provisions of Labor Code Section 1182.7. A copy of the amendments and the statement as to the basis upon which the changes are predicated are attached for your information.

An official copy of the amendments for posting, will be mailed to employers under separate cover. Employers who do not receive a poster by August 21, 1993, may contact the IWC at (415) 703-3820 for a copy.

INDUSTRIAL WELFARE COMMISSION

Lynnel Pollock, Chairperson
James Rude, Vice Chairperson
Robert Hanna
Donald Novey
Dorothy Vuksich

Final Language: Health Care Industry

1) Add the following language to subsection (H) in *Definitions*, Section 2 of Wage Orders 4-89 and 5-89:

(H) . . . 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.

2) Add the following language to subsection (K) in *Definitions*, Section 2 of Wage Order 4-89, and subsection (L) in *Definitions*, Section 2 of Wage Order 5-89:

(K)* . . . Within the health care industry, the term "primarily" as used in Section 1, Applicability, means (1) more than one-half the employee's work time as a rule of thumb or, (2) if the employee does not spend over 50 percent of the employee's time performing exempt duties, where other pertinent factors support the conclusion that management, managerial, and/or administrative duties represent the employee's primary duty. Some of these pertinent factors are the relative importance of the managerial duties as compared with other types of duties; the frequency with which the employee exercises discretionary powers, the employee's relative freedom from supervision, and the relationship between the employee's salary and the wages paid other employees for the kind of nonexempt work performed by the supervisor.

***Subsection letter (L) in Order 5-89.**

3) Add the following Section 3 (J) to Hours and Days of Work of Order 4-89; strike language in Section 3 (K) of Order 5-89 and replace with the following:

(J)* Employees in the health care industry may work on any days any number of hours a day up to twelve (12) without overtime, as long as the employer and at least two-thirds (2/3) of the affected employees in a work unit agree to this flexible work arrangement, in writing, in a secret ballot election before the performance of the work, provided:

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

(2) An employee who works in excess of forty (40) hours in a workweek shall be compensated at one and one-half (1 1/2) times the employee's regular rate of pay for all hours over forty (40) hours in the workweek;

(3) Prior to the secret ballot vote, any employer who proposes to institute a flexible work arrangement shall make 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 flexible work arrangement. Failure to comply with this section shall make the election null and void;

(4) The same overtime standards shall apply to employees who are temporarily assigned to a work unit covered by this subsection;

(5) Any employer who institutes an arrangement pursuant to this subsection shall make a reasonable effort to find an alternative work assignment for any employee who participated in the secret ballot election and is unable or unwilling to comply with the agreement. An employer shall not be required to offer an alternative work assignment to an employee if an alternative assignment is not available or if the employee was hired after the adoption of the flexible work arrangement. There is no maximum number of employees whom an employer may voluntarily accommodate consistent with its desire and ability to do so;

(6) After a lapse of twelve (12) months and upon petition of a majority 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 arrangement above. If the arrangement is revoked, the employer shall comply within sixty (60) days. Upon a proper showing by the employer of undue hardship, the Division may grant an extension of time for compliance;

(7) For purposes of this subsection, affected employees 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 are met.

***Subsection letter (J) in Order 4-89; subsection letter (K) in Order 5-89.**

(K)* When an employee in the health care industry requests in writing, and the employer concurs, the employee shall be permitted to make up work time lost as a result of personal obligations. The amount of make up time shall not exceed two (2) hours in any one workweek [or, where applicable, four (4) hours

in any one fourteen (14) day work period] and must be made up during that workweek [or work period, whichever is applicable]. With the exception of the make up time authorized in this subsection, the appropriate overtime provisions in Section 3 shall apply to all other excess daily or weekly hours worked in the workweek [or fourteen (14) day work period].

*** Subsection letter (K) in Order 4-89; subsection letter (L) in Order 5-89. Bracketed language applies to Order 5 only.**

4) Strike current subsection (C) in Section 3, *Hours and Days of Work*, of Wage Order 5-89 and replace with the following language.

(C) 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 the work, a work period of fourteen (14) consecutive days is accepted in lieu of the workweek of seven consecutive days for purposes of overtime computation and if, for any employment in excess of eight (8) hours in any workday and in excess of eighty (80) hours in such fourteen (14) day period, the employee receives compensation at a rate not less than one and one-half (1 1/2) times the regular rate at which the employee is employed.

5) Add new subsection (C) to Section 11, *Meal Periods*, of Wage Orders 4-89 and 5-89:

(C) 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 a meal period. 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.

IWC FORM 1105A 93 2857 Printed On Recycled Paper

Department of Industrial Relations
State of California
Pete Wilson, Governor
Lloyd W. Aubry Jr., Director of Industrial Relations

State of California
Department of Industrial Relations
DIVISION OF LABOR STANDARDS ENFORCEMENT
P.O. Box 420603
San Francisco, CA 94142-0603

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OFFICIAL NOTICE

Amendments to Sections 2, 3, and 11 of
Industrial Welfare Commission Order No. 5-89, Regulating the

PUBLIC HOUSEKEEPING INDUSTRY

These changes affect only the health care industry

Employers of persons working in the health care industry covered by Order 5-89 must post these amendments next to that order

555555555555555555

Amendments to Secs. 2, 3, and 11 Order 5-89 Title 8, California Code of Regulations 11050 Effective August 21, 1993

• Please Post •

Amendments to Industrial Welfare Commission Order No. 5-89, Regulating the

PUBLIC HOUSEKEEPING INDUSTRY

OFFICIAL NOTICE

To employers and representatives of persons in occupations covered by IWC Order No. 5-89 who work in the ***health care industry:***

The Industrial Welfare Commission (IWC) of the State of California proceeded according to its authority in the Labor Code and the Constitution of California, and concluded that Sections 2, 3, and 11 of its Order 5-89, regulating the Public Housekeeping Industry, should be amended to affect persons who work in the health care industry. The IWC promulgated these amendments to Order 5-89, made pursuant to the special provisions of Labor Code Section 1182.7, on June 29, 1993. The amendments become effective on August 21, 1993.

All other provisions of Section 2, Definitions, Section 3, Hours and Days of Work, and Section 11, Meal Periods, and all other sections of Order 5-89 remain in full force and effect.

The amendments allow more flexibility with respect to work scheduling, managerial and administrative exemptions, and the definition of hours worked for compensation. They apply *only* to persons covered by this order who work in the health care industry. This includes, but is not limited to, all employees who work for hospitals, skilled nursing facilities, intermediate care and residential care facilities, convalescent care institutions, and similar establishments.

The amendments printed in this mailer must be posted next to the calendar-style poster on which the entire Order 5-89 is printed, and which should already be posted where employees can read it.

The reasons for the changes accompany the amendments in the *Statement as to the Basis*, provided for your information. If you have any questions on interpreting the amendments or how they apply to you, please contact your nearest Division of Labor Standards Enforcement office, listed below.

If you need additional copies of this amendment, please write to: Division of Labor Standards Enforcement, P.O. Box 420603, San Francisco, CA 94142-0603.

2. DEFINITIONS

[The following language is added to Section 2, *Definitions*, subsection (H).]

(H) ... 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.

[The following language replaces subsection (K) in Section 3, *Hours and Days of Work*.]

(K) Employees in the health care industry may work on any days any number of hours a day up to twelve (12) without overtime, as long as the employer and at least two-thirds (2/3) of the affected employees in a work unit agree to this flexible work arrangement, in writing, in a secret ballot election before the performance of the work, provided:

(1) An employee who works beyond twelve (12)

(7) For purposes of this subsection, affected employees 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 are met.

[The following language is added to Section 2, *Definitions*, subsection (L).]

(L) ... Within the health care industry, the term "primarily" as used in Section 1, *Applicability*, means (1) more than one-half the employee's work time as a rule of thumb or, (2) if the employee does not spend over 50 percent of the employee's time performing exempt duties, where other pertinent factors support the conclusion that management, managerial, and/or administrative duties represent the employee's primary duty. Some of these pertinent factors are the relative importance of the managerial duties as compared with other types of duties, the frequency with which the employee exercises discretionary powers, the employee's relative freedom from supervision, and the relationship between the employee's salary and the wages paid other employees for the kind of nonexempt work performed by the supervisor.

3. HOURS AND DAYS OF WORK

[The following language replaces subsection (C) in Section 3, *Hours and Days of Work*.]

(C) 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 the work, a work period of fourteen (14) consecutive days is accepted in lieu of the workweek of seven consecutive days for purposes of overtime computation and if, for any employment in excess of eight (8) hours in any workday and in excess of eighty (80) hours in such fourteen (14) day period, the employee receives compensation at a rate not less than one and one-half (1 1/2) times the regular rate at which the employee is employed.

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

(2) An employee who works in excess of forty (40) hours in a workweek shall be compensated at one and one-half (1 1/2) times the employee's regular rate of pay for all hours over forty (40) hours in the workweek;

(3) Prior to the secret ballot vote, any employer who proposes to institute a flexible work arrangement shall make 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 flexible work arrangement. Failure to comply with this section shall make the election null and void;

(4) The same overtime standards shall apply to employees who are temporarily assigned to a work unit covered by this subsection;

(5) Any employer who institutes an arrangement pursuant to this subsection shall make a reasonable effort to find an alternative work assignment for any employee who participated in the secret ballot election and is unable or unwilling to comply with the agreement. An employer shall not be required to offer an alternative work assignment to an employee if an alternative assignment is not available or if the employee was hired after the adoption of the flexible work arrangement. There is no maximum number of employees whom an employer may voluntarily accommodate consistent with its desire and ability to do so;

(6) After a lapse of twelve (12) months and upon petition of a majority 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 arrangement above. If the arrangement is revoked, the employer shall comply within sixty (60) days. Upon a proper showing by the employer of undue hardship, the Division may grant an extension of time for compliance;

[The following is added to Section 3, *Hours and Days of Work*, as subsection (L).]

(L) When an employee in the health care industry requests in writing, and the employer concurs, the employee shall be permitted to make up work time lost as a result of personal obligations. The amount of make up time shall not exceed two (2) hours in any one workweek or, where applicable, four (4) hours in any one fourteen (14) day work period and must be made up during that workweek or work period, whichever is applicable. With the exception of the make up time authorized in this subsection, the appropriate overtime provisions in Section 3 shall apply to all other excess daily or weekly hours worked in the workweek or fourteen (14) day work period.

11. MEAL PERIODS

[The following is added to Section 11, *Meal Periods*, as subsection (C).]

(C) 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 a meal period. 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.

Amendments adopted in San Francisco on June 29, 1993. Amendments effective August 21, 1993.

INDUSTRIAL WELFARE COMMISSION
STATE OF CALIFORNIA
Lynnel Pollock, Chairperson
James Rude
Robert Hanna
Donald Novey
Dorothy Vuksich

QUESTIONS ABOUT ENFORCEMENT of the Industrial Welfare Commission orders and reports of violations should be directed to the Division of Labor Standards Enforcement. Consult the white pages of your telephone directory under CALIFORNIA, State of, Industrial Relations for the address and telephone number of the office nearest you. The Division has offices in the following cities: Bakersfield, El Centro, Eureka, Fresno, Long Beach, Los Angeles, Marysville, Oakland, Pomona, Redding, Sacramento, Salinas, San Bernardino, San Diego, San Francisco, San Jose, Santa Ana, Santa Barbara, Santa Rosa, Stockton, Van Nuys.

Statement as to the Basis of Amendments to Sections 2, 3, and 11 of Industrial Welfare Commission Order No. 5-89

Labor Code Sec. 1182.7 requires the Industrial Welfare Commission (IWC) to provide accelerated review of petitions filed by organizations recognized in the health care industry who request amendments to an IWC order directly affecting only the health care industry. Under this authority, the California Association of Hospitals and Health Systems (CAHHS) petitioned the IWC to amend and/or clarify certain sections of Order 5, solely for employers and employees in the health care industry. The IWC accepted the petition which proposed to redefine "primarily" and "hours worked" to parallel federal law in Section 2, *Definitions*; to clarify and expand regulations regarding flexible schedules and overtime in Section 3, *Hours and Days of Work*; and to permit employees to waive meal periods in Section 11, *Meal Periods*. The IWC held three public hearings on its proposals in April 1993.

After deliberating on all the evidence presented with respect to its proposals, the IWC adopted amendments to Order 5 for the health care industry on June 29, 1993, and offers the following statement as to the basis for its actions:

DEFINITIONS

Testimony suggested the current DLSE interpretations of "hours worked" were "unduly narrow" resulting in "substantial confusion and serious technical problems," and consistency with the Fair Labor Standards Act (FLSA) would eliminate this confusion. In response to testimony presented at the public hearings that the reference to "29 CFR Part 785" was unclear, the IWC amended that language and referred to "the Fair Labor Standards Act" instead, a term more easily understood by the public. On June 29, 1993, the IWC adopted language to assure "hours worked" in the health care industry would be interpreted in accordance with the FLSA, the regulations interpreting the FLSA including, but not limited to, those contained in 29 CFR Part 785, and federal court decisions. The clarification confirms the IWC's intention that issues related to working time will be resolved consistently under state and federal law.

With respect to redefining "primarily" for the health care industry, the IWC decided since it had examined the professional component of the administrative/executive/professional exemption and adopted language to exempt learned and artistic professions as recently as 1989, it was time to respond to demands for a more flexible application of the executive/administrative exemption than the rigid 51 percent rule. Employees testified current regulations sometimes resulted in treating an employee as nonexempt under a rigid application of a 51 percent rule, such as where emergency or other conditions resulted in less than 50 percent of the time being devoted to exempt duties. On June 29, 1993, the IWC adopted language consistent with the FLSA which promoted clarity and compliance while providing needed flexibility to allow exempt executive and administrative employees to perform nonexempt duties without losing their exempt status. In response to public comment suggesting the term "other pertinent factors" was unclear and confusing to employees, the IWC clarified the meaning of that term by listing some, but not all, examples of pertinent factors.

HOURS AND DAYS OF WORK

With respect to the petitioner's request to amend Order 5 so that the IWC's standard for a 14-day work period conformed with federal law, the IWC was advised that while such work periods are ordinarily implemented on a departmental-wide or institutional-wide basis, DLSE's interpretation of the current regulation would allow one employee "to destroy the validity of such an arrangement by individually insisting on a seven day workweek standard." Public testimony in favor of the proposal claimed it set a "reasonable standard," one similar to the FLSA. Other arguments suggested a change was necessary to prevent individual employees from "opting in and out" of 14-day work periods because such activity could prove disruptive to established arrangements. Those opposed to the IWC's proposal objected to deleting language referring to a "written agreement or understanding voluntarily arrived at" from the current regulation, protections not found in the FLSA. On June 29, 1993, the IWC adopted its original proposal regarding the 14-day work period because it provided for a more stable working environment by clarifying how 14-day work periods would be consistently calculated and because it confirmed the IWC's intention that the California standard parallels the federal standard. Finally, the IWC stated its intent that flexible work arrangements, such as allowing employees to work up to 12 hours a day without overtime, and 14-day work periods, were mutually exclusive of one another and thus cannot be used simultaneously for the same employees.

Testimony supported the petitioner's claims that DLSE's interpretations regarding the flexible scheduling rules adopted in 1986 and 1988 limited desirable options for employees and frustrated the IWC's intent of more, not less, flexibility. Many employees told the IWC they voluntarily worked 12-hour shifts at a "reduced rate of pay," with overtime after eight hours a day. Although this practice is permissible, it sometimes adversely affected their benefits and pensions—in order to cope with DLSE's overly "restrictive" policies. Other employees said they preferred to "mix days off" and working the same days each week was an "unrealistic" practice. The revised language clarifies the IWC's original intent to maximize flexibility in scheduling so that the days and hours of work can vary. While some employees argued part-time employees who have flexible work arrangements should be paid premium wages when asked to work beyond their normal part-time arrangements, by the end of the public hearings, most employees agreed requiring premium wages for part-time or temporary employees who work less than 12 hours a day or 40 hours a week is unfair to full-time workers in the same work unit who earn straight time pay for the same daily and weekly hours. While a few employees suggested the "secret ballot election process" allowed under the IWC orders was "flawed" due to "lack of oversight," the Labor Commissioner testified DLSE had received few, if any, complaints regarding the election process.

After evaluating all the evidence, on June 29, 1993, the IWC adopted its proposal to amend flexible scheduling rules so that an individual employee in the health care industry could agree with his or her employer to work on any days any number of hours a day under certain protective conditions. The new language allowing flexible work arrangements permits employers and employees maximum daily and weekly scheduling flexibility, including but not limited to allowing employees to work overtime on a regular basis, as long as the appropriate premium wages are paid for work after twelve (12) hours a day, or in the case of weekly overtime, forty (40) hours a workweek. Moreover, the final language clarified only one meeting regarding disclosure need be held when not more than one meeting is necessary. The IWC intended the same overtime standards to apply to all employees in a work unit regardless of full-time, part-time, on-call, replacement, permanent, or temporary status. The new rules do not invalidate any arrangement that was implemented prior to their effective date.

With respect to allowing employees in the health care industry to make up work time lost as a result of personal obligations, the IWC proposed and eventually adopted the petitioner's suggested language. The IWC agreed the request was reasonable and balanced the needs of employees and employers. Moreover, the language provided flexibility on an as needed basis without requiring a group vote or long term schedule change.

MEAL PERIODS

The petitioner requested the IWC to allow employees in the health care industry who work shifts in excess of eight (8) total hours in a workday to waive their right to "any" meal period or meal periods as long as certain protective conditions were met. The vast majority of employees testifying at public hearings supported the IWC's proposal with respect to such a waiver, but only insofar as waiving "a" meal period or "one" meal period, not "any" meal period. Since the waiver of one meal period allows employees freedom of choice combined with the protection of at least one meal period on a long shift, on June 29, 1993, the IWC adopted language which permits employees to waive a second meal period provided the waiver is documented in a written agreement voluntarily signed by both the employee and the employer, and the waiver is revocable by the employee at any time by providing the employer at least one day's notice.

INDUSTRIAL WELFARE COMMISSION

EXHIBIT B

Assembly Bill No. 60

CHAPTER 134

An act to amend Sections 510, 554, 556, and 1182.1 of, to add Sections 500, 511, 512, 513, 514, 515, 516, 517, and 558 to, to repeal Section 1183.5 of, and to amend and repeal Sections 1182.2, 1182.3, 1182.9, and 1182.10 of, the Labor Code, relating to employment.

[Approved by Governor July 20, 1999. Filed with Secretary of State July 21, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

AB 60, Knox. Employment: overtime.

Existing law provides that 8 hours of labor constitute a day's work unless it is otherwise expressly stipulated by the parties to a contract.

This bill would delete the authority of parties to otherwise expressly stipulate the number of hours that constitute a day's work. The bill would provide that, except for an employee working pursuant to an alternative workweek schedule, as specified, hours worked in excess of 8 hours in one day, hours worked in excess of 40 hours in one workweek, and the first 8 hours worked on the 7th day of work in a given workweek are to be compensated at the rate of no less than 1 $^{1}/_{2}$ times the regular rate of pay of an employee. Under the bill, 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 a workweek are to be compensated at the rate of no less than twice the regular rate of pay of an employee. Employees working pursuant to an alternative workweek schedule under other specified provisions of this bill would be exempt from these requirements.

This bill would make an employer, or other person acting on behalf of an employer, subject to prescribed civil penalties for the violation of prescribed provisions of the Labor Code or provisions regulating hours and days of work of wage orders of the Industrial Welfare Commission. The bill would authorize the Labor Commissioner to issue citations for violations of prescribed provisions of the Labor Code regulating the payment of wages for overtime work and provisions regulating hours and days of work in wage orders of the commission and would prescribe a procedure by which the cited employer or other person may contest the proposed assessment of a civil penalty.

Under existing law, work performed in the necessary care of animals, crops, or agricultural lands is exempt from specified regulation under the above provisions, including the standard for compensation at an overtime rate for work in excess of 8 hours per day.

This bill instead would exempt persons employed in an agricultural occupation, as defined in the wage order of the Industrial Welfare Commission relating to agricultural occupations, with a prescribed exception, from specified regulation under the Labor Code.

Under an existing statute, any employer who intends to use a flexible scheduling technique, as permitted by wage order of the commission, is required to make full written disclosure to the affected employees concerning certain matters of the flexible schedule, as specified. Existing wage orders of the commission specify the rate of overtime compensation required to be paid to an employee for work in excess of 40 hours per week. Other existing provisions of those wage orders provide that no employer is in violation of those overtime provisions if the employees of the employer have adopted a voluntary written agreement that satisfies specified criteria.

This bill would repeal that statute and instead codify the authority of the employees of an employer to adopt an alternative workweek schedule that permits work by affected employees for no longer than 10 hours per day within a 40-hour workweek without the payment to the affected employees of an overtime rate of compensation when approved by at least $^2/_3$ of the affected employees in a work unit by secret ballot. The bill would provide that an employee working more than 8 hours, but not more than 12 hours, in a day pursuant to an alternative workweek schedule is required to be paid an overtime rate of compensation of no less than 1 $^1/_2$ times the regular rate of pay of the employee for work in excess of the regular hours established by that schedule and for work in a workweek in excess of 40 hours per week and an overtime rate of compensation of no less than double the regular rate of pay of the employee for any work in excess of 12 hours per day and work in excess of 8 hours on days worked beyond the regularly scheduled workweek under the agreement.

The bill would declare null and void certain alternative workweek schedules adopted pursuant to specified wage orders of the Industrial Welfare Commission.

Existing wage orders of the commission prohibit an employer from employing an employee for a work period of more than 5 hours per day without providing the employee with a meal period of not less than 30 minutes, with the exception that if the total work period per day of the employee is no more than 6 hours, the meal period may be waived by mutual consent of both the employer and employee.

This bill would codify that prohibition and also would further prohibit an employer from employing an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, with a specified exception.

The bill would provide that, if an employer approves the written request of an employee to make up work time that is lost as a result of a personal obligation of the employee, the hours of that makeup

work time, if performed in the same workweek in which the time was lost, may not be counted towards computing the total number of hours worked in a day for purposes of specified overtime requirements, except for hours in excess of 11 hours of work in one day or 40 hours in one workweek. The bill would require an employee to provide a signed written request for each occasion he or she makes that request. The bill would prohibit an employer from encouraging or otherwise soliciting an employee to make that request.

Existing wage orders of the commission provide that no person employed in an administrative, executive, or professional capacity is required by those wage orders to be compensated for overtime work. Those existing wage orders define an employee as employed in an administrative, executive, or professional capacity if, among other things, the employee is engaged in work that is primarily intellectual, managerial, or creative, and which requires exercise of discretion and independent judgment and the employee receives compensation of not less than a specified amount per month.

This bill would authorize the Industrial Welfare Commission to establish exemptions, with specified limitations, from the requirement that premium pay be paid for overtime work for executive, administrative, and professional employees, provided that the employee is primarily engaged in the duties which meet the test of the exemption and the employee earns a monthly salary equivalent to no less than 2 times the state minimum wage for full-time employment. The bill would require the commission to conduct a review of the duties that meet the test of this exemption and authorize the commission to hold a public hearing, to be conducted no later than July 1, 2000, to adopt or modify regulations relating to duties that meet the test of the exemption without convening a wage board.

The bill would authorize the Industrial Welfare Commission to review, retain, or eliminate exemptions from the hours requirements that were contained in a valid wage order in effect in 1997 and would authorize the commission to establish additional exemptions therefrom for the health or welfare of employees in any occupation, trade, or industry until January 1, 2005.

Under existing law, employment in which the hours of work do not exceed 30 hours in a week or 6 hours in a day are exempt from the general provisions of the Labor Code relating to the hours and days that constitute a workday and a workweek, and related provisions.

This bill would clarify that the exemption applies to the requirements for a day's rest within a period of 7 days of labor and the prohibition against requiring an employee to work more than 6 days in 7.

Existing provisions of the Labor Code contain specific workday and workweek requirements relating to employees of ski establishments, employees of licensed hospitals, and stable employees engaged in the

raising, feeding, or management of racehorses. Existing law also exempts employers engaged in specified commercial fishing enterprises from the minimum wage and maximum hour provisions of existing law.

This bill would repeal those provisions as of July 1, 2000.

This bill would require the Industrial Welfare Commission, prior to July 1, 2000, to conduct a review of wages, hours, and working conditions in the ski industry, commercial fishing industry, and health care industry, and for licensed pharmacists, outside salespersons, and stable employees in the horse racing industry. The bill would authorize the commission, based upon that review, to convene a public hearing to adopt or modify regulations at that hearing pertaining to those industries without convening wage boards. The bill would provide that the hearing be concluded by July 1, 2000.

The bill also would require the Industrial Welfare Commission, at a public hearing, to adopt wage, hours, and working conditions orders consistent with this measure without convening wage boards, which orders shall be final and conclusive for all purposes. Additionally, the commission would be authorized to adopt regulations consistent with this measure necessary to provide assurances of fairness regarding the conduct of employee workweek elections, employee disclosures, employee requests to the Labor Commissioner to review designations of work units, and processing of employee petitions as provided for in this measure or under any wage order of the commission.

Additionally, the bill would authorize the Industrial Welfare Commission to adopt or amend orders relating to break periods, meal periods, and days of rest.

Since violation of these provisions would, under existing law, constitute a misdemeanor, the bill would impose a state-mandated local program.

The bill also would make other technical and conforming changes and would declare null and void specified wage orders of the Industrial Welfare Commission relating to these provisions and temporarily reinstate specified prior orders of the commission.

This bill would further require the Industrial Welfare Commission to study the extent to which alternative workweek schedules are used in California with a cost-benefit analysis and to report the results of the study and recommendations to the Legislature by July 1, 2001.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

SECTION 1. This act shall be known and may be cited as the "Eight-Hour-Day Restoration and Workplace Flexibility Act of 1999."

SEC. 2. The Legislature hereby finds and declares all of the following:

(a) The eight-hour workday is the mainstay of protection for California's working people, and has been for over 80 years.

(b) In 1911, California enacted the first daily overtime law setting the eight-hour daily standard, long before the federal government enacted overtime protections for workers.

(c) Ending daily overtime would result in a substantial pay cut for California workers who currently receive daily overtime.

(d) Numerous studies have linked long work hours to increased rates of accident and injury.

(e) Family life suffers when either or both parents are kept away from home for an extended period of time on a daily basis.

(f) In 1998 the Industrial Welfare Commission issued wage orders that deleted the requirement to pay premium wages after eight hours of work a day in five wage orders regulating eight million workers.

(g) Therefore, the Legislature affirms the importance of the eight-hour workday, declares that it should be protected, and reaffirms the state's unwavering commitment to upholding the eight-hour workday as a fundamental protection for working people.

SEC. 3. Section 500 is added to the Labor Code, to read:

500. For purposes of this chapter, the following terms shall have the following meanings:

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

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

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

SEC. 4. Section 510 of the Labor Code is amended to read:

510. (a) Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any 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 for an employee. In addition, any work in excess of eight hours on any

seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work. The requirements of this section do not apply to the payment of overtime compensation to an employee working pursuant to any of the following:

(1) An alternative workweek schedule adopted pursuant to Section 511.

(2) An alternative workweek schedule adopted pursuant to a collective bargaining agreement pursuant to Section 514.

(3) An alternative workweek schedule to which this chapter is inapplicable pursuant to Section 554.

(b) Time spent commuting to and from the first place at which an employee's presence is required by the employer shall not be considered to be a part of a day's work, when the employee commutes in a vehicle that is owned, leased, or subsidized by the employer and is used for the purpose of ridesharing, as defined in Section 522 of the Vehicle Code.

(c) This section does not affect, change, or limit an employer's liability under the workers' compensation law.

SEC. 5. Section 511 is added to the Labor Code, to read:

511. (a) Upon the proposal of an employer, the employees of an employer may adopt a regularly scheduled alternative workweek that authorizes work by the affected employees for no longer than 10 hours per day within a 40-hour workweek without the payment to the affected employees of an overtime rate of compensation pursuant to this section. A proposal to adopt an alternative workweek schedule shall be deemed adopted only if it receives approval in a secret ballot election by at least two-thirds of affected employees in a work unit. The regularly scheduled alternative workweek proposed by an employer for adoption by employees may be 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.

(b) An affected employee working longer than eight hours but not more than 12 hours in a day pursuant to an alternative workweek schedule adopted pursuant to this section shall be paid an overtime rate of compensation of no less than one and one-half times the regular rate of pay of the employee for any work in excess of the regularly scheduled hours established by the alternative workweek agreement and for any work in excess of 40 hours per week. An overtime rate of compensation of no less than double the regular rate of pay of the employee shall be paid for any work in excess of 12 hours per day and for any work in excess of eight hours on those days worked beyond the regularly scheduled workdays established by the alternative workweek agreement. Nothing in this section requires an

employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

(c) 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.

(d) An employer shall make a reasonable effort to find a work schedule not to exceed eight 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 schedule hours established as the result of that election. An employer shall be permitted to provide a work schedule not to exceed eight hours in a workday to accommodate any employee who was hired after the date of the election and who is unable to work the alternative schedule established as the result of that election. 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.

(e) The results of any election conducted pursuant to this section shall be reported by an employer to the Division of Labor Statistics and Research within 30 days after the results are final.

(f) Any type of alternative workweek schedule that is authorized by this code and that was in effect on January 1, 2000, may be repealed by the affected employees pursuant to this section. Any alternative workweek schedule that was adopted pursuant to Wage Order Numbers 1, 4, 5, 7, or 9 of the Industrial Welfare Commission is null and void, except for an alternative workweek providing for a regular schedule of no more than 10 hours' work in a workday that was adopted by a two-thirds vote of affected employees in a secret ballot election pursuant to wage orders of the Industrial Welfare Commission in effect prior to 1998. This subdivision does not apply to exemptions authorized pursuant to Section 515.

(g) Notwithstanding subdivision (f), an alternative workweek schedule in the health care industry adopted by a two-thirds vote of affected employees in a secret ballot election pursuant to Wage Orders 4 and 5 in effect prior to 1998 that provided for workdays exceeding 10 hours but not exceeding 12 hours in a day without the payment of overtime compensation shall be valid until July 1, 2000. An employer in the health care industry shall make a reasonable effort to accommodate any employee in the health care industry who is unable to work the alternative schedule established as the result of a valid election held in accordance with provisions of Wage Orders 4 or 5 that were in effect prior to 1998.

(h) Notwithstanding subdivision (f), if an employee is voluntarily working an alternative workweek schedule providing for a regular

work schedule of not more than 10 hours work in a workday as of July 1, 1999, an employee may continue to work that alternative workweek schedule without the entitlement of the payment of daily overtime compensation for the hours provided in that schedule if the employer approves a written request of the employee to work that schedule.

SEC. 6. Section 512 is added to the Labor Code, to read:

512. An employer may not employ an employee for a work 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 of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

SEC. 7. Section 513 is added to the Labor Code, to read:

513. If an employer approves a written request of an employee to make up work time that is or would be lost as a result of a personal obligation of the employee, the hours of that makeup work time, if performed in the same workweek in which the work time was lost, may not be counted towards computing the total number of hours worked in a day for purposes of the overtime requirements specified in Section 510 or 511, except for hours in excess of 11 hours of work in one day or 40 hours in one workweek. 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. An 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 week pursuant to this section.

SEC. 8. Section 514 is added to the Labor Code, to read:

514. This chapter does not apply to an 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.

SEC. 9. Section 515 is added to the Labor Code, to read:

515. (a) The Industrial Welfare Commission may establish exemptions from the requirement that an overtime rate of compensation be paid pursuant to Sections 510 and 511 for executive, administrative, and professional employees, provided that the

employee is primarily engaged in the duties which meet the test of the exemption and the employee earns a monthly salary equivalent to no less than two times the state minimum wage for full-time employment. The commission shall conduct a review of the duties which meet the test of the exemption. The commission may, based upon this review, convene a public hearing to adopt or modify regulations at that hearing pertaining to duties which meet the test of the exemption without convening a wage boards. Any hearing conducted pursuant to this subdivision shall be concluded not later than July 1, 2000.

(b) (1) The commission may establish additional exemptions to hours of work requirements under this division 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. This paragraph shall become inoperative on January 1, 2005.

(2) Except as otherwise provided in this section and in subdivision (g) of Section 511, nothing in this section requires the commission to alter any exemption from provisions regulating hours of work that was contained in any valid wage order in effect in 1997. Except as otherwise provided in this division, the commission may review, retain, or eliminate any exemption from provisions regulating hours of work that was contained in any valid wage order in effect in 1997.

(c) For the purposes of this section "full-time employment" means employment in which an employee is employed for 40 hours per week.

(d) For the purpose of computing the overtime rate of compensation required to be paid to a nonexempt full-time salaried employee, the employee's regular hourly rate shall be $^1/_{40}$th of the employee's weekly salary.

(e) For the purposes of this section, "primarily" means more than one-half of the employee's work time.

(f) In addition to the requirements of subdivision (a), registered nurses employed to engage in the practice of nursing shall not be exempted from coverage under any part of the orders of the Industrial Welfare Commission, unless they individually meet the criteria for exemptions established for executive or administrative employees.

SEC. 10. Section 516 is added to the Labor Code, to read:

516. Notwithstanding any other provision of law, the Industrial Welfare Commission may adopt or amend working condition orders with respect to break periods, meal periods, and days of rest for any workers in California consistent with the health and welfare of those workers.

SEC. 11. Section 517 is added to the Labor Code to read:

517. (a) The Industrial Welfare Commission shall, at a public hearing to be concluded by July 1, 2000, adopt wage, hours, and working conditions orders consistent with this chapter without

convening wage boards, which orders shall be final and conclusive for all purposes. These orders shall include regulations necessary to provide assurances of fairness regarding the conduct of employee workweek elections, procedures for employees to petition for and obtain elections to repeal alternative workweek schedules, procedures for implementation of those schedules, conditions under which an adopted alternative workweek schedule can be repealed by the employer, employee disclosures, designations of work, and processing of workweek election petitions pursuant to Parts 2 and 4 of this division and in any wage order of the commission and such other regulations as may be needed to fulfill the duties of the commission pursuant to this part.

(b) Prior to July 1, 2000, the Industrial Welfare Commission shall conduct a review of wages, hours, and working conditions in the ski industry, commercial fishing industry, and health care industry, and for stable employees in the horseracing industry. Notwithstanding subdivision (a) and Sections 510 and 511, and consistent with its duty to protect the health, safety, and welfare of workers pursuant to Section 1173, the commission may, based upon this review, convene a public hearing to adopt or modify regulations at that hearing pertaining to the industries herein, without convening wage boards. Any hearing conducted pursuant to this subdivision shall be concluded not later than July 1, 2000.

(c) Notwithstanding subdivision (a) of Section 515, prior to July 1, 2000, the commission shall conduct a review of wages, hours, and working conditions of licensed pharmacists. The commission may, based upon this review, convene a public hearing to adopt or modify regulations at that hearing pertaining to licensed pharmacists without convening wage boards. Any hearing conducted pursuant to this subdivision shall be concluded not later than July 1, 2000.

(d) Notwithstanding sections 1171 and subdivision (a) of Section 515, the Industrial Welfare Commission shall conduct a review of wages, hours, and working conditions of outside salespersons. The commission may, based upon this review, convene a public hearing to adopt or modify regulations at that hearing pertaining to outside salespersons without convening wage boards. Any hearing conducted pursuant to this subdivision shall be concluded not later than July 1, 2000.

(e) Nothing in this section is intended to restrict the Industrial Welfare Commission in its continuing duties pursuant to Section 1173.

(f) No action taken by the Industrial Welfare Commission pursuant to this section is subject to the requirements of Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code.

(g) All wage orders and other regulations issued or adopted pursuant to this section shall be published in accordance with Section 1182.1.

SEC. 12. Section 554 of the Labor Code is amended to read:

554. Sections 551 and 552 shall not apply to any cases of emergency nor to work performed in the protection of life or property from loss or destruction, nor to any common carrier engaged in or connected with the movement of trains. This chapter, with the exception of Section 558, shall not apply to any person employed in an agricultural occupation, as defined in Order No. 14-80 (operative January 1, 1998) of the Industrial Welfare Commission, nor shall the provisions of this chapter apply when the employer and a labor organization representing employees of the employer have entered into a valid collective bargaining agreement pursuant to Section 514. Nothing in this chapter shall be construed to prevent an accumulation of days of rest when the nature of the employment reasonably requires that the employee work seven or more consecutive days, providing that in each calendar month the employee receive days of rest equivalent to one day's rest in seven. The requirement respecting the equivalent of one day's rest in seven shall apply, notwithstanding the other provisions of this chapter relating to collective bargaining agreements, where the employer and a labor organization representing employees of the employer have entered into a valid collective bargaining agreement respecting the hours of work of the employees, unless the agreement expressly provides otherwise.

In addition to the exceptions herein, the Chief of the Division of Labor Standards Enforcement may, when in his judgment hardship will result, exempt any employer or employees from the provisions of Sections 551 and 552.

SEC. 13. Section 556 of the Labor Code is amended to read:

556. Sections 551 and 552 shall not apply to any employer or employee when the total hours of employment do not exceed 30 hours in any week or six hours in any one day thereof.

SEC. 14. Section 558 is added to the Labor Code, to read:

558. (a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:

(1) For any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

(2) For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

(3) Wages recovered pursuant to this section shall be paid to the affected employee.

(b) If upon inspection or investigation the Labor Commissioner determines that a person had paid or caused to be paid a wage for overtime work in violation of any provision of this chapter, or any provision regulating hours and days of work in any order of the Industrial Welfare Commission, the Labor Commissioner may issue a citation. The procedures for issuing, contesting, and enforcing judgments for citations or civil penalties issued by the Labor Commissioner for a violation of this chapter shall be the same as those set out in Section 1197.1.

(c) The civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.

SEC. 15. Section 1182.1 of the Labor Code is amended to read:

1182.1. Any action taken by the commission pursuant to Sections 517 and 1182 shall be published in at least one newspaper in each of the Cities of Los Angeles, Sacramento, Oakland, San Jose, Fresno, San Diego, and San Francisco. A summary of the action taken and notice of where the complete text of the new or amended order may be obtained may be published in lieu of the complete text when the commission determines such summary and notice will adequately inform the public. The statement as to the basis of the order need not be published.

SEC. 16. Section 1182.2 of the Labor Code is amended to read:

1182.2. (a) The Legislature finds that the hours and days of work of employees employed in California in the seasonal ski industry are subject to fluctuations which are beyond the control of their employers. The Legislature further finds that the economic interests of these employees are best served when minimum limitations are placed upon their hours and days of work. Accordingly, no employer who operates a ski establishment shall be in violation of any provision of this code or any applicable order of the Industrial Welfare Commission by instituting a regularly scheduled workweek of not more than 56 hours, provided that any employee shall be compensated at a rate of not less than one and one-half times the employee's regular rate of pay for any hours worked in excess of 56 hours in any workweek.

(b) As used in this section, "ski establishment" means an integrated, geographically limited recreational area comprised of the basic skiing facilities, together with all operations and facilities related thereto.

(c) This section shall apply only during any month of the year when Alpine or Nordic skiing activities, including snowmaking and grooming activities, are actually being conducted by the ski establishment.

This section shall remain in effect only until July 1, 2000, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2000, deletes or extends that date.

SEC. 17. Section 1182.3 of the Labor Code is amended to read:

1182.3. No employee licensed pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 of the Fish and Game Code, or is employed on a commercial passenger fishing boat licensed pursuant to Article 5 (commencing with Section 7920) of Chapter 1 of Part 3 of Division 6 of the Fish and Game Code, shall be subject to a minimum wage or maximum hour order of the commission.

This section shall remain in effect only until July 1, 2000, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2000, deletes or extends that date.

SEC. 18. Section 1182.9 of the Labor Code is amended to read:

1182.9. An employer engaged in the operation of a licensed hospital or providing personnel for the operation of a licensed hospital who institutes, pursuant to an applicable order of the commission, a regularly scheduled workweek that includes no more than three working days of no more than 12 hours each within any workweek, shall make a reasonable effort to find an alternative work assignment for any employee who participated in the vote which authorized the schedule and is unable to work 12-hour workday schedules. An employer shall not be required to offer an alternative work assignment to an employee if an alternative work assignment is not available or if the employee was hired after the adoption of the 12-hour, 3-day workweek schedule.

This section shall remain in effect only until July 1, 2000, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2000, deletes or extends that date.

SEC. 19. Section 1182.10 of the Labor Code is amended to read:

1182.10. (a) Notwithstanding any other provision of this chapter, or any order of the commission, the employment of stable employees engaged in the raising, feeding, and management of racehorses by a trainer shall be subject to the same standards governing wages, hours, and conditions of labor as those established by the commission for employees in agricultural occupations engaged in the raising, feeding, and management of other livestock, except as set forth in subdivision (b).

(b) Notwithstanding the provisions of any order of the commission permitting employees employed in agricultural occupations to work 10 hours on each of six workdays in a seven-day workweek without the payment of overtime compensation, stable employees shall not be employed more than 10 hours in any workday, nor more than 56 hours during seven days in any workweek. However, stable employees may be employed in excess of 10 hours in any workday, and in excess of 56 hours during seven days in one

workweek, if these employees are compensated at a rate of not less than one and one-half times the employees' regular rate of pay for all hours worked in excess of 10 hours in any workday, or 56 hours in any workweek.

(c) For purposes of this section:

(1) "Stable employees" includes, but is not limited to, grooms, hotwalkers, exercise workers, and any other employees engaged in the raising, feeding, or management of racehorses, employed by a trainer at a racetrack or other nonfarm training facility.

(2) "Trainer" has the same definition as in Section 24001 of the Food and Agricultural Code.

(3) "Workday" and "workweek" have the same definition as in the order of the commission applicable to employees employed in agricultural occupations.

(4) "Regular rate of pay" includes all wages paid by the trainer to the stable employee for a workweek of not more than 56 hours, but excludes those amounts excluded from regular pay by Section 7(e) of the Fair Labor Standards Act (29 U.S.C. Sec. 207(e)), and excludes the payment of the stable employee's share, if any, of the purse of a race, whether that share is paid by the owner of the racehorse or by the trainer.

This section shall remain in effect only until July 1, 2000, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2000, deletes or extends that date.

SEC. 20. Section 1183.5 of the Labor Code is repealed.

SEC. 21. Wage Orders number 1-98, 4-98, 5-98, 7-98, and 9-98 adopted by the Industrial Welfare Commission are null and void, and Wage Orders 1-89, 4-89 as amended in 1993, 5-89 as amended in 1993, 7-80, and 9-90 are reinstated until the effective date of wage orders issued pursuant to Section 517.

SEC. 22. The Industrial Welfare Commission shall study the extent to which alternative workweek schedules are used in California and the costs and benefits to employees and employers of those schedules, and report the results of the study and recommendations to the Legislature not later than July 1, 2001.

SEC. 23. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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EXHIBIT C

MINUTES OF PUBLIC MEETING

OF THE

INDUSTRIAL WELFARE COMMISSION

October 1, 1999

Sacramento

The Industrial Welfare Commission (IWC) held a public meeting on Friday, October 1, 1999, at the State Capitol, Room 112, in Sacramento.

Charles (Chuck) H. Center, appointed Chair of the IWC by Governor Gray Davis on September 6, 1999, opened the meeting at 11:02 a.m. Commissioner John J. McCarthy was present as well as Barry D. Broad, William Eugene Dombrowski, and Leslee A. Coleman IWC Commissioners appointed by the Governor effective September 6, 1999. Stephen J. Smith, Director of the Department of Industrial Relations (DIR); Andrew R. Baron, Acting IWC Executive Officer; Marguerite Stricklin, Counsel to IWC from the Attorney General's Office; Lisa Chin, Intern from the University of California, Davis, School of Law; and Cheryl Buckwalter, Recording Secretary, were also present.

OPENING STATEMENTS

Chair Chuck Center welcomed those in attendance to the first 1999 IWC meeting. Director Stephen J. Smith was introduced to simultaneously administer the Oath of Office to Commissioners. Oaths were signed and collected.

Mr. Smith expressed his appreciation for the Commissioners' willingness to serve on the IWC and described some of the issues with which this Commission will be dealing and the importance of trying to strike a balance. He offered the DIR's assistance to the IWC.

INTRODUCTION OF COMMISSIONERS

Mr. Center explained his intention for the IWC to operate as fairly as in previous years. He acknowledged his employer Archie Thomas and daughter Jennifer Center.

Commissioners were introduced and given an opportunity to describe their backgrounds and interests.

ADJOURN

Mr. Center adjourned the meeting at 11:14 a.m. for a brief closed session to deal with a personnel matter.

PUBLIC MEETING RECONVENED

Mr. Center called the public meeting to order at 11:18 a.m.

EXECUTIVE OFFICER

Mr. Center introduced Andrew R. Baron as the IWC Executive Officer.

Mr. Baron thanked the Commission for the opportunity. He explained the IWC has enormous work ahead and it is his goal for the IWC to operate efficiently and effectively.

Marguerite Stricklin, Counsel to IWC from the Attorney General's Office, and Lisa Chin, Intern from the University of California, Davis, School of Law were introduced.

COMMISSION DISCUSSION

Mr. Baron gave a general overview of mandatory/optional IWC activity stemming from the passage of AB 60. The focus of the next IWC meeting will be to provide opportunity for testimony.

Commissioners were provided with present and historical documentation on wage orders, Labor and Government Codes, AB 60 (Knox) Employment: Overtime.

Mr. Baron presented the status of wage orders under AB 60: All Wage Orders remain intact, except where AB 60 applies across the board, such as in the area of alternative workweeks, until the effective date of wage orders adopted by 7/01/00 concerning procedures for employee alternative/workweek elections as well as if changes are adopted for the industries or occupations listed in the next paragraph, with the exception of 1-98 – manufacturing, which reverts to 1-89; 4-98 – professional, technical, clerical, mechanical, which reverts to 4-89 as amended in 1993; 5-89 – housekeeping, which reverts to 5-89 as amended in 1993; 7-98 – mercantile, which reverts to 7-80; and 9-98 – transportation, which reverts to 9-90.

IWC Activities Under AB 60

The IWC Shall:

Conduct a review of executive, administrative, professional duties which meet the test for an exemption by 7/01/00 – without having to utilize wage boards – not exempting nurses or pharmacists from coverage under orders unless they individually meet the exemption above for executive or administrative employees.

Conclude a public hearing by 7/01/00 in order to develop procedures for employee alternative/workweek elections – without wage boards.

Conduct a review of the following industries or occupations by 7/01/00: Ski, fishing, health care, stable employees (horseracing), pharmacists, outside salespersons.

Report to legislature on alternative workweek schedules by 7/01/01.

The IWC May:

Convene a public hearing to adopt or modify regulations on executive, administrative or professional duties that meet the test for an exemption, to be concluded by 7/01/00.

Establish additional exemptions until 1/01/05 in any occupation, trade, or industry where it finds that hours or conditions of labor may be prejudicial to the health or welfare of employees. (Labor Code authorizes this now and in the future.)

Review, retain, or eliminate any exemption in effect in 1997, except as otherwise provided in this division of the Labor Code. Nothing requires the IWC to alter any exemption in a valid wage order in effect in 1997, except to repeal an exemption that lapses on 7/01/00.

Convene public hearing(s) concerning the industries/occupations listed above, to be concluded by 7/01/00.

Adopt or amend orders for break periods, meal periods, or days of rest.

The potential issuance of a legislative advisory bulletin from the IWC is being explored. Although uncertain if an advisory bulletin will be implemented, the IWC needs to hear from employers and employers need to be aware of their responsibilities and liabilities.

Mr. Center opened the floor for public comment and announced this time was not intended for debate. Comments can also be directed to the IWC Chair or Executive Officer.

Richard Holober, California Labor Federation, agreed it is important for both employers and workers to be aware of changes effective 1/01/00 so employers can comply with the law and employees' rights can be understood. Placing notices in employee lunchrooms was suggested. Regarding the daily overtime issue, Mr. Holober felt the IWC did the right thing regarding 8-hour day laws, due to problems a few years ago.

Julianne Broyles, California Chamber of Commerce, explained this is one of the most balanced approaches to help and not unduly penalize. The Chamber wants to help the IWC and will provide input on problem points they perceive, e.g., examining unfair language such as consecutive workweek.

Thomas R. Luevano, Sutter Health, inquired about the IWC hosting public meetings versus public hearings and duly noticing the public of scheduled meetings.

Mr. Baron explained AB 60 is not in effect until January 1, 2000, and until then, the IWC will be fact finding. A sign-in sheet will be utilized at future meetings; the next meeting will be scheduled in November 1999. Mr. Baron advised the public would be duly noticed of meetings.

James O. Abrams, California Hotel & Motel Association explained that it would be helpful for the IWC to let employers and employee representatives know the type of information and facts the IWC wants to receive.

It was explained to Mr. Abrams and the audience that, in essence, the IWC is starting fresh because record keeping ceased over two years ago. The IWC wants to have a comprehensive view of each industry, e.g., nature of work, compensation, hard data, etc. All information is welcome.

Willie Washington, California Manufacturers Association, will submit his questions and concerns to the IWC and suggested that someone from the Labor Commissioner's office attend meetings so commissioners can address questions. The IWC will try to arrange for a representative to attend meetings.

Letter from Assemblymember Wally Knox. Mr. Center read a letter from Mr. Knox welcoming back the IWC and congratulating new appointees. Mr. Knox looks forward to working with the IWC implementation of daily overtime, sick leave, and other labor issues.

COMMISSION DISCUSSION – IWC ACTIVITY CONCERNING THE MINIMUM WAGE

By statute, "the Commission shall conduct a full review of the adequacy of the minimum wage at least once every two years." The statute further states that "the commission may, upon its own motion or upon petition, amend or rescind any order or portion of any order or adopt an order covering any occupation, trade, or industry not covered by an existing order pursuant to this chapter.

Motion (Broad/Dombrowski)

Pursuant to Statute 1173, motion that the Industrial Welfare Commission reviews the minimum wage every two years.

Vote: Carried 5-0.

Mr. Center opened the floor for public comment.

Richard Holober, California Labor Federation, informed the IWC he sent a request for review of the minimum wage increase to them and explained the mandate of the Commission is to ensure the minimum wage is sufficient. California has the lowest minimum wage on the West Coast. Oregon's minimum wage is $6.50 per hour and Washington's will be $6.50 as of 1/1/00. He explained that three to three and one-half million people in California are at or below the minimum wage. More testimony will be brought to the IWC; an increase is long overdue.

Abdi Soltani, Californians for Justice, explained this organization was founded in 1995 and works for civil rights. He explained economics differ throughout the state, but low wages in the retail and service industries are consistent. Mr. Soltani was asked to forward to the IWC the three areas of concern that he described regarding cost of living and demographics of minimum wage workers.

Roger White, ACORN Community Organization, explained this is a national association and the majority of its membership comprise adults and families. ACORN looks forward to working with the IWC.

Julianne Broyles, California Chamber of Commerce, explained that the Chamber does not have a position yet on what the minimum wage should be and described a recent article in the *Sacramento Bee* about the increase in income of Californians being at the highest level since the late 1960s. It is important to maintain economic fairness with other states in order to compete for business. The IWC would like to obtain the Census Bureau's report.

Motion (Dombrowski/McCarthy)

To adjourn the meeting at 12:06 p.m.

Vote: Carried 5-0.

Respectfully submitted,

Andrew R. Baron
Executive Officer

Approved,

Charles H. Center
Chair

Date: November 8, 1999

MINUTES OF PUBLIC HEARING

OF THE

INDUSTRIAL WELFARE COMMISSION

November 8, 1999

Sacramento

The Industrial Welfare Commission (IWC) held the second in a series of public hearings in regard to AB 60. The IWC accepted testimony on issues pertaining to AB 60, with particular emphasis on its impact immediately upon its effective date of January 1, 2000. The hearing was held on November 8, 1999, in the State Capitol, Room 112, commencing at 9:30 am. A transcript of this hearing has been prepared and is available for review.

Chairperson Chuck Center opened the public hearing shortly after 10:00 am (the exact time was not noted in the record.) Commissioners Barry Broad, Leslee Coleman and Bill Dombrowski were present. The IWC's staff, including Executive Officer Andrew R. Baron, Principal Analyst Michael Moreno, and Administrative Assistant Donna Scotti, as well as the IWC's legal counsel, Deputy Attorney General Marguerite C. Stricklin, were also present.

Chairperson Center explained that the purpose of the hearing was to gather information with respect to the above issues. He then outlined the procedures for speaking and submitting written comment.

Commissioner Coleman moved to have the IWC approve the minutes from the previous hearing. Commissioner Broad seconded the motion, and it was unanimously carried.

The following individuals presented testimony:

1. Willie Washington, California Manufacturers Association
2. Jon Ross, California Restaurant Association
3. Ann Greenhill, Summer House, California Respite Services Association
4. Connie Delgado Alvarez, California Healthcare Association
5. Michele Buhlert, Nurse, employed by Marshall Hospital
6. Julianne Broyles, California Chamber of Commerce
7. Tamme Booth, Pharmacist, employed by Wal-Mart
8. Timothy Long, California Retailers Association
9. Mark Pawlicki, Simpson Timber Company
10. Robert Jones, National Association of Computer Consulting Businesses, Northern California Chapter
11. Kelly Watts, American Electronics Association
12. Lowell Taylor, Pharmacist, employed by Wal-Mart
13. Julia Garci, employed in the paper industry
14. Tyrus Washington, Inland Paper & Packaging
15. Mark Vegh, TOC Management Services
16. Vic Sward, California Trucking Association
17. Daniel McCarthy, California Trucking Association

18. Teresa Miller, California Society of Health System Pharmacists
19. Les Clark, Independent Oil Producers Association
20. Brad Trom, Albertson's and Savon Drug Stores
21. Jim Ewert, California Newspaper Publishers Association
22. Bruce Young, California Retailers Association
23. Joe Brown, Conectiv Operating Services
24. Miles Locker, Chief Counsel, Division of Labor Standards Enforcement

After the IWC determined no one present wished to give further testimony, it was agreed by common consent to adjourn the public hearing at 12:29 p.m. Commissioner Broad moved to adjourn, Commissioner Dombrowski seconded the motion and all Commissioners were in favor of it.

Respectfully Submitted,

_____
Andrew R. Baron
Executive Officer

Approved:

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Chuck Center
Chairperson

Date: February 25, 2000

MINUTES OF PUBLIC HEARING

OF THE

INDUSTRIAL WELFARE COMMISSION

November 15, 1999

Sacramento

The Industrial Welfare Commission (IWC) held the third in a series of public meetings in regard to AB 60. The IWC accepted testimony on issues pertaining to AB 60, with particular emphasis on its impact immediately upon its effective date of January 1, 2000. The hearing was held on November 15, 1999, at the Hiram Johnson State Office Building, Auditorium Room B100, 455 Golden Gate Avenue, San Francisco, commencing at 10:00 am. A transcript of the hearing has been prepared and is available for review.

Chairperson Chuck Center opened the public hearing at 10:04 am. Commissioners Barry Broad, Leslee Coleman, Bill Dombrowski and John McCarthy were present. The IWC's staff, including Executive Officer Andrew R. Baron, Principal Analyst Michael Moreno, and Analyst Lisa Chin, as well as the IWC's legal counsel, Deputy Attorney General Marguerite C. Stricklin, were also present.

Chairperson Center explained that the purpose of the hearing was to gather information with respect to the above issues. He then explained that the hearing would be recorded.

Chairperson Center moved to direct "the executive director to send a letter to the Department of Industrial Relations, the Division of Labor Standards Enforcement, pursuant to section 1198.4 of the Labor Code, to inform the IWC of any changes in enforcement policy implementing any regulations that fall in the purview of the IWC." Commissioner Broad seconded the motion, which passed unanimously.

The following individuals presented testimony:

1. Ken Sulzer, Association of Energy Service Companies, Independent Oil Producers Agency, California Independent Petroleum Association
2. Fred Holmes, Western Drilling
3. Paul Hancock, Poole California Energy Services
4. Tim Long, California Retailers Association
5. Dave Fond, Longs Drug Stores
6. Duane Black, Pharmacist, employed by Longs Drug Stores
7. Alan Pope, Longs Drug Stores
8. Bill Webster, Pharmacist, employed by Vons Pharmacy
9. Vincent Payne, Pharmacist, employed by Pavilions/Safeway/Vons
10. John Perez, United Food and Commercial Workers
11. Bob Roberts, California Ski Industry Associations
12. Marla Herrera, Respiratory Therapist, employed by John Muir Medical Center
13. Sal Nicolosi, employee of Dow Chemical
14. Steve Friday, Dow Chemical

15. Vicki Zahn, Nurse, employed by Queen of the Valley Hospital
16. Connie Delgado Alvarez, California Healthcare Association
17. Judith Levin, Family Support Services of the Bay Area
18. Julianne Broyles, California Chamber of Commerce
19. John Dunlap, California Restaurant Association
20. Greg Wellington, Papa Murphy's Pizza
21. Jim Nichol, Harmon Management

Chairperson Center recessed the public hearing from 1:00 p.m. to 1:43 p.m. After the recess, the following persons also presented testimony:

22. Marcy Saunders, State Labor Commissioner
23. Maureen Wright, Respite Inn
24. Lisa Tomlinson, Pac Pizza
25. Marcie Berman, California Employment Lawyers Association
26. Gail Skinner, Nurse, employed by California Pacific Medical Center
27. Mary Chris Vallario, Nurse, employed by California Pacific Medical Center
28. Jonathan Mayes, Safeway
29. Ron Bingaman, Pharmacist, employed by Safeway
30. Marc Koonin, Steinhart & Falconer, LLP
31. Brad Cinto, Pharmacist, employed by Walgreens
32. Francis Cheng, Pharmacist, employed by Longs Drug Stores
33. Jim Merrill, United Defense
34. Susan Kraft, Safe, Inc.
35. Tom Rankin, California Labor Federation, AFL-CIO
36. Fred Mills
37. Jim Ewert, California Newspaper Publishers

After the IWC determined no one present wished to give further testimony, it was agreed by common consent to adjourn the public hearing at 3:16 p.m. Commissioner Dombrowski moved to adjourn, with Commissioner Broad seconding the motion. It passed unanimously.

Respectfully Submitted,

_____
Andrew R. Baron
Executive Officer

Approved:

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Chuck Center
Chairperson

Date: February 25, 2000

MINUTES OF PUBLIC HEARING

OF THE

INDUSTRIAL WELFARE COMMISSION

December 15, 1999

Sacramento

The Industrial Welfare Commission (IWC) held the fourth in a series of public *meetings and* hearings *with* ~~in~~ regard to AB 60. The Minimum Wage was also on the agenda as well. The IWC accepted testimony on issues pertaining to AB 60 and on Minimum Wage in accordance with Labor Code Sec. 1173. The hearing was held on December 15, 1999, at the Ronald Reagan State Office Building Auditorium, 300 S. Spring Street, Los Angeles, commencing at 10:00 am. A transcript of the hearing has been prepared and is available for review.

Chairperson Chuck Center opened the public hearing at 10:10 am. Commissioners Barry Broad, Leslee Coleman, Bill Dombrowski and John McCarthy were present. The IWC's staff, including, Principal Analyst Michael Moreno and Analyst Christine Morse, as well as the IWC's legal counsel, Deputy Attorney General Marguerite C. Stricklin, were also present.

Chairperson Center explained that the purpose of the hearing was to gather information with respect to the above issues. He then outlined the procedures for speaking and submitting written comment.

Commissioner Broad moved to do the following: "?on Page 2, after, 'No person' -- under Section 3, 'Administrative, Executive, and Professional Employees,' in the second sentence of that paragraph, it says, 'No person shall be considered to be employed in an administrative, executive, or professional capacity unless the person is primarily engaged in the duties which meet the test of the exemption and earns a monthly salary equivalent to no' – proposed language – 'of no less than two times the state minimum wage for full-time employment.' Add the following: 'Labor Code Section 515(a) mandates that the Commission conduct a review of the duties which meet the test of the exemption, and that any hearing conducted pursuant to that subsection be conducted no later than July 1, 2000." Commissioner Coleman seconded this motion, which passed unanimously.

Commissioner Dombrowski moved to adopt the draft of the wage order that was provided at the hearing later in the day, as opposed to the first one that had been provided. He emphasized that this was a draft to work from. Commissioner Broad seconded the motion, which passed unanimously.

Commissioner McCarthy moved to have one of the first items of business in the next meeting be the consideration of an exemption on professional grounds for midwives. Commissioner Coleman seconded the motion, which passed unanimously.

The following individuals presented testimony:

1. Art Pulaski, California Labor Federation, AFL-CIO
2. Maria Marin
3. Orlando Barragan, Californians for Justice
4. Larisa Casillas, Children Now
5. Rev. Dave O'Connell, Church Pastor, Archdiocese of Los Angeles

6. Dan Galpern, California Budget Project
7. Josefina Campos
8. Maximo Garcia
9. Jan Breidenbach, Southern California Association of Non-Profit Housing
10. Ruth Todasco, Wages for Housework Campaign
11. Jung Hee Lee, Korean Immigrant Workers Association
12. Judith Eckert, United Domestic Workers
13. Carol Lyles, Home Care Worker, Los Angeles County
14. Wally Knox, California State Assembly Member
15. Jon Ross, California Restaurant Association
16. Ted Burke, Restaurateur, Shadowbrook Restaurant, Santa Cruz
17. Jamie Alba, Restaurateur
18. Julianne Broyles, California Chamber of Commerce
19. Horace Heidt, Sherman Oaks Chamber of Commerce, Apartment Building Owner
20. Sandra Frolich, Sherman Oaks Chamber of Commerce
21. James Abrams, California Hotel and Motel Association

Chairperson Center recessed the public hearing from 12:30 pm. to 1:20 pm. After the recess, the following persons also presented testimony:

22. Marcy Saunders, State Labor Commissioner
23. Terence Street, Roebbelen Contracting
24. John Hakel, Associated General Contractors of California
25. James Martens, Transportation Management Systems
26. Paul Gladfelty, California Mining Association
27. Charles Birenbaum Attorney, California Mining Association
28. Kim Witt, Viceroy Gold Corporation
29. Ken Sulzer, Attorney, California Independent Petroleum Association, Association of Energy Service Companies, Independent Oil Producers Agency
30. Rod Eson, Venoco
31. Dave Lefler, Western Drilling, Inc.
32. Scott Wetch, State Building and Construction Trades Council of California, AFL-CIO
33. Richard Holober, California Labor Federation, AFL-CIO
34. Matt McKinnon, California Conference of Machinists
35. Patricia Gates, Attorney, Northern California District Council of Laborers
36. Jim Shadwick, Time Clock Sales and Service
37. Dr. B.J. Snell, California Nurse-Midwives Association
38. Ruth Mielke, Certified Nurse-midwife
39. Susan Bogar, Certified Nurse-midwife
40. Pauline Glatleider, Certified Nurse-midwife
41. Cynthia Everett, Registered Nurse
42. Jill Furillo, California Nurses Association
43. Nancy Marchutz, Certified Nurse-midwife
44. Betsy Jenkins, ~~e~~ *C*ertified ~~n~~ *N*urse-midwife
45. Charlet Rogers, Registered Nurse
46. Richard Simmons, Attorney, California Healthcare Association
47. Katherine Connolly, Registered Nurse
48. Charles Long, Edison Pipeline and Terminal Company
49. Paul Lussi, Edison Pipeline and Terminal Company

50. Matt Bartosiak, Employers Group
51. Karla Wilson, Advanced Practiced Nurse
52. Pamela Melton, PARCA
53. Michael Murrey, Staples
54. Richard Holober, California Labor Federation, AFL-CIO
55. Sonia Moseley, United Nurses Association of California
56. Ethel Rowe, SEIU Local 399
57. Mary McCulley, Nurse Practitioner
58. Francine Alba, Sherman Oaks Chamber of Commerce
59. Donna Nowicki, Nurse Practitioner
60. Jane Downs, Along Came Mary! Productions
61. Hermie Montani, Saputo Chees USA, Inc.
62. Bob Hay, Poly-Tainer, Inc.
63. Gabriella Lopez, Poly-Tainer, Inc.
64. James Davis, Attorney
65. Ginny Pinkerton, California Association for Health Services at Home
66. Joseph Diaz, California Nursing Home Association
67. Monica Vera-Schubert, Pharmacist
68. Annette Flaster, Pharmacist
69. Morrie Goldstein, Guild for Professional Pharmacists

After the IWC determined no one present wished to give further testimony, it was agreed by common consent to adjourn the public hearing at 6:00 p.m. Commissioner Dombrowski moved to adjourn. Commissioner Broad seconded the motion, which passed unanimously.

Respectfully Submitted,

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Andrew R. Baron
Executive Officer

Approved:

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Chuck Center
Chairperson

Date: February 25, 2000

MINUTES OF PUBLIC HEARING

OF THE

INDUSTRIAL WELFARE COMMISSION

January 28, 2000

Sacramento

The Industrial Welfare Commission (IWC) held the fifth in a series of public meetings and hearings with regard to AB 60. The IWC heard testimony regarding an exemption for advanced practice nurses. Pursuant to Labor Code Section 1181, the IWC also accepted testimony on other issues pertaining to AB 60 and considered the adoption of an Interim Wage Order to implement its provisions. The hearing was held on January 28, 2000, in Sacramento, at the State Capitol, Room 4203, commencing at 10:00 a.m. A transcript of the hearing has been prepared and is available for review.

Chairperson Chuck Center opened the public hearing at 10:10 am. Commissioners Barry Broad, Leslee Coleman, Bill Dombrowski and Doug Bosco were present. The IWC's staff, including, Executive Officer Andrew Baron, Principal Analyst Michael Moreno, Analyst Christine Morse, Administrative Analyst Donna Scotti and Analyst Lisa Chin, as well as the IWC's legal counsel, Deputy Attorney General Marguerite C. Stricklin, were also present.

Executive Officer Baron swore in the new commissioner, Doug Bosco.

Chairperson Center explained that the purpose of the hearing was first to receive testimony regarding advanced practice nurses, and then to consider the proposed Interim Wage Order. He then outlined the procedures for addressing the commission.

Following the receipt of additional testimony pertaining to AB 60, Commissioner Broad moved to adopt the proposed Interim Wage Order with certain amendments. Commissioner Dombrowski seconded the motion, which passed unanimously.

Commissioner Bosco moved that the proposed Interim Wage Order go into effect on March 1, 2000. Commissioner Dombrowski seconded the motion, which passed unanimously.

Commissioner Broad moved to convene a wage board to establish a wage order for on-site construction, mining, drilling, and logging based on the criteria set forth in Labor Code Section 1178. Commissioner Dombrowski seconded the motion, which passed unanimously.

Commissioner Broad moved to adopt the proposed Interim Wage Order as amended. Commissioner Coleman seconded the motion, which passed unanimously.

The following individuals presented testimony:

1. B. J. Snell, California Nurse Midwives Association
2. Susanne Phillips, California Coalition Of Nurse Practitioners
3. Deborah Haight, California Association Of Nurse Anesthetists

4. Deborah Gribbons (Harris), Advanced Practice Nurse.
5. Noreen Clarke-Sheehan, Advanced Practice Nurse
6. Karen Snow-Rodriguez, Advanced Practice Nurse
7. Donna Nowicki, Advanced Practice Nurse
8. Jeanette Morrow, California Coalition Of Nurse Practitioners
9. Arlene Sheehan, Neonatal Nurse Practitioner
10. Patrice Pratoomratana, Respiratory Therapist
11. Tricia Hunter, American Nurses Association
12. Pamela Broderson, Nurse Practitioner
13. Barbara Blake, United Nurses Associations Of California
14. Vivian Miller, Nurse Practitioner
15. Diane Fletcher, Nurse Practitioner
16. Mary E. Lynch, Professor, University Of California, San Francisco
17. Ellen Bair, Nurse Practitioner
18. Julianne Broyles, California Chamber Of Commerce, California Employers Association
19. Tom Rankin, California Labor Federation
20. Donald Clark, Clark Pacific
21. Scott Wetch, State Building And Construction Trades Council
22. Patricia Gates, Van Bourg, Weinberg, Roger & Rosenfeld
23. Jamie Khan, Associated General Contractors
24. Warren Mendel, Southern California Contractors Association
25. Phil Vermeulen, Engineering Contractors Association, Fence Contractors, Sacramento And Marin Building Exchanges, Flasher Barricade Association
26. Alan Smith, National Plasterers Council
27. George Oliveira, National Plasterers Council
28. Eric Carleson, California Spa And Pool Industry Education Council
29. Robert Tollen, California Independent Petroleum Association, Association Of Energy Service Companies, Independent Oil Producers Agency
30. Ed Ehlers, Associated California Loggers
31. Mark Vegh, Toc Management Systems
32. Richard Holober, California Nurses Association

Chairperson Center recessed the public hearing from 12:42 p.m. to 1:19 p.m. After the recess, the following persons also presented testimony:

33. Patrice Pratoomratana (Continued), Respiratory Therapist
34. Sandy Rock, Mad River Community Hospital
35. Linda Hayes, Critical Care Registered Nurse
36. Carol Mantell, Registered Nurse
37. Amy Meier, Scripps Memorial Hospital
38. Dawn Dingwell, California Association Of Health Facilities
39. Debbie Portela, Owner/Operator, Long-Term Care Facility
40. Jay Allen, Rcca Services
41. Kate Gattuso, Respiratory Therapist
42. Jack Mcgee, Respiratory Care Practitioner
43. Kerry Rodriguez Messer, California Association For Health Services At Home
44. Marianne Ward, Licensed Vocational Nurse, Interim Healthcare
45. Holly Swiger, Registered Nurse, Vitas Hospice
46. Mary West Piowaty, Respiratory Therapist

47. Melanie Loya, Respiratory Therapist
48. Randy Clark, California Association For Respiratory Care
49. Steve Harvey, Respiratory Care Practitioner
50. Connie Delgado Alvarez, California Healthcare Association
51. Michael Arnold, California Dialysis Council
52. Kathryn C. Rees, California Assisted Living Facilities Association
53. James Neff, Motion Picture Association Of America
54. Robert Jones, National Association Of Computer Consulting Businesses
55. Ron Mckune, The Employers Group
56. Kelly Watts, American Electronics Association
57. James Abrams, California Hotel And Motel Association
58. John Zaimes, Energy Generators
59. Joyce Iseri, California Alliance Of Child And Family Services
60. Rolf Claussen, Greater California Livery Association
61. Alan Shanedling, Fleetwood Limousine

After the IWC determined that no one present wished to give further testimony, it was agreed by common consent to adjourn the public hearing at 3:42 p.m. Commissioner Broad moved to adjourn. Commissioner Dombrowski seconded the motion, which passed unanimously.

Respectfully Submitted,

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Andrew R. Baron
Executive Officer

Approved:

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Chuck Center

Date : February 25, 2000

MINUTES OF PUBLIC MEETING

OF THE

INDUSTRIAL WELFARE COMMISSION

February 25, 2000

San Francisco

Pursuant to Labor Code Section 1181, the Industrial Welfare Commission (IWC) held the sixth in a series of public meetings and hearings with regard to AB 60. The hearing was held on February 25, 2000, in the auditorium of the San Francisco Department of Public Health Building, Room 300, at 10:00 a.m. The IWC heard testimony regarding the impact of AB 60 on employees and employers in the horse racing, fishing, and outside sales industries. The IWC also held a closed session regarding personnel matters. In addition, the IWC accepted testimony on other usual business that came before it. A transcript of the hearing has been prepared and is available for review.

Commissioner Bill Dombrowski chaired the meeting in Chairperson Chuck Center's absence. Commissioner Dombrowski opened the public hearing at 10:10 am. Commissioners Barry Broad, Leslee Coleman, Bill Dombrowski and Doug Bosco were present. The IWC's staff, including, Executive Officer Andrew Baron, Principal Analyst Michael Moreno, Analyst Christine Morse, as well as the IWC's legal counsel, Deputy Attorney General Marguerite C. Stricklin, were also present.

Commissioner Coleman moved to approve the minutes from the November 8, 1999, November 15, 1999, December 15, 1999 and January 28, 2000 meetings and hearings. Commissioner Broad seconded the motion, which passed unanimously.

Commissioner Dombrowski recessed the public at 10:12 am. for a closed session regarding personnel matters. The meeting was reconvened at 10:25 am.

Commissioner Dombrowski explained that the purpose of the meeting was to receive comments from the public. He then outlined the procedures for addressing the commission.

Commissioner Coleman moved to convene a wage board to review the impact of AB 60 on the computer industry. Commissioner Bosco seconded the motion. Commissioners Coleman, Bosco and Dombrowski voted in favor of the motion. Commissioner Broad abstained. The motion passed.

Commissioner Broad moved that there has been publication of an action taken by the Industrial Welfare Commission, as required by Section 1182.1. Commissioner Coleman seconded the motion, which passed unanimously.

The following individuals presented testimony:

Stable Employees in the Horse racing Industry

1. Allen Davenport, Service Employees International Union
2. Charles Dougherty, California Thoroughbred Trainers Association

3. Bob Fox, California Thoroughbred Trainers Association
4. Miles Locker, Division of Labor Standards Enforcement

Commercial Fishing

5. Peggy Beckett, Huck Finn Sportfishing
6. Roger Thomas, Golden Gate Fishermen's Association
7. Zeke Grader, Pacific Coast Federation of Fishermen's Associations
8. Tom Rankin, California Labor Federation
9. Bob Fletcher, Sportfishing Association of California
10. Miles Locker, Division of Labor Standards Enforcement

Outside Salespersons

11. Tom Rankin, California Labor Federation
12. Patricia Gates, Van Bourg, Weinfeld, Roger & Rosenfeld
13. Robert Tollen, Seyfarth, Shaw, Fairweather & Geraldson
14. Ron McKune, The Employers Group
15. Guy Halgren, Sheppard, Mullin, Richter & Hampton
16. Miles Locker, Division of Labor Standards Enforcement

Computer Professionals

17. Robert Jones, National Association of Computer Consulting Businesses
18. Keith Honda, Office of Assemblyman Mike Honda
19. Tom Rankin, California Labor Federation
20. James Abrams, California Hotel and Motel Association

Other Industries

21. Nathan Rangell, California Outdoors
22. Wardell Jackson, Association of California Care Home Operators
23. Tony Martinno, Association of California Care Home Operators
24. Allen Davenport, Service Employees International Union
25. James Abrams, California Hotel and Motel Association
26. Willie Washington, California Manufacturers Association
27. Kelly Watts, American Electronics Association
28. Tom Rankin, California Labor Federation
29. Jim Ebert, California Newspaper Publishers Association

After the IWC determined that no one present wished to give further testimony, it was agreed by common consent to adjourn the public hearing at 1:27 p.m. Commissioner Coleman moved to adjourn. Commissioner Bosco seconded the motion, which passed unanimously.

Respectfully Submitted,

Andrew R. Baron
Executive Officer

Approved: March 31, 2000

MINUTES of PUBLIC HEARING
OF THE
INDUSTRIAL WELFARE COMMISSION

March 31, 2000
Sacramento

Pursuant to Labor Code Section 1181, the Industrial Welfare Commission (IWC) held the seventh in a series of public meetings and hearings with regard to AB 60. The bill requires the IWC to review testimony regarding the professional exempt duties re: managerial by July 1, 2000. The IWC also accepted testimony on other usual business that came before it. The hearing was held at 10:00 a.m. on March 31, 2000, in Sacramento in Room 4203 of the State Capitol. A transcript of the hearing has been prepared and is available for review.

Commissioner Bill Dombrowski chaired the meeting. Commissioner Dombrowski opened the public hearing at 10:14 am. Commissioners Barry Broad, Leslee Coleman, Bill Dombrowski and Doug Bosco were present. The IWC's staff, including, Executive Officer Andrew Baron, Principal Analyst Michael Moreno, Analyst Christine Morse, Analyst Donna Scotti as well as the IWC's legal counsel, Deputy Attorney General Marguerite C. Stricklin, were also present.

Commissioner Dombrowski made a motion for the commissioners to recognize Chuck Center for his service and wish him well. Commissioner Coleman seconded. The motion was passed unanimously.

Commissioner Bosco moved to approve the minutes from the February 25, 2000 hearing. Commissioner Coleman seconded the motion, which passed unanimously.

Commissioner Dombrowski announced Agenda Item Number 5 "Consideration and public comment on the issue of whether employees who receive a certain base wage that is higher than the current minimum wage, as well as additional compensation, should be exempt from overtime pay requirements," is being removed from the agenda.

Commissioner Broad moved to not have comments shouted from the audience and take testimony appropriately. Commissioner Coleman seconded the motion. Motion was unanimously passed.

Commissioner Broad stated that there was a conflict between proposed language in Section 5(M) of the Interim Wage Order regarding stable employees and the Fair Labor Standards Act. As a result of that conflict, he suggested it be prudent to remove that matter from the agenda and consider it at a later date.

Commissioner Broad moved to close the investigation on Item Number 3, consideration of and public comment on the amendment to Section 1 of Interim Wage Order 2000 to include a revised definition of an "outside salesperson." Commissioner Coleman seconded the motion. Motion was passed unanimously.

Commissioner Bocso moved to make Commissioner Dombrowski permanent chairman of the Commission. Commissioner Broad seconded the motion. Motion was unanimously passed.

Commissioner Coleman moved to accept the names for members of the Computer Professionals Wage Board, the chairperson, and the charge. Motion was unanimously passed.

Commissioner Broad made a motion to convene a wage board to consider whether it is appropriate at this time to increase the state minimum wage. Commissioner Bosco seconded. The motion unanimously passed.

Commissioner Broad moved to adopt the appointments to the Construction, Drilling, Mining, and Oil wage board and accept its charge. Commissioner Bosco seconded. Motion was unanimously passed.

The following individuals presented testimony:

Outside Salespersons

1. Julianne Broyles, California Chamber Of Commerce
2. Bob Acherman, California and Nevada Soft Drink Association
3. Scott Wetch, State Building and Construction Trades Council
4. Patricia Gates, Van Bourg, Weinfeld, Roger & Rosenfeld
5. Tom Rankin, California Labor Federation
6. Robert Tollen, Seyfarth, Shaw, Fairweather & Geraldson
7. Tom Rankin, California Labor Federation
8. Patricia Gates, Van Bourg, Weinfeld, Roger & Rosenfeld
9. Ron Mckune, The Employers Group

Executive, Administrative, Professional Exemption -
10 Bill Reich, Staff Counsel, Division of Labor Standards Enforcement
11. Bruce Young, California Retailers Association
12. Bruce Laidlaw, Landels, Ripley & Diamond
13. Ned Fine, Management Attorney
14. Julianne Broyles, California Chamber of Commerce
15. Jon Ross, California Restaurant Association
16. James Abrams, California Hotel and Motel Association
17. Art Pulaski, California Labor Federation
18. Scott Wetch, State Building and Construction Trades Council
19. Bruce Hartford, National Writers Union (UAW)
20. Michael Zakos, nurse
21. Sonia Moseley, California Labor Federation, United Nurses Associations of California/

AFSCME
22. Rosalina Garcia, building maintenance worker
23. MATT Mckinnon, California Conference of Machinists
24. Keith Lagden, former manager, Taco Bell and Wendy's
25. John Getz, grocery clerk
26. Dan Kittredge, grocery clerk
27. Edward Powell, California Labor Federation, California State Theatrical Federation,

International Association of Theatrical,Stage Employees (IATSE)

28. Uwe Gunnerson, Operating Engineers Local 3
29. Judy Parez, Communication Workers Of America, Local 9400
30. Keith Hunter, District Council of Ironworkers
31. Bill Kosnik, restaurant manager
32. Ken Lindeman, former employee, Taco Bell and Wendy's
33. Tom Rankin, California Labor Federation
34 John Bennett, former IWC member and chair

Appointment of Wage Board Members -Computer Professionals
33. Tom Rankin, California Labor Federation Wage Board - Minimum Wage
34. Tom Rankin, California Labor Federation
35. Tracey Bridges, Association for Community Reform Now (ACORN)
36. Esperanza Ber, garment workers union

Further Business
37. Emil Ayad, Guard Vision Private Security, Inc.
38. Bob Ulreich, International Union of Security Officers
39. Nick Delte, Californians for Justice
40. Dee Cuney, childcare worker

After the IWC determined that no one present wished to give further testimony, it was agreed by common consent to adjourn the public hearing at 1:12 p.m. Commissioner Broad moved to adjourn. Commissioner Bosco seconded. Motion was unanimously passed.

Respectfully Submitted,

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Andrew R. Baron

Executive Officer

Approved:

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Bill Dombrowski, Chairperson

MINUTES of PUBLIC MEETING
OF THE
INDUSTRIAL WELFARE COMMISSION

April 14, 2000
Sacramento

Pursuant to Labor Code Section 1181, the Industrial Welfare Commission (IWC) held the eighth in a series of public meetings and hearings with regard to AB 60. The IWC heard testimony on matters impacting the health care industry, and on election procedures for adopting and repealing alternative workweek schedules. The meeting was held at 10:00 a.m. on April 14, 2000, at the Oakland Federal Building, located at 1301 Clay Street, Oakland, California. A transcript of the hearing has been prepared and is available for review.

IWC Chair Bill Dombrowski opened the public hearing at 10:06 a.m.. Commissioners Barry Broad, Bill Dombrowski, Harold Rose, and Doug Bosco were present. The IWC's staff, including, Executive Officer Andrew Baron, Principal Analyst Michael Moreno, Analyst Donna Scotti, and Analyst Lisa Chin, as well as the IWC's legal counsel, Deputy Attorney General Marguerite C. Stricklin, were also present.

Executive Officer Baron "swore" in newly appointed Commissioner, Mr. Harold Rose.

Commissioner Broad moved to approve the minutes from the March 31, 2000 hearing. Commissioner Rose seconded the motion, which passed unanimously.

Commissioner Broad advised the IWC that two nominees for the Wage Board for On-site industries were inadvertently omitted from the reading of the list of nominees at the last public hearing. He then read the names of the nominees, Gil Crosthwaite, and Lynn Kraemer, and advised the IWC that they were from the mining industry.

Commissioner Broad suggested reconsideration of the action to establish a wage board for certain employees in the computer industry, and asked that the issue be addressed at the next public hearing. Commissioner Dombrowski agreed that the IWC should reconsider its action because legislation has been introduced to address the issue, and directed the IWC staff to put the matter on the May 5 agenda.

The following individuals presented testimony:

Healthcare Industry

Don Maddy, George Steffes, Inc.; California
Erin Pettengill, registered nurse, Sutter Memorial Hospital, Sacramento
Libby Prall, registered nurse, Sutter Memorial Hospital
Darci Cimino, licensed vocational nurse, Sutter Memorial Hospital
Cathy White, registered nurse, Eisenhower Medical Center, Palm Springs
Melanie Walker, respiratory therapist, John Muir Medical Center
Amy Lowery, registered nurse, Mercy Healthcare, Bakersfield
Allen Outlaw, respiratory therapist, Eisenhower Medical Center
Tom Luevano, Sutter Health RICHARD SIMMONS, Sheppard, Mullin, Richte & Hampton
Tom Rankin, California Labor Federation

Leila Valdivia, registered nurse, Kaiser Los Angeles Medical Center, SEIU Local 535
Joyce Gray, registered nurse, Encino Tarzana Medical Center
Deborah Bayer, registered nurse, Children's Hospital, Oakland; California Nurses Association
Wendy Bloom, registered nurse, Children's Hospital, Oakland
Michael Zackos, registered nurse, Kaiser Permanente, Los Angeles; UNAC
Cheryl Obasih-Williams, registered nurse, Fountain Valley Medical Center
Barbara Blake, United Nurses Associations of California/AFSCME
Herb Steinkrans, respiratory therapist, Seton Medical Center, Daly City
Allen Davenport, Service Employees International Union
Kay McVay, California Nurses Association
Patricia Gates, Van Bourg, Weinberg, Roger & Rosenfeld
Tom Rankin, California Labor Federation
Kerry Rodriguez Messer, California Association of Health Facilities
Paul Tennell, Vencor; California Association of Health Facilities
Cindy Laubacher, Wilke, Fleury, Hoffelt, Gould & Birney; California Veterinary Medicine Association
Denyne Kowalewski, California Association for Health Services at Home
Marilyn Baker-Venturini, Self-Help HomeCare & Hospice
Mary Jo Kelly, parent of home care patient
Holly Swiger, Vitas Healthcare Corporation
Roberta Acker, respiratory care practitioner, Children's Hospital, Oakland
Katie Sabato, supervisor, Children's Hospital, Oakland
Chris Woodfall, respiratory therapist, Stanford University Hospital
Susan Smith, respiratory care practitioner, Stanford University Hospital
Jan Anderson, California Dialysis Council
Timothy Winn, respiratory care manager, Children's Hospital, Oakland
Brent Watts, respiratory therapist, Children's Hospital, Oakland

Advanced Practice Nurses

Tom Rankin, California Labor Federation
Malcolm Trifon, Kaiser Permanente; California Healthcare Association
Ken Sulzer, Seyfarth, Shaw, Fairweather & Geraldson; California Association of Nurse Practioners
Sandra Schmit, certified registered nurse anesthetist, Kaiser Oakland Medical Center
Naomi Newhouse, nurse midwife, Kaiser Permanente Medical Group
Krisa Van Meurs, M.D., Lucile Packard Hospital, Stanford University
Terri Schneider-Biehl, neonatal nurse practitioner, Children's Hospital and Medical Center, San Diego
Donna King, pediatric nurse practitioner, Children's Hospital, San Diego
David Loose, Association of California Nurse Leaders
Barbara Blake, United Nurses Associations of California/AFSCME
Tricia Hunter, American Nurses Association, California
Laurie Twight, clinical nurse specialist

Election Procedures

Allen Davenport, Service Employees International Union
Peter Cooper, California Labor Federation

Barbara Blake, United Nurses Associations of California/AFSCME

After the IWC determined that no one present wished to give further testimony, it was agreed by common consent to adjourn the public hearing at 3:05 p.m. Commissioner Rose moved to adjourn. Commissioner Broad seconded the motion, which passed unanimously.

Respectfully Submitted,

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Andrew R. Baron
Executive Officer

Approved:

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Bill Dombrowski, Chairperson

MINUTES of PUBLIC MEETING
OF THE
INDUSTRIAL WELFARE COMMISSION
May 5, 2000
Van Nuys

Pursuant to Labor Code Section 1181, the Industrial Welfare Commission (IWC) held the ninth in a series of public meetings and hearings with regard to AB 60. The IWC's agenda called for a review of, and public comment upon, the following matters: the skiing industry as set forth in Labor Code §§517 (b) and 1182.2; meal periods, break periods, and days of rest as set forth in Labor Code §§ 512 and 516; duties which meet the test for an exemption for executive, administrative and professional employees as set forth in Labor Code §515(a); and. licensed pharmacists, as set forth in Labor Code §§517(c) and 1186.

The meeting was set for 10:00 a.m. on May 5, 2000, at the Van Nuys State Building, located at 6150 Van Nuys Boulevard - Auditorium, Van Nuys, California. A transcript of the hearing has been prepared and is available for review.

IWC Chair Bill Dombrowski opened the public hearing at 10:06 a.m. Commissioners Barry Broad, Bill Dombrowski, and Leslee Coleman were present. The IWC's staff, including, Executive Officer Andrew Baron, Principal Analyst Michael Moreno, Analyst Nikki Verrett, as well as the IWC's legal counsel, Deputy Attorney General Marguerite C. Stricklin, were also present.

The following individuals presented testimony:

Skiing Industry
Bob Roberts, California Ski Industry Association
Kevin Johnston, Dodge Ridge
Glenn Kreis, Mammoth Mountain
Brian Cochrane, Snow Summit
Don Wolcott, Snow Summit
Tim Broadham, Mammoth Mountain
Pam Mitchell, Mammoth Mountain
Tom Rankin, California Labor Federation
Marcie Berman, California Employment Lawyers Association

Meal Periods
Melissa Patack, Motion Picture Association of America, California Group
Marcie Berman, California Employment Lawyers Association
Tom Rankin, California Labor Federation
Pam Mitchell, Mammoth Mountain
Julianne Broyles, California Chamber of Commerce
Miles Locker, Chief Counsel, Division of Labor

After the IWC determined that no one present wished to give further testimony, it was agreed by common consent to adjourn the public hearing at 11:45 a.m. Commissioner Broad moved to adjourn. Commissioner Coleman seconded the motion, which passed unanimously.

Respectfully Submitted,

Andrew R. Baron
Executive Officer

Approved:

Bill Dombrowski, Chairperson

State of California
Department of Industrial Relations
INDUSTRIAL WELFARE COMMISSION
~~770 L Street, Suite 1170~~
~~Sacramento, CA 95814~~
~~(916) 322-0167 FAX (916) 324-1795~~

GRAY DAVIS, Governor

July 5, 2000

MINUTES of PUBLIC HEARING OF THE INDUSTRIAL WELFARE COMMISSION

May 26, 2000
Sacramento

In accordance with the "Eight-Hour-Day Restoration and Workplace Flexibility Act of 1999," commonly known as AB 60, as well as Labor Code §1181, the Industrial Welfare Commission (IWC) will be considering the adoption of amendments to the Interim Wage Order 2000, as well as Wage Orders 1 through 14. A public hearing was held on May 26, 2000, in Sacramento, at the State Capitol, Room 4202, to consider amendments proposed by one or more of the commissioners.

Chairman Bill Dombrowski opened the hearing at 10:20 a.m. Commissioners Barry Broad, Leslee Coleman, Bill Dombrowski and Doug Bosco were present. Commissioner Harold Rose was absent. The IWC's staff, including, Executive Officer Andrew Baron, Principal Analyst Michael Moreno, Analyst Nikki Verrett, Analyst Donna Scotti as well as the IWC's legal counsel, Deputy Attorney General Molly Mosley, were also present.

Commissioner Broad moved to approve the minutes from the April 14 and May 5 meetings. Commissioner Coleman seconded the motion, which passed unanimously.

Commissioner Broad proposed an amendment to language in the agenda, (attached) on the first page, (B)(1): " -- limited to licensed and certified healthcare personnel employed by a licensed, 24-hour health facility or licensed dialysis clinic, who are engaged in direct patient care, or pharmacists dispensing prescriptions in any practice setting where they are required to engage in direct patient care." Motion died for want of a second.

Commissioner Broad proposed as a substitute for language in the agenda, (attached): "All hours worked in excess of 36 hours in a workweek shall be compensated at a rate of not less than one and a half times the employee's regular rate of pay and all hours worked in excess of 12 hours in a day or in excess of 8 hours on any workday beyond three days in any workweek shall be compensated at a rate of twice the employee's regular rate of pay." Motion died for want of a second.

Commissioner Broad proposed for language in attached agenda: (B)(4: "No employees assigned to work a 12-hour shift established pursuant to this section shall be require to work more than 12 hours in a 24-hour period or more than 40 hours in a workweek, except under the conditions provided in Subsection (b). Prior to mandating overtime pursuant to this section, an employer shall exhaust all reasonable staffing alternatives, including soliciting off-duty employees to report voluntarily to work, soliciting on-duty employees to volunteer to work overtime, and recruiting per-diem and registry employees to report to work. And then

(b) An employee may be required to work overtime if either of the following conditions are met: 1) a state of emergency declared by a county, state, or federal authority is in effect in the county in which the healthcare facility is located; or 2) in unanticipated and nonrecurring event which imperils patient care at the healthcare facility. An employee shall not be required to work overtime under this subsection on more than three occasions in a twelve-month period." Motion died for want of a second.

Commissioner Broad proposed as language to attached agenda: "Paragraph (5): Employees assigned to work a 12-hour shift established pursuant to this section may voluntarily work an additional 4 hours of overtime in the same 24-hour period, provided, however, that every employee shall be entitled to not less than 8 consecutive hours off-duty within a 24-hour period. That essentially caps the amount of overtime at 4 hours so that they would work a 16-hour day, maximum. Assuming that they're working other 12-hour days in the same workweek, it's possible that within a 48-hour period, they could work 32 hours, under this proposal, as opposed to 48 hours or 72 hours consecutively." Commissioner Bosco seconded the motion. Vote was two in favor and two opposed. The IWC will revisit the motion next month.

Commissioner Broad proposed as language to attached agenda: "Every employee assigned to work a 12-hour shift established pursuant to this section shall be entitled to not less than one duty-free meal period during the shift, which may not be waived. However, an employee shall be entitled to a second meal period, which may be taken as an on-duty meal period by mutual consent of the employer and the employee consistent with the provisions of this Order. The purpose here is that when you have 12-hour -- employees on 12-hour shifts, that they do have an off-duty meal period, a time which is free. Otherwise, what they would be essentially required to do is work all 12 hours and try to catch a meal period during that time." Commissioner Bosco seconded the motion. Vote was two in favor and two opposed.

Commissioner Broad proposed as language to attached agenda: "Any alternative workweek agreement adopted pursuant to this section shall provide for not less than two days off within a workweek and shall provide for not less than 4 hours of work in any workday." The motion died for want of a second.

Commissioner Broad proposed as language to attached agenda: "Paragraph (F):

Nothing in this section shall prohibit an employer and an employee, by mutual consent, 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." Commissioner Bosco seconded. The proposal passed by a vote of three to one.

Commissioner Broad proposed as substitute for attached language proposed by Chairman Dombrowski: "..in the section of Mr. Dombrowski's that refers to a reasonable (sic) operated by the employer, provided the employee meets the qualifications of this position. Nothing in this section shall prohibit an employer from permitting employees who are unable to work the hours established by the alternative workweek agreement to work 8-hour shifts within the same work unit covered by the agreement. An employer shall be permitted, but is not required, to accommodate any employee who is hired after the date of the election and who is unable to work the alternative schedule established as a result of that election. An employer shall explore any available reasonable alternative means of accommodating the

religious beliefs or observance of an affected employee that conflicts with an adopted alternative workweek schedule, in a manner provided by subdivision (j) of Section 12940 of the Government Code." The motion died for want of a second.

Commissioner Broad proposed as language to attached agenda: "Paragraph (C) The one that begins, For the purposes of this section, 'regularly scheduled' And the difference is that that means that they have to name - they're voting on the days of the week of their schedule as opposed to number of days. And I would sort of add to that that you would also change that in Paragraph (A). Or actually, you could leave it as scheduled workdays, actually the way it is, in your proposal. His proposal, if I understand it right, would have you designate the specific days. In other words, you would be voting on a four-10 arrangement Monday through Friday, or a menu of alternatives that the employer would propose, but that they would name the days of your schedule. The language that we adopted a moment ago allowing the employee -- in combination with what I'm just proposing and the language we adopted a moment ago, a person would have a regularly scheduled workweek, and by mutual consent with the employer, they could switch the days of the week. That's the -- that would be the effect of that." The motion died for want of a second.

Commissioner Broad proposed as language to attached agenda: "Paragraph (C) would provide that except for the alternative workweeks with regard to healthcare employees that are doing 12-hour shifts, -- for the purposes of this section, a 'work unit' may include all nonexempt employees in a division, department, job classification, or shift sharing a community of interest concerning the conditions of their employment in a readily identifiable work group. Or shift sharing a community of interest concerning the conditions of their employment in a readily identifiable work group is what is added. The existing rule has no concept in it that the employees have to be somehow related in some way to one another. And I think employers should -- it's very wide- ranging language as it is, but at least suggests that the employer -- and it can be down to one individual -- however, the employees need to be somehow related to one another. It does not make sense for an employer to have an alternative workweek schedule that has, the janitors in one facility and the television engineers in another facility of the same employer voting together." Commissioner Bosco seconded. The vote was two in favor and two opposed.

Commissioner Broad proposed as language to the attached agenda: "Paragraph (D) -- says that, At least 14 days prior to an election on a proposal to adopt or repeal an alternative workweek schedule, the employer shall provide each affected employee with a written disclosure of the time and location of the balloting, the effects of the adoption of the proposal on the wages, hours, and benefits of the employee, the rights of employees to repeal the proposal" -- and the new -- and then I will strike "the neutral party selected to conduct the election pursuant to (D), and the right of employees to request of the Labor Commissioner of the appropriateness of a designated work unit. This written disclosure shall be distributed at a meeting held during the regular work hours and at the work site of the affected employees. An employer shall provide that disclosure in a non-English language as well as English if at least 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. The failure by an employer to distribute this written disclosure at the meeting and by mail renders the adoption of an employer-proposed alternative workweek schedule null and void. The difference here is -- actually, it just sort of fleshes out what the requirement is. Right now there is nothing that -- the employer has to hold a meeting, as I understand it, under Mr.

Dombrowski's proposal, but doesn't -- it's not clear what happens to people who can't -- who are not there that day at work, or who are sick. This requires them to just mail the written notice that's already required to them and to provide -- where you have non-English-speaking employees, to provide it in that language so that they can understand what they're voting on. I think that would be the only significant changes from the current requirement." The motion died for want of a second.

Commissioner Broad proposed as language to attached agenda: "Paragraph (G): Any election to establish or repeal an alternative workweek schedule shall be held during the regular working hours at the work site of the affected employees. The employer shall bear the costs of conducting an election held pursuant to this section is current law, but is not in the wage orders, and I think should be specified. They can't charge the employees for the costs of conducting an election. Upon complaint by an affected employee and after investigation by the Labor Commissioner, the Labor Commissioner may require the employer to select a neutral third party to conduct the election." Commissioner Dombrowski seconded the motion. The motion unanimously carried.

Commissioner Broad proposed as language to attached agenda: "Paragraph (H): Employees affected by the change in any work hours resulting from the adoption of an alternative workweek schedule may not be required to work those new hours for at least 30 days after the announcement of the final results of the election. The purpose of this is to ensure that people can rearrange their lives to do this. We heard a great deal of testimony about family matters and childcare and other concerns that are raised. Going from an 8-hour shift to -- you know, five 8-hour days to three 12-hour days, would necessarily require major changes in things like childcare and transportation. So I think this is a very reasonable proposal." Commissioner Bosco seconded the motion. The motion unanimously carried.

Commissioner Broad proposed as language to attached agenda: "Paragraph (I), it's already in the proposal, and it is in the statute, I believe, as well as in the proposal -- correct me if I'm wrong -- I know it's in the statute -- I'm not sure if it's in Mr. Dombrowski's proposal -- but:

No work unit may be established by an employer solely for the purposes of adopting or repealing an alternative workweek schedule. The Labor Commissioner ---- and this is new -- -- shall review and approve, reject, or modify the designation of any work unit of affected employees by an employer if a written request is made to the commissioner by an employee of the employer at least seven days prior to the date of the election held on the proposed adoption of an alternative workweek schedule. The Labor Commissioner's determination shall be final and binding. This allows employees who feel like this is a bizarre or inappropriate work unit, where people do not belong together in any logical way, to make a request to the Labor Commissioner. The Labor Commissioner -- the Labor Commissioner's determination would settle the matter for all purposes for that election." Commissioner Bosco seconded the motion. The vote was two in favor and two opposed.

Mr. Baron clarified that all issues that received two-to-two votes will be noted for reconsideration.

Commissioner Bosco moved to adopt the chair's amended proposal. Commissioner Coleman seconded the motion. The motion passed by three to one vote.

Commissioner Dombrowski moved that Item 3 of the Agenda, consideration of Wage Order 5 deleting personal attendants, resident managers, and employees who have direct responsibility for children in 24-hour care from Section 3 (D) of that order to comply with the federal regulations, be put over until the next hearing. Commissioner Coleman seconded the motion, which then passed unanimously.

Commissioner Bosco moved to adopt Item 4 of the Agenda. Commissioner Coleman seconded, which then passed unanimously.

Commissioner Broad moved to adopt Item 6 of the Agenda with the amendment "Be no later than October 1, 2000" Commissioner Coleman seconded, and it passed unanimously.

Commissioner Broad moved to accept named members to the Minimum Wage Board. Commissioner Coleman seconded. The motion unanimously carried.

Commissioner Broad moved to accept the charge to the Minimum Wage Board. Commissioner Bosco seconded. The motion unanimously carried.

Commissioner Coleman moved to reconsider Item 8. Commissioner Broad seconded. The motion unanimously carried.

Commissioner Broad moved to close the investigation of wages, hours, and conditions of labor and employment of stables employees in the horseracing industry. Commissioner Bosco seconded it, which was unanimously adopted.

The following individuals presented testimony:

Alternative Workweek Schedules & Election Procedures

DON MADDY, George Steffes, Inc.; California Healthcare Association
KERRY RODRIGUEZ MESSER, California Association of Health Facilities
KATHY REES, California Assisted Living Facilities Association
RICHARD SIMMONS, Sheppard, Mullin, Richter & Hampton; California Healthcare Association
TOM LUEVANO, Sutter Health
MICHAEL ARNOLD California Dialysis Council
DENYNE KOWALEWSKI, California Association for Health Services at Home
HOLLY SWIGER, Vitas Healthcare; California Hospice and Palliative Care Association
ROBYN BLACK, Aaron Reed & Associates; California Society for Respiratory Care
RANDY CLARK, California Respiratory Care Therapists
CINDY LAUBACHER, California Veterinary Medical Association
CHARLES SKOIEN, JR., Community Residence Care Facilities of California
WARDELL JACKSON, Association of California Care Home Operators
TONY MARTINNO, Association of California Care Home Operators
LILA SMITH, respiratory therapist
PATRICIA HARDER, registered nurse
TOM RANKIN, California Labor Federation, AFL-CIO
RICHARD HOLOBER, California Nurses Association
TOM RANKIN, California Labor Federation, AFL-CIO
GLENDA CANFIELD, Service Employees International Union

RICHARD HOLOBER, California Nurses Association
PATRICIA GATES, Van Bourg, Weinberg, Roger & Rosenfeld
GLENDA CANFIELD, Service Employees International Union
DEBORAH BAYER, registered nurse; California Nurses Association
TOM RANKIN, California Labor Federation, AFL-CIO
MICHELLE CHINARD, registered nurse, County of Marin Psychiatric Emergency Service
ALLEN DAVENPORT, Service Employees International Union
MIKE ZACKOS, United Nurses Associations of California
BILL CAMP, Sacramento Central Labor Council
BARBARA DENT, registered nurse
CHERYL OBASIH-WILLIAMS, Tenet employee
CAROL SWEET, Tenet employee

Managerial Duties

BRUCE YOUNG, California Retailers Association
LYNN THOMPSON, Law Firm of Brian Kays
JAMES ABRAMS, California Hotel and Motel Association
TOM RANKIN, California Labor Federation, AFL-CIO
MARCIE BERMAN, California Employment Lawyers Association
SCOTT WETCH, State Building and Construction Trades Council of California, AFL-CIO

MATTHEW McKINNON, California Conference of Machinists
PATRICIA GATES, Van Bourg, Weinberg, Roger & Rosenfeld
RICHARD HOLOBER, California Nurses Association
BILL CAMP, Sacramento Central Labor Council

Minimum Wage - Appointment of Wage Board Members

TOM RANKIN, California Labor Federation, AFL-CIO
JULIANNE BROYLES, California Chamber of Commerce

Stable Employees in the Horseracing Industry

ALLEN DAVENPORT, Service Employees International Union

Other Business

JAMES ABRAMS, California Hotel and Motel Association
TIMOTHY HUET, Association of Arizmendi Cooperatives, Rainbow Grocery Cooperative

After the IWC determined that no one present wished to give further testimony, it was agreed by common consent to adjourn the public hearing at 4:34 p.m. Commissioner Broad moved to adjourn. Commissioner Coleman seconded. Motion was unanimously passed.

Respectfully Submitted,

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Andrew R. Baron
Executive Officer

Approved:

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Bill Dombrowski, Chairperson

State of California GRAY DAVIS,
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MINUTES of PUBLIC HEARING
OF THE
INDUSTRIAL WELFARE COMMISSION

June 30, 2000
Sacramento

In accordance with the "Eight Hour-Day Restoration and Workplace Flexibility Act of 1999," commonly known as AB 60, as well as Labor Code § 1181, the Industrial Welfare Commission ("IWC") will be considering the adoption of amendments to the Interim Wage Order 2000, as well as Wage Orders 1 through 15. A public hearing was held on June 30, 2000, in Sacramento, at the State Capitol, Room 4202, to consider amendments proposed by one or more of the commissioners.

Chairman Bill Dombrowski opened the hearing at 10:18 a.m. Commissioners Barry Broad, Leslee Coleman, Bill Dombrowski, Doug Bosco, and Harold Rose were present. The IWC's staff, including, Executive Officer Andrew Baron, Principal Analyst Michael Moreno, Analyst Nikki Verrett, Analyst Donna Scotti as well as the IWC's legal counsel, Deputy Attorneys General Marguerite Stricklin, and Randall Borcherding, were also present.

Commissioner Bosco moved to approve the minutes from the May 26th meeting. Commissioner Coleman seconded the motion, which passed unanimously.

Commissioner Dombrowski proposed consideration of the proposals in Item #2 of the Agenda regarding Definitions, Daily Overtime, Make-up Time, Collective Bargaining, Minors, Penalties and Meal Periods. Commissioner Broad proposed approval of amendments to the Item #2 sections regarding Collective Bargaining Agreements and Meal Periods in Wage Order 12 relating to the Motion Picture Industry. Commissioner Broad indicated that he would vote in favor of the first amendment and abstain from the second. The first motion on collective bargaining passed unanimously, the second motion on Meal Periods passed with Commissioner Broad abstaining. Commissioner Broad moved for approval of the language contained in Item #2, as amended, and Commissioner Rose provided a second to the motion. The motion was unanimously approved.

With regard to Item #3 on the Agenda, Commissioner Bosco proposed an amendment to healthcare industry coverage in Section I(B) of Alternative Workweeks, by adding subsection (B)(4) as follows: "Licensed veterinarians, registered veterinary technicians, and registered animal health technicians providing patient care". He also proposed adding the same language to the Statement as to Basis as well as a statement that the definitions of animal health care providers are the same as in Business and Professions Code Sections 4825 through 4857. Commissioner Coleman seconded the motion, which passed by a majority vote of 3 to 2.

With regard to Item #4, Commissioner Broad proposed to adopt or amend IWC wage orders with respect to break periods, meal periods, and days of rest. Commissioner Rose seconded the motion, which passed by a majority vote of 3 to 2.

Commissioner Broad proposed Item #5 on the Agenda as an amendment to Wage Order 5, concerning the removal of personal attendants, resident managers and employees who have direct responsibility for children in twenty-four (24) hour care from Section 3(D) of that Order to comply with pertinent federal regulations. Commissioner Bosco seconded the motion, which was passed unanimously.

Commissioner Rose proposed consideration of Item #6 on the Agenda, language proposed by Commissioner Broad regarding the commercial fishing industry. Commissioner Bosco seconded the motion, which passed unanimously.

Commissioner Dombrowski proposed Item #7 on the Agenda, that the ski industry goes to a 48-hour week, 10-hour day, during the ski season, which means any month of the year during which Alpine or Nordic skiing activities, including snowmaking and grooming activities, are actually being conducted. Commissioner Coleman seconded the motion, which passed by a majority vote of 3 to 2.

With regard to Item #8 on the Agenda, Commissioner Dombrowski proposed adoption of his proposal, with amendments, regarding the duties that meet the test for the exemption from overtime pay for administrative, executive, and professional employees. Commissioner Coleman seconded the motion. Commissioner Broad alternative language for this agenda item. Commissioner's Dombrowski's proposal passed by a majority vote 3 to 2.

Commissioner Dombrowski proposed that the IWC adopt the language in Item #9 on the Agenda as follows: "The IWC directs the executive officer to finalize the Statement as to the Basis and summary language in accordance with the Commission's deliberations and regulations that have been adopted. The executive officer shall report on its completion to the Commission." Commissioner Coleman seconded the motion, which passed by a majority vote.

Commissioner Dombrowski proposed adoption of Item #10, consideration of whether to extend the provisions of Interim Wage Order 2000 up to the effective date of language of the new wage orders adopted at this hearing, pursuant to Labor Code §517. Commissioner Coleman seconded the motion, which passed unanimously.

The following individuals presented testimony:

Reconsideration of May 26 Actions re Healthcare

TOM RANKIN, California Labor Federation, AFL-CIO

ALLEN DAVENPORT, Service Employees International Union

BARBARA BLAKE, United Nurses Associations of California, AFSCME

RICHARD HOLOBER, California Nurses Association

DON MADDY, George Steffes, Inc.; California Healthcare Association

Meal and Rest Period Proposals

TOM RANKIN, California Labor Federation, AFL-CIO

JULIANNE BROYLES, California Chamber of Commerce

JAMES ABRAMS, California Hotel and Motel Association

SPIKE KAHN, AFSCME Council

Ski Industry Regulations

TOM RANKIN, California Labor Federation, AFL-CIO

PAM MITCHELL, Mammoth Mountain Ski Area employee

BILL CAMP, Sacramento Central Labor Council

MARCIE BERMAN, California Employment Lawyers Association

PATRICIA GATES, Van Bourg, Weinberg, Roger & Rosenfeld

BOB ROBERTS, California Ski Industry Associations

Executive, Administrative, and Professional Duties

BRUCE YOUNG, California Retailers Association

LYNN THOMPSON, Law Firm of Bryan Cave, LLP; California Retailers Association

ART PULASKI, California Labor Federation, AFL-CIO

TOM RANKIN, California Labor Federation, AFL-CIO

WALLY KNOX, California State Assembly member

JUDY PEREZ, Communication Workers of America

MARCIE BERMAN, California Employment Lawyers Association

LAURA HO, Saperstein, Goldstein, Demchak & Baller

PATRICIA GATES, Van Bourg, Weinberg, Roger & Rosenfeld

TOM BRANDEN, Machinists Union, District Lodge

DON HUNSUCKER, United Food and Commercial Workers Local 1288

WALTER JOHNSON, San Francisco Labor Council

Other Business

MARY LOU THOMPSON, Littler, Mendelson, Fastiff, Tichy & Mathiason

After the IWC determined that no one present wished to give further testimony, it was agreed by common consent to adjourn the public hearing at 2:26 p.m. Commissioner Bosco moved to adjourn. Commissioner Rose seconded. Motion was unanimously passed.

EXHIBIT D

Department of Industrial
Division of Labor Standards Enforcement

MEMORANDUM

Date December 23, 1999

From: Miles E. Locker
Chief Counsel for the Labor Commissioner

Marcy V. Saunders
State Labor Commissioner

To: All DLSE Professional Staff
Andrew Baron, IWC Executive Secretary

Subject: Understanding AB 60: An In Depth Look at the Provisions of the "Eight Hour Day Restoration and Workplace Flexibility Act of 1999"

This Memo was drafted prior to the IWC's adoption of the Interim Wage Order, and as such, this Memo does not purport to interpret the Interim Wage Order. To the extent that any provisions of the Interim Wage Order may be inconsistent with this Memo, the Wage Order provisions would prevail.

AB 60, which was enacted by the Legislature and signed by Governor Davis earlier this year, will take effect on January 1, 2000. It is therefore critically important that all DLSE professional staff take some time to learn about the provisions of this law, and to understand some of the questions that will arise in its interpretation and enforcement. This memo will summarize each section of the bill, with a focus on whether and how it changes existing law. We will also discuss commonly asked questions about AB 60, and by summarizing from recently issued or pending opinion letters, provide the answers to these questions.

AB 60 ---- An Introduction to the Substantive Provisions

The Legislature named AB 60 the "Eight Hour Day Restoration and Workplace Flexibility Act of 1999. That name tells us the two primary purposes behind the legislation --- first, to restore daily overtime in California; that is, to bring back the general requirement for overtime pay after eight hours of work in a day, a requirement that the Industrial Welfare Commission ("IWC") had eliminated from Wage Orders 1 (manufacturing industry), 4 (professional, technical, clerical, and mechanical occupations), 5 (public housekeeping industry), 7 (mercantile industry), and 9 (transportation industry), with the adoption of the 1998 wage orders. Section 21 of AB 60 provides that these 1998 wage orders (1-98, 4-98, 5-98, 7-98, and 9-98) shall be null and void; and that in their place, the pre-1998 wage orders (1-89, 4-89 as amended in 1993, 5-89 as amended in 1993, 7-80, and 9-90, are reinstated from January 1, 2000 until no later than July 1, 2000, at which point the IWC is required, pursuant to section 11 of the bill (which adds section 517 to the Labor Code) to adopt new wage orders.

It is very important to understand, however, that although only 5 of the 15 IWC wage orders that are currently in effect will become null and void on January 1, 2000, AB 60 as a whole applies to all California workers except for those who are expressly exempted by the bill itself, or those who were expressly exempted from a pre-1998 wage order.- Section 9 of AB 60 adds section 515 to the Labor Code, which provides, at subsection (b)(2), that except for AB 60's new test for the administrative, executive and professional exemption found at section 515(a), "nothing in this section requires [the IWC] to alter any exemption from provisions regulating hours of work *that was contained* in any valid wage order in effect in 1997," and that "except as otherwise provided in [AB 60], the [IWC] may review, retain or eliminate any exemption from provisions regulating hours of work that was contained in any valid wage order in effect in 1997."

With these general principles in mind, we can answer the most commonly asked questions about AB 60 coverage. 13 of the pre-1998 wage orders expressly exempt public employees from their coverage. These public employees, who would otherwise be covered by a wage order but for the exemption "contained in" the wage order, are therefore exempt from AB 60. Likewise, truck drivers whose hours of service are regulated by the United States Department of Transportation (under 49 C.F.R. §395.1, et seq.) or by the California Highway Patrol or the State Public Utilities Commission (under 13 C.C.R. §1200, et seq.) are expressly exempt from the overtime provisions of the pre-1998 IWC orders. These workers are therefore exempted from the overtime provisions of AB 60. On the other hand, workers who were not expressly exempted from any pre-1998 wage order, such as on-site construction, drilling, mining and logging employees, are covered by AB 60. We should note, however, that Labor Code §515(b)(1) provides that until January 1, 2005, the IWC may establish additional exemptions from the overtime provisions of AB 60. Thus, employees engaged in on-site construction, drilling, mining and logging will be covered by AB 60 unless and until the IWC chooses to expressly exempt any of them from its provisions.

The statutory provisions of AB 60, or any other state law, will prevail over any inconsistent provision in the pre-1998 wage orders. For example, the current $5.75 an hour state minimum wage, which was established by the electorate with the passage of the Living Wage Act of 1996, now codified at Labor Code section 1182.11, prevails over the lower minimum wage rates contained in the pre-1998 wage orders. Likewise, AB 60's salary basis test, which requires a monthly salary equivalent of at least twice the minimum wage, currently $1,993.33 per month, as a prerequisite for the administrative, executive and professional exemptions from overtime, prevails over the remuneration test (and lower monthly amounts) for the administrative and executive exemptions in the pre-1998 wage orders. Therefore, starting on January 1, 2000, employers must comply with the pre-1998 wage orders, *to the extent they are not inconsistent with AB 60 or any other controlling statutes*, in which case the requirements of the statute will apply.

The second important purpose behind AB 60 is the intent to provide more options for work schedule flexibility than had been available in the pre-1998 wage orders. AB 60 maintains, with some changes, two of the mechanisms under the pre-1998 wage orders which permitted work schedules of more than eight hours per day without payment of daily overtime - - namely, the provisions for secret ballot elections to implement an "alternative workweek schedule," and the collective bargaining agreement opt-out provision. In addition to these mechanisms, there are two new provisions in AB 60 that permit individual employees to work more than eight hours in a day (but not more than the alternative number of hours -- either ten or eleven -- permitted by the statute), at the employee's request and under clearly specified conditions, without payment of overtime. The first of these new provisions allows for individual "make-up time" under which an employee can take time off for personal reasons and during the same workweek, make up that time by working up to eleven hours in a day without the payment of overtime. The second of these new provisions allows individual employees who were working on July 1, 1999 under a schedule that provided for up to 10 hours in a day to continue working this schedule without payment of daily overtime, even if this schedule was not established by an alternative workweek election. We will return to these flexible work schedule arrangements later in this memo. For now, we will simply note that although AB 60 allows for increased flexibility in work schedules, the statute imposes limits on the total hours that can be worked in a day under most flexible arrangements, and sets out strict procedures that must be followed in order to work more than eight hours in a day without the payment of daily overtime.

Finally, before embarking on a detailed review of AB 60, we should note that for DLSE, in its function as an enforcement agency, perhaps the most important change brought about by this new law is creation of a new method for enforcing overtime obligations. Under section 14 of the bill, section 558 is added to the Labor Code, under which the DLSE may issue a civil penalty citation to an employer that violates the provisions of AB 60 or any provision regulating hours and days of work in any IWC order. These penalties are set at the amount of $50 for an initial violation (or $100 for any subsequent violation) per underpaid employee for each pay period in which the employee was underpaid. In addition, the civil penalty citation may include the amount owed to employees for underpaid overtime wages.

A Section by Section Look at AB 60

Definitions: Section 3 of AB 60 adds section 500 to the Labor Code, defining certain words that are used in the statute. The word "workday" is defined as "any consecutive 24 hour period commencing at the same time each calendar day." The word "workweek" is defined as "any seven consecutive days, starting with the same calendar day each week," and as "a fixed and regularly recurring period of 168 hours" made up of "seven consecutive 24-hour periods." Finally, the term "alternative workweek schedule" is defined as "any regularly scheduled workweek requiring an employee to work more than eight hours in a 24-hour period." These definitions are unchanged from the pre-1998 wage orders. An employer may designate the period of the workday and the workweek. Absent pre-designation by the employer, DLSE will treat each workday as starting at midnight, and each workweek as starting at midnight on Sunday, so that Sunday is the first day of the workweek and Saturday the last.

The Basic Overtime Law: Section 4 of AB 60 amends Labor Code §510, to set out California's new basic overtime law. First, it requires overtime compensation at the rate of no less than one and one-half the employee's regular rate of pay for all hours worked in excess of eight in one workday, and for all hours worked in excess of 40 in one workweek, and for "the first eight hours worked on the seventh day of work in any one workweek". Second, it requires overtime compensation at the rate of double the employee's regular rate of pay for all hours worked in excess of 12 hours in one day, and "for any work in excess of eight hours on any seventh day of a workweek."

This basic overtime law is the heart of AB 60. It restores daily overtime, and takes the basic overtime provisions found in almost all of the pre-1998 wage orders - - time and a half for all hours worked in a workday in excess of 8 and up to 12; double time for all hours worked in a workday in excess of 12; time and a half for all hours worked in excess of 40 in a workweek; and seventh day premium pay - - and enshrines these provisions as statutory requirements.

We have received many inquiries concerning the provision for seventh day premium pay. The time and a half provision reads slightly differently than the double time provision: time and a half for "the first eight hours worked on the *seventh day of work in any one workweek*," and double time for "any work in excess of eight hours on any *seventh day of a workweek*." This raises the question whether AB 60 requires double time for any work performed in excess of eight hours on the seventh day of the workweek, even if the employee has not worked all seven days of that workweek. We do not believe this would be a logical reading of the statute; rather, both the time and a half and double time provisions for seventh day premium pay must be harmonized to require that the employee work all seven days of the workweek in order to quality for this type of premium pay. The purpose of seventh day premium pay is to provide extra compensation to workers who are denied the opportunity to have a day off during the workweek; not to reward someone who may only be scheduled to work one day a week for having fortuitously been scheduled to work on what is the seventh day of the employer's workweek. This reading of AB 60 is consistent with the provisions for seventh day premium pay contained in the pre-1998 wage orders, and we are unable to discern any intent on the part of the Legislature to modify those provisions.

> Example: An employer has no pre-designated workweek. An employee of that employer works the following schedule: Sunday-off; Monday-off; Tuesday-8 hours; Wednesday-8 hours; Thursday-8 hours; Friday-8 hours; Saturday-8 hours; Sunday-8 hours; Monday-8 hours; Tuesday-8 hours; Wednesday-8 hours; Thursday-8 hours; Friday-off; Saturday-off. Is the employee entitled to any overtime pay or seventh day premium pay? Answer-NO. There is no daily overtime, because the employee never worked more than eight hours in a day. There is no weekly overtime, because the employee did not work more than 40 hours during each of the two workweeks (running from Sunday to Saturday). And even though the employee worked ten days in a row, there is no seventh day premium pay, because the employee did not work seven consecutive days in any one workweek.

The statute also provides that "nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work." This is consistent with DLSE's enforcement of the pre-1998 wage orders. It simply means that there is no "pyramiding" of separate forms of overtime pay for the same hours worked. Once an hour is counted as an overtime hour under some form of overtime, it cannot be counted as an hour worked for the purpose of another form of overtime. When an employee works ten hours in one day, the two daily overtime hours cannot also be counted as hours worked for the purpose of weekly overtime.

> Example: An employee works 12 hours on Monday, Tuesday, Wednesday, and Thursday. How many non-overtime and overtime hours did the employee work that week? Answer-- The employee is credited with 4 hours of daily overtime each day worked, for a total of 16 daily overtime hours, and these daily overtime hours cannot be counted for the purpose of determining when to start paying time and a half for hours worked in excess of 40 in a week. Because pyramiding is not allowed, there are no weekly overtime hours, even though the employee worked 48 total hours during the workweek. Only 32 of these hours were regular, non-daily overtime hours, and they are the only hours that count towards weekly overtime computations.

Labor Code §510 provides for certain exceptions from the basic overtime law. The overtime requirements of section 510 do not apply to an employee working pursuant to:

> 1. an alternative workweek schedule adopted pursuant to Labor Code §511, discussed below, or
>
> 2. an alternative workweek schedule adopted by a collective bargaining agreement pursuant to Labor Code §514, discussed below, or
>
> 3. an alternative workweek schedule for any person employed in an agricultural occupation, as defined in IWC Order 14. (Section 9 of AB 60 amends section 554 of the Labor Code to exclude persons employed in agricultural occupations from all of AB 60, except for section 558, the section that sets out civil penalties for violations of the overtime provisions contained in AB 60 or in any IWC order. Thus, the basic overtime law, now found at Labor Code §510, does not apply to workers covered by IWC Order 14. However, an agricultural employer that violates the special overtime provisions of Order 14 will be subject to a penalty citation just like any other employer.)

Finally, section 510 retains the existing provision regarding "ridesharing," which states that time spent commuting to and from *the first place at which an employee's presence is required by the employer* shall not be considered to be part of a day's work, when the employee commutes in a vehicle that is owned, leased or subsidized by the employer, and is used for the purpose of ridesharing. Of course, once the employee reaches the first place at which his or her presence is required by the employer, all time spent subject to the control of the employer (whether or not the employee is then engaged in physical or mental labor), and all time during which the employee is suffered or permitted to work, must count as hours worked under the various IWC orders.

Non-Collectively Bargained Alternative Workweek Schedules: Section 5 of AB 60 adds section 511 to the Labor Code, which permits certain non-collectively bargained alternative workweek schedules. Under subsection (a), an employer may propose a "regularly scheduled alternative workweek" authorizing work by the affected employees "for no longer than 10 hours per day within a 40-hour workweek" without payment of overtime compensation. The proposed "regularly scheduled alternative workweek" may be "a single work schedule that would become the standard schedule" for all of the workers in the work unit, or "a menu of work schedule options, from which each employee in the unit would be entitled to choose."

Whether it is the only work schedule for an entire work unit or one of several options on a menu available to the workers in the unit, the "regularly scheduled alternative workweek" must provide for specified workdays and specified work hours, and these workdays and work hours must be fixed and regularly recurring.

Adoption of an alternative workweek schedule under section 511(a) requires a secret ballot election with approval by at least two-thirds of the affected employees. We have received many inquiries concerning the procedures to be followed in holding such an election. Section 11 of AB 60 adds section 517 to the Labor Code, which requires the IWC, no later than July 1, 2000, to adopt wage orders which must include procedures for conducting elections to establish or repeal alternative workweek schedules, procedures for implementing such alternative schedules, the procedures for petitioning to repeal an alternative workweek schedule, the conditions under which an employer can unilaterally repeal such a schedule, the contents of any required notices or disclosures to employees, and the factors in designating a work unit for purposes of an election. Until such new wage orders are adopted by the IWC, employers must comply with the procedures dealing with alternative workweek elections that are found in the applicable pre-1998 IWC wage order, to the extent that those procedures are not inconsistent with AB 60.

Each worker eligible to vote in an election must be informed, prior to the election, of the precise work schedule -- that is, the precise workdays and work hours -- that he or she will be assigned to work (or, in the case of an election to establish a "menu of work schedule options", allowed to choose from) if the alternative work schedule is adopted. We have been asked whether an employer can establish a menu of work schedule options through an election, and then, if too many or too few workers choose to work one of the alternative schedules, assign workers to work schedules on some basis other than the workers' choice. The answer to this is no, as the statute clearly provides that "each employee in the unit would be entitled to choose" among the various work schedule options on the "menu." If the employer's business needs preclude allowing its employees to freely choose among work schedule options, the employer should not propose a "menu of work schedule options". Instead, the employer may be able to propose more than one alternative work schedule by dividing the workforce into separate work units, and proposing a different alternative work schedule for each unit, so that each worker knows exactly what schedule he or she is voting for.

A "regularly scheduled alternative workweek" permitted by section 511(a) cannot provide for *regularly scheduled* workdays in excess of 10 hours or *regularly scheduled* workweeks in excess of 40 hours. Thus, *regularly scheduled* workdays for longer than 10 hours (except within the health care industry, which is discussed below) are not permitted under a non-collectively bargained alternative workweek schedule, and if an employer whose employees are working pursuant to an alternative workweek schedule *regularly scheduled* workdays in excess of 10 hours, DLSE will conclude that these employees are not working an alternative workweek schedule permitted under section 511(a), and thus, the employer will be required to pay overtime compensation for all hours worked in excess of eight in a day or 40 in a week, as required by section 510.

> Example: An employer covered by Wage Order 7, whose employees have voted to adopt a 4/10 alternative workweek schedule (4 workdays a week, 10 hours per workday, for a total of 40 hours worked each workweek)

pursuant to section 511(a), seeks to have its employees regularly work 12 hours each workday, and asks whether it can do this by paying two hours overtime, at time and a half, for the extra two hours each workday. The answer is NO. A regularly scheduled 12 hour workday is not permitted under section 511(a), so this is not a valid regularly scheduled alternative workweek. As such, section 510 will apply to require time and a half for all hours worked in excess of eight in a workday. The employer must pay time and a half for 4 overtime hours each workday.

However, it is expected that there will be occasions, *not regularly recurring,* when an employee working under an alternative workweek schedule adopted pursuant to section 511 will be required to work extra hours beyond those that are regularly scheduled. These occasions are addressed by subsection (b) of section 511, which provides that an employee working under an alternative workweek schedule adopted pursuant to subsection (a) shall be paid overtime compensation at the rate of no less than one and one-half times the employee's regular rate of pay for any work in excess of the regularly scheduled hours established by the alternative workweek agreement and for all hours worked in excess of 40 per week, and at the rate of no less than double the employee's regular rate of pay for all hours worked in excess of 12 hours per day and for any work in excess of 8 hours on days worked other than workdays that are regularly scheduled under the alternative workweek. The same prohibition of "pyramiding" different types of overtime pay, found at section 510, is contained in section 511.

Example: A secret ballot election results in the adoption of an alternative workweek schedule under which the affected workers are to work four ten hour days (Monday-Thursday), for a total of 40 hours work each workweek. No overtime compensation is required when the employees work the hours that are authorized by this alternative workweek schedule. On occasion, the employer assigns extra work to these employees. This extra work is not assigned on a regular or recurring basis. One workweek, an employee working under this alternative workweek schedule works the following hours: Monday-10 hours, Tuesday-12 hours, Wednesday-14 hours, Thursday-10 hours, Friday-10 hours, Saturday-off, Sunday-off. There is no overtime for Monday or Thursday (since the employee did not work any extra hours, outside his or her regularly scheduled hours, on those days); the extra two hours worked on Tuesday must be paid at time and a half; the extra four hours worked on Wednesday are paid at time and a half for the first two hours and at double time for the next two hours (since those final two hours were beyond 12 hours in a day); the extra 10 hours worked on Friday must be paid at time and a half for the first eight hours (since those hours were not regularly scheduled, as Friday is not a regularly scheduled workday) and at double time for the final two hours (since these two hours exceeded eight hours on a non-regularly scheduled workday).

We have been asked whether AB 60 permits alternative workweek schedules of less than 40 hours per week. Section 511 (a) permits the adoption of a regularly scheduled alternative workweek "that authorizes work by the affected employees for no longer than 10 hours per day *within a 40 hour workweek.*" The word "within" means any workweek of no more than 40 hours, and would include workweeks of less than 40 hours. However, paragraph 3(B) of Order 1-89 (manufacturing) contains a unique provision, not found in any other wage order, that requires an alternative work schedule to provide for "not more than ten hours per day within a workweek of *not less than* 40 hours." Thus, employers covered by Order 1-89 are prohibited from establishing an alternative schedule of less than 40 hours per workweek. All other employers, under AB 60, can establish alternative schedules that provide for up to 40 hours in a workweek. The IWC, of course, may consider amending the language in Order 1 to conform to the more liberal provisions of the statute.

We have received many inquiries as to whether AB 60 prohibits the adoption or retention of a so-called "9/80" alternative work schedule that does not provide for the payment of overtime. Under a 9/80 schedule, employees will work 9 hours a day from Monday through Thursday, 8 hours on Friday, followed by a week of 9 hours worked each day on Monday through Thursday, and no hours worked on Friday. If the employer has not pre-designated a workday and workweek, the standard midnight to midnight workday (based on the calendar day) used by DLSE for enforcement purposes will result in 44 hours worked the first workweek of this schedule, followed by 36 hours worked the second workweek. And since a regularly scheduled alternative workweek adopted by a secret ballot election cannot provide for more than 40 hours regularly scheduled within a workweek, the fact that every other workweek is regularly scheduled to exceed 40 hours would defeat the alternative workweek, and mandate payment of overtime for all hours worked in excess of 8 in a day or 40 in a week. But by predesignating the workday to run from noon to noon, and by predesignating the workweek to run from Friday noon to next Friday at noon, the employer can establish a 9/80 schedule that does not exceed 40 hours in a workweek, in that the eight hours worked every other Friday are split in half, with the 4 hours worked before noon falling into the first workweek, and the 4 Friday hours worked after noon falling into the second workweek.

Of course, as with any other alternative workweek schedule under section 511, the 9/80 schedule cannot be unilaterally imposed by the employer but must be (or have been) adopted by the requisite two-thirds vote in a secret ballot election to allow for this schedule without the payment of daily overtime.

Prohibited Reduction of Regular Rate of Pay: Subsection (c) of section 511 provides that "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." This is a new protection, that never before existed in the Labor Code or any IWC order. This prohibition only applies to reductions in the regular rate of pay that are implemented on or after January 1, 2000; it does not apply to any reduction implemented prior to January 1, 2000. The prohibition applies to repeals resulting either from an election or from an employer's unilateral decision, and to the nullification of any alternative workweek schedule by operation of AB 60. The prohibition would be enforceable by filing an individual wage claim or a civil action to recover unpaid wages owed to a worker or group of workers based on the wage rates that were in effect prior to the unlawful reduction, and through injunctive relief.

Reasonable Accommodation: Under subsection (d), an employer must make a reasonable effort to find a work schedule of no more than eight hours in a workday to accommodate any employee who was eligible to vote in the election that established the alternative workweek schedule, if such employee is unable to work the hours established by the election. Employers do not have a duty to make such an effort on behalf of any employee who is hired after the election was held, except for a duty to explore any available alternative means of accommodating the religious beliefs of those employees whose religious observances conflict with an adopted alternative workweek schedule. However, the statute permits the employer to provide a work schedule of no more than eight hours in a workday to any employee who is hired after the adoption of an alternative workweek schedule if that employee is unable to work the alternative schedule.

Reporting the Results of the Election: Subsection (e) requires the employer to report the results of any such election (regardless of the outcome of the election) to the Division of Labor Statistics and Research (DLSR) within 30 days after the results are final. AB 60 does not indicate whether the failure to comply with this reporting requirement could invalidate the result of the election. We would expect the IWC to address this issue in its post-AB

60 regulations. Any employer covered by reinstated Order 1-89 (manufacturing industry) is subject to an additional requirement, unique to that Order, that no agreement for an alternative workweek shall be valid until it is filed with DLSE. Thus, employers under Order 1 must report election results to both DLSR and DLSE, and such employers cannot implement an alternative workweek schedule without first reporting the election results to DLSE.

Presently Existing Non-Collectively Bargained Alternative Work Schedules: Subsection (f) of section 511 provides that any presently existing alternative workweek schedule that was adopted pursuant to IWC Wage Orders 1, 4, 5, 7, or 9 shall be null and void, *except for an alternative workweek that meets all of the following conditions:*

1. it provides for no more than 10 hours of work in a workday (except for 12 hour workdays that are allowed in the health care industry, as specified in subsection (g), discussed below).

2. it was adopted by a two-thirds vote of the affected employees in a secret ballot election.

3. the election was held "pursuant to wage orders of the Industrial Welfare Commission in effect prior to 1998.

AB 60 thus puts an end to any alternative workweek schedules that were unilaterally established by employers pursuant to the 1998 wage orders, except for certain voluntary arrangements as specified in subsection (h) of section 511, discussed below. Alternative workweek schedules that were adopted under wage orders that were not amended in 1998 (those that left daily overtime undisturbed) should meet the prerequisites for a regularly scheduled alternative workweek under AB 60, so they are not nullified by operation of statute. These prerequisites are a maximum of ten hours work in a workday, a maximum of 40 hours in a workweek, adoption by a secret ballot election with a 2/3 vote of approval by the affected employees, with the election conducted pursuant to the procedures specified in the applicable wage order.

We have received many inquiries from employers that unilaterally adopted an alternative workweek under the 1998 wage orders, and that now wish to establish alternative workweek schedules that will not be nullified upon the effective date of AB 60. Of course, those employers could wait until January 1, 2000, to propose alternative workweek schedules that may then be adopted by a two-thirds vote in secret ballot elections conducted pursuant to the procedures specified in the applicable reinstated pre-1998 wage order. But many employers would like to establish a "nullification-proof" alternative workweek schedule in advance of January 1, 2000, so as to allow for a seamless transition. These employers have focused on the requirement that the election have been held "pursuant to wage orders . . . that were in effect prior to 1998," and have asked whether this means that to be valid and not subject to nullification, the election must: (1) have been held or be held on a date when the applicable pre-1998 wage order was or will be in effect (that is, prior to January 1, 1998, or after January 1, 2000), or (2) have been held or be held at any time until the IWC adopts the post-AB 60 wage orders, including the period until December 31, 1999 while the 1998 wage orders remain in effect, as long as the employer complied with the election procedures (including requirements for employee notification, etc.) contained in the applicable pre-1998 wage order. We believe that the intent of AB 60 is best effectuated by construing this ambiguous provision in accordance with the latter interpretation, so as to allow employers who are presently subject to a 1998 wage order to conduct an election by following all of the procedures provided in the applicable pre-1998 wage order.

Finally, turning to those alternative workweek schedules that will not be nullified by operation of AB 60 on January 1, 2000, subsection (f) provides that "any type of alternative workweek schedule that is authorized by this code and that was in effect on January 1, 2000, may be repealed by the affected employees." Procedures for repeal will be contained in the IWC's post-AB 60 wage orders. Until those orders are adopted, procedures for repeal are governed by the applicable pre-1998 wage order. Under long-standing DLSE enforcement policy, an employer that wants to terminate an alternative workweek schedule can do so unilaterally, without holding a repeal election, after providing reasonable advance notice to its employees. If the IWC wishes to prohibit such unilateral repeals, it may do so through its post-AB 60 regulations.

Two Important Exceptions to Subsection (f) of Labor Code §511:

- - The first exception to subsection (f) is found at subsection(g), which deals with the health care industry. It provides that an alternative workweek schedule in the health care industry adopted by a two-thirds vote of affected employees in a secret ballot election pursuant to Wage Order 4-89 as amended in 1993, or Wage Order 5-89 as amended in 1993, that provided for workdays exceeding 10 hours but not exceeding 12 hours in a day without the payment of overtime compensation, shall be valid until July 1, 2000. Of course, if the alternative workweek schedule adopted pursuant to such an election provided for a workday that does not exceed 10 hours, it would meet the criteria set out in subsection (f), and it would therefore remain valid indefinitely.

Several health industry employers have asked whether there is any possibility, under AB 60, for extending alternative workweek schedules that provide for 12 hour workdays past July 1, 2000. At present, it would appear that any regularly scheduled non-collectively bargained alternative workweek in the health care industry that provides for workdays that exceed 10 hours will be nullified by operation of the statute following July 1, 2000; and unless the affected employees adopt an alternative workweek schedule that comports with AB 60's limits and any provisions that may be adopted by the IWC, the basic overtime requirements of section 510 will apply.

- - The second exception to subsection (f) of Labor Code §511 is found at subsection (h), which permits an individual employee to continue to work an alternative workweek schedule without the payment of daily overtime compensation, even if the schedule was established by the employer unilaterally, without an election, under the 1998 wage orders, if all of the following conditions exist:

1. the employee was employed on July 1, 1999, and

2. the employee was then *voluntarily* working an alternative workweek schedule, and

3. this schedule did not provide for work in excess of 10 hours of work in a workday, and

4. this employee makes a *written request* to the employer to continue working this schedule, and

5. the employer approves the written request.

Employees hired after July 1, 1999 will not be eligible for this non-collectively bargained, non-secret ballot approved, individual alternative workweek schedule. If the employee, as of July 1, 1999, was working an alternative workweek with regularly scheduled workdays of more than 10 hours, this option is unavailable, even if the employee and employer are now willing to limit the workday to 10 hours. A written request to continue working this individual alternative workweek without payment of daily overtime will only be effective as to work performed after the date of the request; the employer must pay the applicable daily overtime compensation for any work performed prior to the date that the written request is executed and approved. Finally, because this exception allows for individual voluntary agreements, DLSE has determined that the employee can, at anytime, revoke his or her written request to continue working this sort of alternative workweek schedule, in which case the employer must henceforth pay daily overtime in accordance with the provisions of AB 60.

Individual "Make-Up Time" and the Flexible Workweek: The most significant new aspect of work time flexibility is found at section 7 of AB 60, which adds section 513 to the Labor Code, to provide a mechanism for individual employees to take time off to attend to their personal needs, and to then make up that time *within the same workweek*, without the payment of overtime compensation except for hours worked in excess of 11 in one workday or 40 in one workweek. The employee benefits by not losing any pay, or incurring any loss of sick or vacation time, for the time off; and the employer benefits by not having to pay daily overtime to the employee who is working more than eight hours (but not more than 11 hours) in a day in order to make up the missed time.

Make-up time will not count in computing the total number of hours worked in a day for the purposes of the overtime requirements specified in section 510 (the basic overtime law) and section 511 (the provisions for regularly scheduled alternative workweeks) only if the make-up hours are worked in the same workweek in which the work time was lost. Also, the employer will not have to pay overtime compensation for the make-up work only to the extent that the employee performing the make-up work does not exceed 11 hours of work in a workday or 40 hours of work in a workweek. In other words, when an employee works more than eight hours in a workday because the employee is performing make-up work that day, any work performed in excess of 11 hours that day must be paid at the appropriate overtime rate. Likewise, any work performed in excess of 40 hours during the workweek must be paid as overtime.

Under section 513, make up time is permitted if the employer approves the employee's *signed written request* to make up time that has been or that will be lost as a result of *the employee's personal needs*. The employer may choose to grant or deny any request to work make up time. A separate written request is needed each time the employee asks to make up work time pursuant to this section. The request need not be made prior to the employee taking off the time, but must be made prior to the performance of the make up work in order to ensure that the employer is not liable for daily overtime for the make up hours. Any daily overtime hours worked prior to a request to perform make up work cannot be credited as make up time, but rather, will constitute time for which overtime compensation must be paid. And most importantly, time that is taken off in one workweek can only be made up during that same workweek; if it is worked in a different workweek than the when it was taken, the daily overtime hours worked must be paid as overtime.

The statute expressly prohibits employers from "encouraging or otherwise soliciting an employee to request an employer's approval to take personal time off and make up the work hours within the same week pursuant to this section." This does not prohibit employers from merely informing workers of the provisions of this statute; however, it clearly does prohibit employers from suggesting, recommending (or certainly, ordering) that workers "request" make up time.

We have been asked whether make-up time can be worked in advance of the date that the time being made up is lost. There is nothing in the statute that would prohibit this, so long as the make-up work is performed during the same workweek in which the time is lost. Thus, if an employee knows that he or she will need to take time off to attend to personal needs on the last day of the workweek, the employee can make-up this time in advance, during the preceding days of that workweek. The question that then follows is: does the employer have any overtime exposure if that worker, after working the make-up time, decides not to take the time off, and works the time that he or she had planned on taking off? The answer to this would depend on whether the employee ended up working more than 40 hours in that workweek. If so, section 513 requires payment of overtime for all hours worked in excess of 40 in a workweek. If the employee did not end up working more than 40 hours that workweek, the employer would not be liable for any daily overtime (provided that the employee did not work more than 11 hours in any workday, and that any hours worked in excess of eight in any one workday were worked as make-up time). The reason the employer would not be liable for any daily overtime under this scenario is because the employer agreed to allow the employee to work these extra daily hours *without payment of daily overtime* in order to make-up time that the employee asserted would be lost later in the workweek due to the employee's personal obligations, and the employer relied on the employee's assertion in granting this request. On the other hand, if an employer revokes its previously granted permission to allow an employee to perform make-up work after the make-up work is performed, but before the time off is taken, the employer will be liable for all daily overtime, and the extra daily hours worked will not be treated as make-up time.

Finally, we have been asked whether these make-up time provisions apply to employees working under regularly scheduled alternative workweeks. The answer is yes, section 513's make-up time provisions expressly apply to workers covered by section 510, the basic overtime law, and to workers covered by section 511, which authorizes alternative workweek schedules. Of course, a worker employed under a valid alternative workweek schedule which provides for 10 hours of work in a workday without payment of overtime will only be able to work one extra hour of make-up time during such a workday before exceeding the 11 hour per day cap that triggers overtime for all subsequent make-up time worked that day. Because make-up time applies to workers employed under an alternative workweek schedule, such workers may perform up to 11 hours of make-up work on a day that they are not regularly scheduled to work without the payment of overtime compensation that would otherwise be required, pursuant to section 511(b), for working on a day other than a regularly scheduled workday.

> Examples: An employee scheduled to work an eight hour workday can work an additional three hours that day as make-up time without the payment of daily overtime. An employee scheduled to work a six hour workday can work an additional five hours that day as make-up time without the payment of daily overtime. An employee scheduled to not work at all on a specific day can work up to 11 hours of make-up time that day without the payment of overtime, whether the worker is covered by the basic overtime law or is working under an alternative workweek schedule pursuant to section 511. On the other hand, an employee not covered by a regularly scheduled alternative workweek pursuant to section 511, who is nonetheless scheduled to work nine hours in a workday, can work two hours of make-up time that day without payment of overtime for the make-up time, but must be paid overtime for the one overtime hour of scheduled, non- make-up work. If this same employee works three hours of make-up time, resulting in 12 hours of work that workday, the employee must be paid two hours of overtime at the rate of one and one-half times the regular rate (one hour for the ninth hour of scheduled work, and another hour for the make-up time that exceeded the eleventh hour of work that day). Finally, if this same employee works four hours of make-up time,

resulting in 13 hours of work that workday, the employee must be paid 2 hours of overtime at time and a half, and one hour of overtime at twice the regular rate of pay.

The Collective Bargaining Agreement Opt-Out Provision: Section 8 of AB 60 adds section 514 to the Labor Code, which makes AB 60's overtime and meal period provisions inapplicable to employees who are covered by a collective bargaining agreement ("CBA"), if the CBA expressly provides for the wages, hours and working conditions of the employees, and provides a regular hourly wage rate for those employees of not less than 30 percent more than the state minimum wage, and "provides premium wage rates for all overtime hours worked." If a CBA meets these provisions for the opt-out, the workers covered by the CBA are not entitled to statutory overtime; rather, they will receive premium pay for all overtime hours worked, as provided by the CBA. This is somewhat different from prior law, in that the opt-out under the IWC orders had required payment of a regular rate of at least $1 an hour more than the state minimum wage; and under the new "30 percent above" formula, the required regular rate would now be seven dollars and 47 and a half cents ($7.475) per hour. And of course, future increases in the state minimum wage will automatically result in increases in the regular rate required for the opt-out. If the opt-out requirements are met, workers are paid for all hours worked in accordance with the provisions of the CBA. It should be remembered, however, that there is no CBA opt out under the Fair Labor Standards Act, which requires payment of overtime at the rate of one and one half the regular rate of pay for all hours worked in excess of 40 in a workweek.

The term "premium wage rates" are not defined in AB 60 or in the IWC orders. The term has always been interpreted to mean any wage rate in excess of the applicable straight time regular hourly rate of pay. There is no indication that the Legislature intended this term to be interpreted in any other manner. Indeed, it would make no sense to interpret the term as synonymous with a statutory overtime rate such as one and a half times the regular rate, since the very purpose of an opt-out provision is to allow for an alternative to the minimum standard that would otherwise be required by statute. The amount by which the premium exceeds the regular rate is left to the parties to negotiate; we will recognize any rate higher than the regular rate as a premium.

We have received several inquiries regarding the meaning, within section 514, of the term "all overtime hours." The one thing it cannot mean is all hours worked in excess of eight in a day without regard to any definition of overtime that might be contained in the CBA, since such a meaning would prohibit unions from collectively bargaining for the very same alternative workweek schedules that non-unionized workers could adopt under AB 60 -- that is, work schedules of up to 10 hours a day (and 12 hours a day in the health care industry) without the payment of daily overtime or premium pay. There is nothing to indicate that the Legislature intended such a peculiar result. The IWC's post-AB 60 regulations may provide further guidance on the parameters of the CBA opt-out.

As with any other wage claims that are filed with DLSE by employees covered by a CBA, any claims for overtime where a CBA is involved must be reviewed by DLSE Legal in accordance with the consent decree in *Livadas v. Bradshaw*.

Administrative, Executive and Professional Exemption: Section 9 of AB 60 adds section 515 to the Labor Code. This is the section that codifies, with some very significant changes from prior law, the administrative, executive, and professional exemptions from overtime. First, there are two ways in which AB 60 merely codifies pre-existing California law. As was the case under the IWC orders, there is no exemption, no matter how highly the employee may be paid, unless the employee is "primarily engaged" in exempt work, and the term "primarily" is defined as more than one-half the employee's work time. Thus, state law continues to differ from federal law, which is less protective of workers; in that under federal law, the focus is on the employee's "primary duty," and an employee may be found to have a "primary duty" as a manager even if the worker spends most of his or her work time performing non-exempt tasks. In contrast, state law looks to what the worker is "engaged in," that is, what is the worker physically doing.

AB 60 also codifies California's pre-existing fixed workweek method for calculating overtime compensation owed to a non-exempt salaried employee, a method that was approved by the courts 15 years ago in the *Skyline Homes* case. Under this method, the salary paid to a non-exempt salaried employee only covers the 40 non-overtime hours of the workweek; it does not serve to compensate the worker for any overtime hours worked. This weekly salary must be divided by 40 to establish a regular hourly rate of pay, which is then the basis for all overtime calculations. Overtime hours worked are then paid at either one and one half times the regular rate, or double the regular rate, as required. This contrasts with the less protective federal fluctuating workweek method, under which a salary paid to a non-exempt employee is deemed to cover all hours worked (including overtime hours); so the more overtime hours worked, the lower the regular rate of pay, and so that overtime hours worked are only paid at one-half the employee's regular rate of pay. AB 60 does not change the method of computing overtime compensation for employees who are paid on a commission or piece rate basis; which under both state and federal law is based on a fluctuating workweek whereby total weekly commission or piece rate earnings are divided by the total number of hours (including overtime hours) worked in the week to compute the regular rate of pay; and overtime hours are then compensated at one-half this regular rate of pay.

To be sure, AB 60 brings about some very significant changes in the administrative, executive and professional exemptions. Under prior law, there was no minimum remuneration or salary requirement for the professional exemption. Under Labor Code section 515, the professional exemption is subject to the same minimum salary requirement as the administrative and executive exemption. The so-called "remuneration" requirement under prior law is now changed to a requirement of a monthly salary, equivalent to no less than twice the minimum wage for full time work (defined as employment for 40 hours per week), which would now require a salary of at least $1,993.33 per month. Since the required salary is set as a multiple of the minimum wage, future increases in the state minimum wage will result in corresponding increases in the threshold salary for the exemption. The value of any payments in kind, or other forms of remuneration (such as employer provided meals or lodging) cannot be used as a credit against this required minimum salary. The legislative intent in switching from remuneration to salary was to explicitly adopt the federal salary basis test, to the extent that it is consistent with California wage and hour law. Thus, employees who are paid on the basis of an hourly wage, or commissions, or piece rates, cannot be exempt from payment of overtime under the administrative, executive or professional exemptions.

We have been asked whether a part-time employee working in a bona fide executive, administrative, or professional capacity (that is, one who is "primarily engaged" in such exempt work) can be exempt if he or she is paid a monthly salary that is less than the full-time salary equivalent of twice the minimum wage, but not less than the applicable percentage of the minimum monthly required salary, based on the proportion of time that the part-time employee works in relation to a full time, forty hour week. For example, can an attorney employed by a law firm on a part-time 20 hour per week basis, be exempt if paid a monthly salary of $1,000? The answer to that question is no; we do not believe that this monthly minimum required salary can be reduced, even if the ostensibly exempt employee is scheduled to work less than 40 hours per week. An exempt employee is expected to exercise discretion and independent judgment in order to decide the number of hours to devote to a particular task, and cannot be expected to confine his or her

work hours to a set schedule, as any such employer-imposed limitation on hours worked would be inconsistent with the discretion and independent judgment that is the hallmark of exempt work. Section 515(a)'s requirement of "a monthly salary equivalent to no less than two times the state minimum wage for full-time employment," simply serves to set the amount of the required monthly salary as a multiple of the minimum wage; and not to permit reductions of this monthly threshold salary for employees who work less than 40 hours per workweek.

As was the case under the IWC orders, section 515(f) provides that the professional exemption shall not apply to registered nurses. Another bill that was passed and signed by the Governor this year, AB 651, provides that the professional exemption shall not apply to pharmacists, a category of workers who formerly were expressly exempted, under the IWC orders, as licensed professionals.

AB 60 does not define the duties that characterize exempt work. Section 515(a) gives the IWC the task of "reviewing the duties which meet the test of the exemption," and then, if the IWC chooses, it may convene public hearings to adopt or modify regulations pertaining to these duties. Under the existing IWC orders, the duties are spelled out only in the broadest terms --- "work which is primarily intellectual, managerial or creative, and which requires the exercise of discretion and independent judgment." In enforcing the IWC orders, DLSE has out of necessity come to rely upon the federal regulations, and federal case law, which define the terms "executive", "administrative" and "professional" for purposes of the exemptions, to the extent that these federal definitions are not inconsistent with state law. We do not know yet whether the IWC will decide whether to adopt specific definitions for these terms. Absent the adoption of such definitions, we will continue to follow existing DLSE interpretations, as set out in our opinion letters, of these terms. (See, for example, opinion letters dated 1/7/93 and 10/5/98.)

Meal Period Requirements: Section 6 of AB 60 adds section 512 to the Labor Code, which codifies the requirements for meal periods during the workday. These provisions are somewhat confusing, and there have been many questions as to whether AB 60 puts an end to "on-duty meal periods." That term is used in the IWC orders to describe a meal period during which the employee is not relieved of all duty regardless of the length of time of the meal period, or that is less than 30 minutes long regardless of whether the employee is relieved of all duty. Under the IWC orders, an "on-duty meal period" is permitted only (1) when the nature of the work prevents the employee from being relieved of all duty, and (2) when the employee and employer have entered into a written agreement permitting an on-duty meal period. An employee must be paid for the entire on-duty meal period; that is, it constitutes time worked.

We believe that AB 60 does not prohibit "on-duty meal periods". Had the Legislature intended to accomplish that, the bill would have expressly done so. Instead, the term "on-duty meal period" is not found anywhere in the text of AB 60. Section 512 provides that a meal period of no less than 30 minutes must be provided to any employee who is employed for a work period of more than five hours per day. However, this meal period can be waived by mutual consent of the employee and the employer if the total daily work period does not exceed six hours. A second meal period of no less than 30 minutes must be provided to any employee who is employed for a work period of more than 10 hours in a day, however, this second meal period can be waived by mutual consent if the worker does not work more than 12 hours that day, and if the first meal period was not waived. Of course, since the first meal period cannot be waived if there were more than 6 work hours in a day, it would seem that no employee working more than 10 hours in a day could have waived the first meal period. In any event, whenever a worker is employed for more than 12 hours in a day, the second meal period cannot be waived.

The confusion over whether AB 60 ends "on-duty meal periods" stems from a misunderstanding of the term "meal period" and the meaning of the provisions that limit the ability to mutually agree to a waiver of the meal period. The term "meal period" includes both the on-duty paid and off-duty unpaid variety. If the prerequisites (as defined in the IWC orders) for an on-duty meal period are met, then an on-duty meal period may be established. Even though the employee is required to work during the on-duty meal period, the employee must be given the opportunity, while working if necessary, to eat his or her meal. That is what cannot be waived, if the work period exceeds six hours, and if an on-duty meal period has been properly established. On the other hand, if the prerequisites for an on-duty meal period have not been met, the limits on waiver of the meal period apply to the employee's right to take an off-duty meal period.

The IWC will continue to have an important role in defining meal period requirements, as section 10 of AB 60 adds section 516 to the Labor Code, which provides that notwithstanding any other provision of law, the IWC may adopt or amend regulations regarding meal periods, break periods, and days of rest.

Day of Rest Requirement: AB 60 does not amend existing Labor Code sections 551 and 552, which provide that every employee is entitled to one day's rest in seven, and that no employer shall cause its employees to work more than six days in seven.

Section 12 of AB 60 makes some minor changes to Labor Code §554, which, among other things, permits an accumulation of days of rest when the nature of the employment reasonably requires that the employee work seven or more consecutive days, providing that in each calendar month the employee receives days of rest equivalent to one day's rest in seven. The most significant change to section 554 is that it now specifies that employees covered by IWC Order 14 (agricultural occupations) are not covered by this chapter of the Labor Code (starting with Labor Code §500), except for Labor Code section 558, so that employers of such employees will be subject to civil citations for violations of the overtime provisions of Order 14.

Section 13 of AB 60 makes some minor changes to Labor Code §556, which provides that sections 551 and 552, the sections which mandate one day's rest in seven, shall not apply to any employer or employee when the total hours of employment do not exceed 30 hours in a week or six hours in any one day of that week. We have been asked whether an employee who works such a part-time schedule would be entitled to seventh day premium pay, pursuant to section 510. The answer is yes, seventh day premium pay is required under section 510 if the worker works seven consecutive days in a workweek, regardless of the total number of hours worked during that workweek or during any of the days during that workweek. Section 556 does not exempt part-time workers from the requirements of seventh day premium pay.

Enforcement: As discussed earlier in this memo, section 14 of AB 60 adds section 558 to the Labor Code, which establishes a civil penalty citation system as a mechanism for enforcing the overtime provisions of both AB 60 *and* the IWC orders. The citation may include: 1) a civil penalty that is payable to the State (set for an initial violation, which we interpret as a first citation, at $50 per employee per pay period for which the employee was underpaid; and for a subsequent violation, at $100 per employee per pay period in which the employee was underpaid), *and* 2) an additional amount representing the unpaid overtime wages owed to the employees, with any such wages that are recovered to be paid by DLSE to the affected employees. By allowing for inclusion of unpaid wages as a component of the amount assessed, overtime citations differ from minimum wage civil penalty citations under Labor Code §1197.1, which do not

include an unpaid wage component. This unpaid overtime wage component of the assessment provides DLSE with a significant enforcement mechanism, and a means of expeditiously pursuing the collection of unpaid overtime wages.

Employer Appeal Rights: Section 558(b) provides that the procedures for issuing, contesting and enforcing judgments for civil penalty citations for overtime violations shall be the same as the procedures governing minimum wage citations under Labor Code §1197.1. Thus, an employer will have 15 business days from the date the citation is issued to request an appeal hearing. The hearing must then be held within 30 days of a timely request. The decision of the Labor Commissioner's hearing officer, either affirming, dismissing or modifying the proposed assessment, must be served on the parties within 15 days of the conclusion of the hearing. The employer then has 45 days from the date the decision is served to file a petition for a writ of administrative mandate. If no writ petition is timely filed, then the Labor Commissioner's decision becomes due and payable, and is entered as a clerk's judgement. If a writ petition is filed, the court will review the administrative record to determine whether the evidence presented at the hearing before the Labor Commissioner supports the findings and whether the Labor Commissioner's decision correctly applies the law. Since court review is by way of writ, rather than de novo trial, it is critical to present the necessary evidence at the administrative hearing to establish an adequate administrative record.

Of course, the civil penalty provision of section 558 is not the only means available to DLSE for enforcing a worker's right to overtime compensation. DLSE can still prosecute overtime violations as it has in the past, by filing a civil action pursuant to Labor Code §1193.6. DLSE also can, of course, continue to adjudicate individual employee wage claims through the section 98 Berman hearing process.

We have received several inquiries as to whether "willfulness" is a required element for the issuance of a civil penalty for overtime violations. The answer is no, there is no requirement of "willful" underpayments. The word "willful" or "intentional" does not appear in section 558. Had the Legislature intended to make "willfulness" a requirement, they would have do so expressly, as in Labor Code section 203. It is therefore our conclusion that purported absence of willfulness is not a defense to the imposition of penalties under section 558.

We have also been asked whether meal period violations will be subject to civil penalty citations under section 558. At first blush, the statute authorizes the issuance of a citation for a violation of "a section of this chapter or any provision regulating hours and days of work in any [IWC] order," so that violations of the meal period requirements of section 512 would appear to be subject to civil penalty citations. But the manner in which civil penalties are calculated -- $50 or $100 per *underpaid employee* per pay period in which the employee was underpaid, plus the amount of the *underpaid wages* -- makes it clear that a violation of meal period requirements will not result in the imposition of a civil penalty under section 558, unless the meal period violation is coupled with a failure to pay the employee for the time worked during the unlawfully deprived meal period. In other words, as long as the employee was paid at the appropriate regular or overtime rate for the time worked during what should have been his or her meal period, the employer is not subject to a penalty. However, if an employee is not given a meal period as required by section 512, *and* is not paid for such time worked (either at the regular rate or at the overtime rate, whatever may be required), a penalty citation may be issued in accordance with section 558.

We have also received inquiries as to whether penalties will be assessed against an employer's payroll clerk, payroll supervisor, or a payroll processing service for failure to issue checks that contain required overtime compensation. This question is prompted by the expansive language of section 558, which makes "any employer or other person acting on behalf of an employer" subject to a penalty citation. Regardless of the expansive sweep of this language, DLSE does not intend to issue penalty citations to any individual persons who do not formulate policies that lead to non-payment of required overtime compensation. In general, penalties will be issued against the legal entity that is the employer. To the extent that DLSE may, on appropriate occasions, decide to go beyond this legal entity in imposing liability, we would not anticipate going beyond the definition of employer found in each of the IWC orders. That definition includes any person "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.*" Thus, in appropriate instances, corporate officers or managers may be included as defendants in a penalty citation pursuant to section 558.

Labor Code section 553, which was not amended by AB 60, offers another method of enforcing AB 60's provisions. Section 553 provides that "any person who violates this chapter," which now includes the overtime provisions of AB 60, "is guilty of a misdemeanor."

Special Industries: Existing provisions of the Labor Code contain special workday or workweek requirements or exemptions relating to employees of ski establishments (section 1182.2), commercial fishing boats (section 1182.3), licensed hospitals (section 1182.9), and stable employees engaged in the raising, feeding or training of racehorses (section 1182.10). Sections 16 to 19 of AB 60 amends these statutes to provide for their repeal effective July 1, 2000, unless the Legislature enacts a statute prior to that date extending these special provisions. Of course, the IWC may choose to maintain, or modify, the exemptions for these industries pursuant to Labor Code section 515(b).

EXHIBIT E

The 2002 Update Of

The DLSE

Enforcement Policies and Interpretations

Manual

(Revised)

ACKNOWLEDGEMENTS

The Division of Labor Standards Enforcement (DLSE) Enforcement Policies and Interpretations Manual summarizes the policies and interpretations which DLSE has followed and continues to follow in discharging its duty to administer and enforce the labor statutes and regulations of the State of California.

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March, 2006

45.2 Meal Periods. Labor Code § 512(a) provides:

> An employer may not employ an employee for a work 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 of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

Section 11 of Wage Order 4-2001 provides:

> (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 the 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 workday 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 (1) 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.

EXHIBIT F

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, 2017, 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. 12/2016)
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, 2017, 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 of-fering 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 (1½) 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 (1½) 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 (7th) 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 (7th) 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 work-week. 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; and

(b) Eleven dollars ($11.00) per hour for all hours worked, effective January 1, 2018;

(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; and

(b) Ten dollars and fifty cents ($10.50) per hour for all hours worked, effective January 1, 2018.

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.

(D) 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		Effective January 1, 2018	
For an employer who employs:	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
Room shared	$40.76/week	$38.82/week	$42.70/week	$40.76/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
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
Meals:				
Breakfast	$3.80	$3.62	$3.98	$3.80
Lunch	$5.22	$4.97	$5.47	$5.22
Dinner	$7.01	$6.68	$7.35	$7.01

(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.

其它文字的摘录

工业福保委将摘录本规则中有关工资和工时的规定，用西班牙文、中文印出。其它文字如有需要，也将向往翻译。如果您有需要，可以要信索取，函寄到：

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
605 West Santa Ana Blvd., Bldg. 28, Room 625
Santa Ana, CA 92701
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

STATEMENT AS TO THE BASIS

TAKE NOTICE Pursuant to the "Eight-Hour-Day Restoration and Workplace Flexibility Act," Stats. 1999, ch. 134 (commonly referred to as "AB 60"), the Legislature reaffirmed the State's commitment to the eight-hour workday standard and daily overtime, and authorized workers to adopt regularly scheduled alternative work days and weeks according to statutory and regulatory provisions. The Industrial Welfare Commission of the State of California ("IWC"), in accordance with the authority vested in it by the California Constitution, Article 14, Section 1, as well as Labor Code §§ 500-558, and 1171-1204, held public meetings and investigative hearings during which it received public comment regarding the implementation of AB 60 and, on March 1, 2000, the IWC's Interim Wage Order - 2000 became effective. The IWC subsequently has held additional public meetings and public hearings pursuant to Labor Code §517(a) to further review all of its Wage Orders for purposes of complying with AB 60. The IWC has considered all correspondence, verbal presentations, and other written materials submitted prior to the adoption of amended wage orders. The IWC submits the following statement as to the basis for the various amendments made to sections 1, 2, 3, 4, 7, 9,11, 12, 17, and 20ı of Wage Orders 1 through 15, and to the Interim Wage Order - 2000. The Statements as to the Basis for the remaining parts of the IWC's wage orders are contained in prior printings of those orders. These remaining parts have not been changed, and there is no need for an explanation because the IWC is continuing in effect regulations that have previously become a part of the standard working conditions of employees in this State.

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1. Please note that not all amendments apply to all of the wage orders, and that the sections of the Interim Wage Order are slightly different from the other wage orders. Please refer to the detailed Statement below.

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1. APPLICABILITY OF ORDER

Amendments to this section apply to Wage Orders 1 through 13, 15, and the Interim Wage Order. Generally, the section now provides, in part, that employees employed in administrative, executive, and professional capacities are exempt from Sections 3 through 12 of these wage orders. According to the provisions of Labor Code § 515, the criteria that must be satisfied in order to obtain an exemption from overtime pay requirements based on the fact that an individual is an administrative, executive, or professional employee, are that the particular employee must be primarily engaged in duties which meet the test for the exemption, and earn a monthly salary of no less than two times the state minimum wage for full time employment. Labor Code § 515(e) defines "primarily" as "more than one-half of an employee's work time," and § 515(c) defines "full-time employment" as 40 hours per week.

Thus the Legislature has codified the longstanding IWC regulatory requirement that an employee must spend more than 50% of his or her work time engaged in exempt activity in order to be exempt from receiving overtime pay. The IWC notes that this California "quantitative test" continues to be different from and more protective of employees than, the federal "qualitative" or "primary duty" test. Unlike the California standard, federal law allows an employee that is found to have the "primary duty" of an administrator, executive, or professional to be exempt from overtime pay even though that employee spends most of his or her work time doing nonexempt work. Under California law, one must look to the actual tasks performed by an employee in order to determine whether that employee is exempt. In addition, the statutory threshold for monthly employee remuneration has substantially

increased from the amounts set forth in prior IWC wage orders, and that remuneration must be received in the form of a salary.

In addition to the above requirements, Labor Code § 515(f) codified the IWC's existing treatment of registered nurses employed to engage in the practice of nursing. They are not to be considered exempt professional employees, and will not be considered exempt under Labor Code § 515(a) unless they individually meet the criteria established for executive or administrative employees. Similarly, Labor Code § 1186 (enacted by Senate Bill 651, Stats. 1999, ch. 190), provides that pharmacists employed to engage in the practice of pharmacy no longer qualify as exempt professional employees and must individually meet the criteria established for executive or administrative employees in order to be considered exempt under Labor Code § 515(a).

In accordance with the mandate of Labor Code § 515(a) and the expedited process for the promulgation of regulations authorized by § 517, the IWC conducted a review in order to determine the administrative, executive, and professional duties that meet the test of the exemption. The IWC held public meetings and hearings, and received verbal and written public comment in the form of testimony, correspondence, and legal argument regarding various proposals for exempt duties. The bulk of the information came from employers and employees involved in retail, restaurant, and fast food service businesses, as well as representatives of these groups. The IWC also received substantial comment from the legal community. The chief concern of all of these groups related to the distinction between executive managerial employees and nonexempt employees. Employees stated that it was common to have the title of a manager and not be paid overtime, yet perform many of the same tasks as other nonexempt employees during most of the workday. Many employers asked for specific action by the IWC, including the classification of work in settings, such as retail stores, where managers may spend a significant amount of time on the retail floor in the course of managing the operation and directing and supervising the staff. They argued that an employee should not lose his or her exempt manager status merely because he or she sometimes may have to chip in and perform nonexempt work. Attorneys representing employers argued that California should move toward the federal regulatory standards. Other attorneys representing employees reminded the IWC that use of federal regulations might conflict with California's more protective statutory requirement that, in order to be exempt, employees must be "primarily 3 engaged" in exempt work. The IWC determined that the way to harmonize these various and competing concerns was to focus on identifying the federal regulations that could be used to describe managerial duties within the meaning of California law. The purpose of identifying and referring to such regulations is to more clearly delineate managerial duties that meet the test of the exemption and to promote consistent enforcement practices. The IWC also received testimony and correspondence from registered nurses regarding the loss of their exempt status as professional employees.

The IWC received similar testimony and correspondence from pharmacists and pharmacy representatives. Some testimony reflected the desire to reinstate the professional exemption, while other testimony based on safety and accuracy considerations did not. In addition, advocates seeking an exemption for pharmacists urged that, if the professional exemption could no longer be used, the definition for the administrative exemption should be expanded to include the coverage of pharmacists. Arguments included greater flexibility, professional degrees, and their managerial and advisory duties. Testimony submitted against the allowance of an exemption cited strenuous working conditions, potential jeopardy to the quality of patient care, and the interest of minimizing medical errors. The IWC does not have the power to repeal Labor Code § 515(f) or1186, which explicitly require that registered nurses and pharmacists individually meet the administrative or executive

criteria in order to qualify for an exemption. Accordingly, the IWC chose not to address regulations relating to registered nurses and pharmacists.

Advanced practice nurses, which is an umbrella term that includes nurse practitioners, clinical nurse specialists, certified registered nurse anesthetists, and certified nurse-midwives, submitted testimony advocating the continuation of their exempt status as professional employees. They noted, among other things, that they are not employed to engage in the practice of nursing, and they have advanced degrees in specialized areas, and/or special certification by the State of California. They further noted their 24-hour responsibility for patients, independent management duties, and the need for continuity of patient care as justification for status as exempt professionals. Health care organizations and health care employees both submitted comments and correspondence urging an exemption for advanced practice nurses. On the other hand, labor organizations representing advanced practice nurses testified that they should be treated no differently than other nurses. The IWC also received information regarding pending legislation (Senate Bill 88) that would provide exempt professional status to three types of advanced practice nurses. This legislation was enacted and signed by Governor Davis in September 2000. Accordingly, Sections 3-12 the IWC Wage Orders 1-13 and 15, and Sections 4 and 5 of the Interim Wage Order do not apply to certified nurse midwives, certified nurse practitioners, and certified nurse anesthetists, within the meaning of Articles 2.5, 7, and 8, of Business and Professions Code, Division 2, Chapter 6, who otherwise satisfy the requirements for the professional, executive or administrative exemption. (See Stats. 2000, ch. 492, amending Labor Code § 515.) After digesting all the information received in its review, the IWC chose to adopt regulations for Wage Orders 1 - 13, and 15 that substantially conform to current guidelines in the enforcement of IWC orders, whereby certain Fair Labor Standards Act regulations (Title 29 C.F.R. Part 541) have been used, or where they have been adapted to eliminate provisions that are inconsistent with the more protective provisions of California law. The IWC intends the regulations in these wage orders to provide clarity regarding the federal regulations that can be used describe the duties that meet the test of the exemption under California law, as well as to promote uniformity of enforcement. The IWC deems only those federal regulations specifically cited in its wage orders, and in effect at the time of promulgation of these wage orders, to apply in defining exempt duties under California law.

Executive Exemption. The IWC derived the duties which meet the test for the executive exemption from language in the federal regulation 29 C.F.R. § 541.1(a)- (d), with one important exception. The reference in 29 C.F.R. § 541.1(a) to the phrase "primary duty" is omitted because, as discussed above, that phrase refers to a federal test that provides less protection to employees. Instead section A(1) generally refers to managerial duties and responsibilities, while section A(5) sets forth California's "primarily engaged" requirement. Section A(5) also refers to the federal regulations, 29 C.F.R. §§ 541.102, 541.104-541.111, 541.115-541.116, that may be used to describe exempt duties under California law. Included in these regulations are two which describe work and occasional tasks that are "directly and closely related" to exempt work. (29 C.F.R. §§ 541.108 and 541.110.) For example, time spent by a manager using a computer to prepare a management report should be classified as exempt time where use of the computer is a means for carrying out the exempt task. The IWC recognizes that 29 C.F.R. § 541.110 also refers to "occasional tasks" that are not "directly and closely related." The IWC does not intend for such tasks to be included in the calculation of exempt work. In addition, the last sentence of section A(5) comes from the California Supreme Court's decision in Ramirez v. Yosemite Water Co. (1999) 20 Cal.4th 785, 801-802. Although that case involved the exemption for outside salespersons, the determination of whether an employee is an outside salesperson is also quantitative: the employee must regularly spend more than half of his or her working time engaged in sales activities outside the workplace. In remanding the case back to the Court of Appeal, the California Supreme Court offered the following advice:

"Having recognized California's distinctive quantitative approach to determining which employees are outside salespersons, we must then address an issue implicitly raised by the parties that caused some confusion in the trial court and the Court of Appeal: Is the number of hours worked in sales-related activities to be determined by the number of hours that the employer, according to its job description or its estimate, claims the employee should be working in sales, or should it be determined by the actual average hours the employee spent on sales activity? The logic inherent in the IWC's quantitative definition of outside salesperson dictates that neither alternative would be wholly satisfactory. On the one hand, if hours worked on sales were determined through an employer's job description, then the employer could make an employee exempt from overtime laws solely by fashioning an idealized job description that had little basis in reality. On the other hand, an employee who is supposed to be engaged in sales activities during most of his working hours and falls below the 50 percent mark due to his own substandard performance should not thereby be able to evade a valid exemption. A trial court, in determining whether the employee is an outside salesperson, must steer clear of these two pitfalls by inquiring into the realistic requirements of the job. In so doing, the court should consider, first and foremost, how the employee actually spends his or her time. But the trial court should also consider whether the employee's practice diverges from the employer's realistic expectations, whether there was any concrete expression of employer displeasure over an employee's substandard performance, and whether these expressions were themselves realistic given the actual overall requirements of the job."

The IWC, in summarizing the above language in its wage orders, intends to provide some guidance in the enforcement of its regulations. The IWC does not intend to modify or limit the California Supreme Court's statements or its decision.

Administrative Exemption. The IWC similarly derived the duties that meet the test for the administrative exemption from language in the federal regulation 29 C.F.R. § 541.2(a)-(c), with the exception of the "primary duty" phrase. Section B(1)(b), which restates 29 C.F.R. § 541.2(a)(2), refers to school administration, but is not intended to establish a different test with regard to school administration, or to affect the professional exemption as it relates to teachers, or to otherwise change existing law. Section B(4) sets forth the California "primarily engaged" requirement. That section also sets forth the federal regulations, 29 C.F.R. §§ 541.201-541.205, 541,207-541.208, 541.210, and 541.215, that may be used to describe exempt duties under State law. These regulations include types of administrative employees, categories of administrative work, and a description of what is meant by the phrase "discretion and independent judgment." The last sentence of section B(4) again summarizes the California Supreme Court's decision in Ramirez v. Yosemite Water Co. (1999) 20 Cal.4th at 801-802, quoted above. In summarizing that language, the IWC intends to provide some guidance in the enforcement of its regulations, and does not intend to modify or limit the California Supreme Court's statements or its decision.

Professional Exemption. The IWC developed the duties that meet the test for the professional exemption from the list of recognized professions contained in prior wage orders as well as from language in the federal regulations 29 C.F.R. § 541.3(a)(1), (2), and (4), and 541.3(b). The recognized professions are law, medicine, dentistry, optometry, architecture, engineering, accounting, and teaching. Although registered nurses and pharmacists were previously included in the list of recognized professionals, as discussed above, they can no longer be considered to be exempt as professionals. (Labor Code §§ 515(f) and 1186.) Teaching continues to require a certificate from the Commission for Teacher Preparation and Licensing, or teaching in an accredited college or university, to be eligible for the professional exemption.

Employees subject to Wage Orders 1, 4, 5, 9, and 10 have had the "learned or artistic" aspect of the professional exemption available to them since 1993. The IWC found no reason to limit this aspect of the exemption to those five wage orders. The IWC therefore decided to include the "learned and artistic" provisions uniformly throughout all the wage orders. Section C(4) sets forth the federal regulations, 29 C.F.R. §§ 541.207, 541.301(a)-(d), 541.302, 541.306, 541.307, 541.308, and 541.310, that may be used to describe exempt duties under State law.

The new regulations in this section of the IWC's wage orders regarding the administrative, executive, and professional exemption are consistent with existing law and enforcement practices.

Recent legislative enactments provide exemptions from some or all of the provisions of the IWC's wage orders. In addition to an exemption for certain advanced practice nurses, SB 88, Stats. 2000, ch. 492, creates an exemption for certain employees in computer software fields. Sections 3-12 of IWC Wage Orders 1-13 and 15, and Sections 4 and 5 of the Interim Wage Order will not apply to employees in computer software fields who 1) earn forty-one dollars ($41.00) or more per hour, 2) are primarily engaged in work that is intellectual or creative and requires the exercise of discretion and independent judgment, and 3) are highly skilled and proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming, and software engineering within the meaning of added Labor Code § 515.5. In addition, effective January 1, 2001, the IWC's orders will not apply to any individual participating in a National Service Program, such as AmeriCorps, AmeriCorps NCCC, and Senior Corps, that carry out services with the assistance of grants from the Corporation for National and Community Service within the meaning of Title 42, United States Code, Section 12571. (See Stats. 2000, ch. 365, amending Labor Code § 1171.)

This section further provides that outside salespersons are exempt from the provisions of the IWC's wage orders. Pursuant to the requirements of Labor Code § 517(d), the IWC conducted a review of the wages, hours, and working conditions of outside salespersons and received testimony and correspondence on these matters. Some witnesses urged the IWC adopt a more expansive definition of an outside salesperson. Others asked the IWC to define more clearly those activities that are not "sales related." After considering proposals by both employers and employees, the IWC determined that it would not change its longstanding definition of "outside salesperson." (See Ramirez v. Yosemite Water Co., 20 Cal.4th 785.) However, the IWC notes that this exception is to be construed narrowly, as a determination that an employee is an outside salesperson deprives that employee of the protections of the wage orders and many other provisions of the Labor Code.

The provisions of Wage Order 10 now apply to all employees employed by an employer operating a business at a horse racing facility, including stable employees. Stable employees include, but are not limited to grooms, hotwalkers, exercise workers, and any other employees engaged in the raising, feeding, or management of racehorses, employed by a trainer at a racetrack or other non farm training facility. Employees in the commercial fishing industry are now covered by wage orders 10 and 14.

The IWC received no compelling evidence, and concluded there was no reason at this time, to warrant making any other changes in the provisions of this section.

2. DEFINITIONS

Amendments to this section apply to Wage Orders 1 through 13, and 15. The IWC received testimony from employee and employer groups requesting clarification regarding what a workday and a workweek included. There was also confusion regarding the definition of an alternative workweek.

The IWC adopted the following language into the Interim Wage Order - 2000: 1) "Workday" and "day" mean any consecutive 24-hour period beginning at the same time each calendar day; 2) "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) An "Alternative workweek schedule" means any regularly scheduled workweek requiring an employee to work more than eight (8) hours in a 24-hour period. This language will now replace the language in Wage Orders 1 through 13 and 15. The definitions provided in this section for "workday" and "day," "workweek" and "week," and "alternative workweek schedule" are identical to the definitions provided in Labor Code §500.

The IWC determined that an additional definition for a work "shift" should be added to its wage orders. "Shift " means designated hours of work by an employee, with a designated beginning and quitting time.

As discussed below in Section 3, Hours and Days of Work, the IWC also determined that the health care industry should retain the option to adopt alternative workweek schedules with work days of more than 10 but not exceeding 12 hours. The IWC has therefore included definitions in Wage Orders 4 and 5 for the terms "health care industry," "employees in the health care industry" and "health care emergency." These three terms are discussed more fully in Section 3.

The IWC received no compelling evidence, and concluded there was no authority at this time, to warrant making any other change in the provisions of this section other than those required by AB 60.

3. HOURS AND DAYS OF WORK
DAILY OVERTIME -GENERAL PROVISIONS [2]

This portion of Section 3 states the daily overtime provisions mandated by AB 60 and applies to Wage Orders 1 through 13, unless otherwise indicated. This section clarifies that premium pay for the "seventh day of work in any one workweek" refers to the seventh consecutive day of work in a workweek. The IWC received testimony regarding the general provisions of overtime as mandated by AB 60. Both employers and employees testified that they were confused regarding the meaning of the "seventh day of work" in the calculation of premium pay. The time-and-a-half provision in Labor Code §510(a) refers to "seventh day of a workweek," but the double time provision refers to "seventh day of a workweek." This slight difference creates the confusion as to whether AB 60 requires double time pay for any work performed in excess of eight hours on the seventh day of the workweek, even if the employee has not worked on all seven days of that workweek. The IWC found that the purpose of the seventh day premium is to provide extra compensation to workers who are denied the opportunity to have a day off during the workweek. Following a literal interpretation of the double time provision would illogically reward someone who may only be scheduled to work one day, and that day fortuitously happens to be the seventh day of the employer's workweek. To clarify this matter, the IWC inserted the term "consecutive" to specify that an employee must work on all seven days in a designated workweek to receive overtime compensation for the seventh day of work in a workweek.

In determining overtime compensation for nonexempt full-time salaried employees, this section also restates Labor Code § 515 (d), which clarifies that the rate of 1/40th of the employee's weekly salary should be used in the computation.

ALTERNATIVE WORKWEEKS SCHEDULES [3]

This portion of section 3 provides the general guidelines for Wage Orders 1 through 13 for the adoption of employer proposed alternative workweek schedules provided by Labor Code § 511. Section 511 has specific provisions for adopting alternative workweek schedules and sets the standards for determining the overtime compensation for employees who adopt such schedules. Generally, Wage Orders 1 through 13 provide that an employer does not violate the daily overtime provisions by properly instituting an alternative workweek schedule of up to ten (10) hours per day within a forty (40) hour workweek. Instead, once employees have properly adopted an alternative workweek schedule, an employer must pay one and one-half (1½) times the employees' regular rate of pay for all work performed in any workday beyond that alternative workweek of up to twelve (12) hours a day or beyond forty (40) hours per week, and double the employees' regular rate of pay for 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 adopted alternative workweek schedule. Wage Orders 4 and 5 also provide for alternative workweek schedules of up to twelve (12) hours in a workday within a forty (40) hour workweek for employees in the health care industry. In addition, the IWC has provided for special exemptions from daily overtime for organized camp counselors and employees in the ski and commercial fishing industries. These matters are discussed in more detail below.

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2 See Section 4 of the Interim Wage Order
3 See Sections 5-8 of the Interim Wage Order.

The IWC notes that Wage Order 1-89, which was reinstated by AB 60, provided for an alternative workweek "of not more than ten (10) hours per day within a workweek of not less than forty (40) hours," as opposed to the language adopted by the IWC that provides for an alternative workweek of not more than ten (10) hours per day within a "within a forty (40) hour workweek," as specified in AB 60. To resolve this conflict, and in the interest of uniformity and greater flexibility in crafting alternative workweek schedules, the IWC adopted the latter language to insert into Wage Orders 1 through 13. Thus, Wage Order 1 now contains language identical to the other wage orders.

The IWC further clarified that hours considered in the calculation of daily overtime pay are not counted in the determination of 40-hour workweek overtime compensation. Basically, there is no "pyramiding" of separate forms of overtime pay for the same hours worked. Once an hour worked is paid at the applicable daily overtime rate, that same hour cannot be used in the computation of forty hours for the purposes of weekly overtime pay.

After receiving testimony and correspondence from employees who sought predictability in work schedules, and employers who sought flexibility in work schedules, the IWC concluded that an employer proposal for an alternative workweek schedule must designate the number of days in the workweek and number of hours in the work shift. The employer does not need to specify the actual days to be worked within that workweek prior to the alternative workweek election. The phrase "regularly scheduled," as set forth in Labor Code § 511(a), means that the employer must schedule the actual work days and the starting and ending time of the shift in advance, providing the employees with reasonable notice of any changes, wherein said changes, if occasional, shall not result in a loss of the overtime exemption. However, in no event does Labor Code § 511(a) authorize an employer to create a system of "on-call" employment in which the days and hours of work are subject to continual changes, depriving employees of a predictable work schedule. Moreover, in Wage Orders 1, 2, 3, 6, 7, 8, 11, 12, and 13, the IWC retained the pre-AB-60 requirement that alternative workweek schedules provide for two (2) consecutive days off for employees.

The IWC received several inquiries concerning flexibility for employees switching alternative workweek options after an election is held. The IWC concluded that upon the approval of the employer, an employee may move from one menu option to another. Additionally, the "menu of options" provision provided in Labor Code § 511(a) provides that an employer may propose "a menu of work schedule options, from which each employee in the unit would be entitled to choose. "Such choice may be subject to reasonable nondiscriminatory conditions, such as a seniority based system or a system based on random selection for selection of limited alternative schedules, provided that any limitation imposed upon an employee's ability to choose an alternative schedule is approved as part of the 2/3 vote of the work unit. If the employer's business needs preclude allowing its employees to freely choose among work schedule options, the employer should not propose a menu of work schedule options. Instead, the employer may be able to propose more than one alternative workweek schedule by dividing the workforce into separate work units, and proposing a different alternative workweek schedule for each unit. This method would inform each employee of exactly which schedule would be adopted by the election. In order to provide flexibility in accommodating the personal needs of employees, the IWC further clarified that employers may grant employee requests t switch same-length shifts on an occasional basis.

Based on some of the testimony the IWC received regarding alternative workweek schedules, a question arose as to whether an employer who adopted an alternative workweek arrangement of no greater than ten (10) hours per day could lawfully require employees to work beyond those scheduled hours on a recurring basis with the payment of appropriate overtime compensation. Labor Code §511 (a) provides that employees may elect to establish a "regularly scheduled alternative workweek" that authorizes work by the affected employees for no longer than 10 hours within a 40-hour workweek. However, Labor Code § 511(b) provides that an employee working beyond the hours established by the alternative workweek agreement shall be entitled to overtime compensation. The IWC believes that, reading these two provisions of the Labor Code together, an employer who requires an employee to work beyond the number of hours established by the alternative workweek agreement, even if such overtime hours are worked on a recurring basis, does not violate the law if the appropriate overtime compensation is paid.

However, the IWC added a section to its wage orders out of its continued concern that employers could establish alternative workweek agreements and then consistently deviate from the regular schedule approved by the employees without paying overtime compensation for work performed beyond eight hours in a day. Such conduct effectively deprives employees of the right established by Labor Code §511(a) to a "regularly scheduled" alternative workweek and could lead to abuses. To prevent any such abuses, the IWC wage orders now provide that, if an employer sends workers home early on a work day that they are scheduled to work beyond eight hours without the payment of overtime pursuant to an alternative workweek agreement, the employer is required to pay overtime compensation in accordance with the provisions of the Labor Code §511(a) for all hours worked in excess of eight (8) hours on that workday.

The IWC has received questions regarding how part-time employees working in employee units that have adopted alternative workweeks should be paid overtime. It is the IWC's continued intention that a part-time employee be paid overtime in the same manner as other employees in the work unit. Thus if the employee work unit has adopted an alternative work week schedule of four ten-hour days, a part-time 11 employee working two ten-hour days would not be paid overtime after eight hours; rather, overtime would be paid after working the ten-hour daily shift.

This section echoes Labor Code §511(c), which prohibits employers from reducing an employee's regular rate of hourly pay as the result of the adoption, repeal, or nullification of an alternative

workweek schedule. Labor Code §511(c) only applies to reductions in the regular rate of pay that are instituted after January 1, 2000, the effective date of AB 60. This section also reflects the requirements of Labor Code § 511(d) regarding the required reasonable accommodation of employees who are unable to work alternative workweek schedules that are established through election, the permissible accommodation of employees hired after the election who are unable to work the alternative workweek schedules established through election, and the required exploration of "any available reasonable alternative means" of accommodation of the religious belief of an affected employee that conflicts with the alternative workweek schedule established through election. In addition, this section states the requirements for the employer reporting of alternative workweek election results mandated by Labor Code §511(e), as well as the provisions in Labor Code §554 concerning the accumulation of days of rest. The requirement of one day's rest in seven is mandated by Labor Code §§ 551 and 552.

Notwithstanding the general provisions in its wage orders regarding alternative workweeks, Wage Orders 4 and 5 allow employees in the "health care industry" to adopt employer proposed alternative workweeks of up to twelve (12) hours in a workday within a forty (40) hour workweek. Labor Code § 511(g) and the Interim Wage Order 2000 previously authorized such alternative workweeks if they were adopted according to the election and other requirements contained in those measures. In addition, the Interim Wage Order provides that such alternative workweeks are valid only until the effective date of wage orders promulgated pursuant Labor Code §517. In the meantime, the IWC conducted a review of the health care industry, as required by Labor Code § 517(b), to determine inter alia whether the allowance of twelve hour workdays should continue to be an option for employees, and what employees should be considered a part of the health care industry.

The IWC received testimony and correspondence from numerous employees, employers, and representatives of the health care industry regarding alternative workweeks. Citing personal preference, commuter traffic, mental and physical wellbeing, family care, and continuity of patient care issues, the vast majority of testimony from health care employees urged the retention of the 12-hour workday. Advocates of 12-hour workdays also noted that 8-hour shifts were impractical for hospital and home health care services, and that their industry should be afforded greater flexibility.

The IWC received additional testimony and correspondence from employees who work eight (8) hour shifts and prefer doing so. These employees also emphasized the need for flexibility in work scheduling, so that eight (8) shifts would not be eliminated, and so that employees would not be forced to work longer or shorter hours than desired.

The IWC also received testimony concerning patient safety considerations in support of the elimination of 12-hour workdays. These witnesses advised that the last four hours of 12-hour shifts can be exhausting and that exhaustion can result in a greater inclination toward making mistakes.

Based on all the information it received, the IWC determined that the health care industry should retain the option to adopt alternative workweek schedules with work days of more than 10 but not exceeding 12 hours. The IWC further determined that it will retain through its wage orders the provisions of former Labor Code § 1182.9, that employers engaged in the operation of a licensed hospital, or in providing personnel for the operation of a licensed hospital, may propose regularly scheduled alternative workweeks that include no more than three (3) twelve (12)-hour workdays within a 40-hour workweek, and that, if such an alternative workweek is adopted, an employer must 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 shift. However, an employer is not being 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 twelve (12) hour, three (3) day alternative workweek schedule.

The main question remaining was how the health care industry would be defined. Following several public meetings and hearings, employer and employee representatives decided to work together and attempt to resolve several issues regarding the health care industry and to draft proposed language for consideration by the IWC. Prior to the public hearing on June 30, 2000, these two groups were able to negotiate compromises agreeable to both sides and to propose such language to the IWC. The proposed language, which the IWC adopted, defines the "health care industry" 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. The IWC received testimony and correspondence that in intermediate care and residential care facilities other regulatory agencies use the term "resident" to describe persons receiving medical care in those facilities. The IWC concluded that the term "patient" includes "residents" of those facilities as defined by Health & Safety Code §§ 1250(c), (d), (e), (g), and (h), and 1569.2(k).

The proposal also included language defining the employees that are a part of the health care industry. The IWC adopted this proposal with one amendment regarding animal health care. Employees in the health care industry are now defined as those employees who provide patient care, or work in a clinical or medical department, including pharmacists dispensing prescriptions in any practice setting, or work primarily or regularly as members of a patient care delivery team, or are licensed veterinarians, registered veterinary technicians, and unregistered animal health assistants and technicians providing patient care in animal hospital settings or facilities equivalent to those described above for people.

The regulations make clear that the phrase "employees in the healthcare industry" does not include those persons primarily engaged in providing meals, performing maintenance or cleaning services, doing business office or other clerical work, or undertakings involving any combination of such duties. Therefore, any alternative workweek schedule that is adopted by employees primarily engaged in these duties, and that provides for workdays in excess of 10 hours, is now null and void.

The IWC intends the definition of employees in the health care industry to encompass pharmacists who dispense prescriptions in all practice settings, including community retail pharmacists. The IWC also intends to include within the definition of the health care industry all employees who primarily or regularly provide hospice care as members of a patient care delivery team.

The IWC further notes that the requirement that an employee work primarily or regularly as a member of a patient care delivery team means that the employee must spend more than one-half of his or her work time engaged in such work. In Wage Orders 4-89 and 5-89, as amended in 1993, the IWC had a different definition of the term "primarily" for employees in the health care industry. According to those orders, "the term 'primarily' as used in section 1, Applicability, means (1) more than one-half the employee's work time as a rule of thumb or, (2) if the employee does not spend more than 50 percent of the employee's time performing exempt duties, where other pertinent factors support the conclusion that management, managerial, and/or administrative duties represent the employee's primary duty." This definition no longer exists. Again, the IWC emphasized that, consistent with Labor Code §515 (e), "primarily" means one-half the employee's work time.

With regard to animal health care, the IWC received testimony from veterinarians and the California Veterinary Medical Association which represents approximately 4,500 licensed veterinarians and

registered veterinary technicians who own and/or work in some 2,200 hospitals, clinics and independent practices throughout the State. The Association advised the IWC that approximately 50% of the animal care facilities are 24-hour hospitals that provide medical, dental, and surgical care, as well as emergency and critical care for patients. The IWC determined that licensed veterinarians, registered veterinary technicians and unregistered assistants had the same work-related issues and personal concerns regarding alternative workweek schedules as employees providing health care services to humans, and that such employees, who provide patient care within the meaning of Business and Professions Code §§ 4825-4857 in facilities similar to those described above for the treatment of humans, should be included in the health care industry.

The negotiated proposed language that the IWC adopted also includes a few protections for employees working 12-hour shifts. Employees cannot be required to work more than 12 hours in a 24-hour period unless there is a "health care emergency," as that phrase is defined in the regulation, and even though all reasonable steps have been taken to provide otherwise, the continued overtime is 14 necessary to provide the required staffing. However, an employee may be required to work up to thirteen (13) hours within a 24-hour period if the employee that is supposed to relieve the first employee does not show up for his or her shift on time and does not notify the employer two hours in advance that he or she will not appear for duty as scheduled. Also, no employee can be required to work more than sixteen (16) hours in a 24-hour period unless by a voluntary mutual agreement of the employee and employer, and no employee can work more than 24 consecutive hours until that employee receives 8 consecutive off-duty hours. Finally, the adopted language provides that, if, during the last quarter of 1999, an employer implemented a reduced pay rate for employees choosing to work 12 hour shifts, and desires to reimplement a flexible work arrangement that includes twelve (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.

The IWC retained the provisions in Wage Order 5 relating to the following method of calculating overtime compensation. An employer engaged in the operation of a hospital or other institution primarily engaged in the care of the sick, aged, or mentally ill or defective in residence may, pursuant to an agreement or understanding arrived at before the performance of work, establish a work period of fourteen (14) consecutive days in lieu of a workweek of seven (7) consecutive days if, for any work in excess of eighty (80) hours in such fourteen (14) day period, the employee receives compensation at a rate of not less than one and one-half (1½) times the employee's regular rate of pay.

ELECTION PROCEDURES

Labor Code 517(a) directed the IWC to adopt regulations before July 1, 2000 regarding "the conduct of employee workweek elections, procedures for employees to petition for and obtain elections to repeal alternative workweek schedules, procedures for implementation of those schedules, conditions under which an adopted alternative workweek schedule can be repealed by the employer, employee disclosures, designations of work, and the processing of workweek election petitions." In accordance with this mandate, this section also lays out the election procedures for the adoption and repeal of alternative workweek schedules. Labor Code § 511(e) requires employers to report the results of any election to the Division of Labor Statistics and Research.

Based on testimony it received during public meetings and hearings, as well as its consideration of proposals of election procedures that were submitted, the IWC determined its wage orders should have more extensive procedures and safeguards than included in the Interim Wage Order - 2000. The language adopted reiterates the two-thirds (b) vote before the performance of work and secret ballot

election requirements found in Labor Code § 511(a), and also provides a definition for "affected employees in the work unit." This definition is derived from preexisting language found in Wage Orders 4, 5, 9, and 10. However, the adopted language also sets up employee disclosure guidelines and mandates that an employer must provide disclosure in a non-English language if at least five (5) percent of the affected employees primarily speak that non-English language. Written disclosure and at least one meeting must be held at least fourteen (14) days prior to the secret ballot vote. This 14-day notice provision was previously applicable only to the health care industry. Failure to abide by these employee disclosure requirements will render the election null and void. In addition, Wage Order election procedures now require employers to hold elections at the work site of the affected employees, specify that employers must bear any election costs, and authorizes the Labor Commissioner to investigate employee complaints. Following an investigation, an employer may be required to select a neutral third party to conduct the election. In order to provide additional protection for employees, the IWC added language that prohibits employers from intimidating or coercing employees to vote either in support of or in opposition to a proposed alternative workweek. Also, employees cannot be discharged or discriminated against for expressing opinions about elections or for voting to adopt or repeal an alternative workweek agreement.

The procedures further provide for the revocation of an alternative workweek schedule. The one-third (1/3) petition threshold and two-thirds (b) vote required to reverse an alternative workweek agreement reflects language adopted in the Interim Wage Order - 2000. While Wage Orders 1, 9, 10 and non-health care industry employees in Wage Orders 4 and 5 already followed these requirements, Wage Orders 2, 3, 6, 7, 8, 11, 12, 13, and Wage Orders 4 and 5 in the coverage of health care industry employees instead required a majority of employees to petition for an election. In the interest of establishing a universal provision applicable to all wage orders, the IWC decided to defer to the one-third (1/3) standard.

Following the repeal of an alternative workweek schedule, the employer faces a sixty (60) day compliance deadline, but the Division of Labor Standards Enforcement (DLSE) may grant an extension upon showing of undue hardship. This provision merely restates preexisting language from Wage Orders 1 through 13.

The requirements that an election to repeal an alternative workweek agreement must be held within thirty (30) days of an employee petition and on the affected employees' work site fall under the IWC's Labor Code § 517 authority. The prerequisite twelve (12) month lapse after the adoption of an alternative workweek schedule before an election to repeal can be held reflects preexisting language found in Wage Orders 1 through 13.

The adopted language clarifies that the report on election results is a public document, and further specifies the content required for each report. The language also provides for a thirty (30) day grace period before employees are required to work any new alternative workweek schedules adopted through election.

OTHER PROVISIONS [4]

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4 See Sections 6-8 of the Interim Wage Order.

Minors: This section reflects the current penalties for violation of child labor laws. Violators are now subject to civil penalties from $500 to $10,000 as well as to criminal penalties. These increased

penalties, initially set forth in the Interim Wage Order - 2000, will now be reflected in all the IWC's wage orders.

Make up Time: This section implements the make up time provisions mandated by Labor Code §513. The statute provides that an employer must approve the written request of an employee on each occasion the employee would like to perform make up time in the same workweek. In the interest of employer and employee convenience, the IWC decided to allow any employee who knows in advance that he or she will be requesting make up over a succession of weeks to request make up work time for up to four weeks in advance.

Collective Bargaining Agreements: This section updates the criteria for the collective bargaining agreement exemption in accordance with Labor Code § 514. Except as provided in subsections referring to overtime for minors 16 and 17 years of age, the availability of a place to eat for workers on night shift, and limits on work over 72 hours, employees working under valid collective bargaining agreements are exempt from the AB 60 overtime provisions if the agreement provides for the wages, hours of work, and working conditions of the employees, premium wage rates are designated for all overtime hours worked, and their regular hourly rate of pay is at least thirty (30) percent more than the state minimum wage.

This provision replaces the previous requirement that employees under collective bargaining agreements must earn at least one-dollar ($1) an hour more than the state minimum wage to qualify for the exemption. Premium wage rates are any rates higher than the regular hourly wage rate. The IWC also adopted language that requires the application of "one day's rest in seven" for employees working under a collective bargaining agreement unless the agreement explicitly states otherwise.

The California Labor Federation submitted testimony that Labor Code §514 was intended to permit the parties to a collective bargaining agreement to define what constitutes "overtime hours" and to determine the rate of premium pay to be paid for all overtime hours worked. The Commission agrees that § 514 permits the parties to a collective bargaining agreement to establish alternative workweek agreements through the collective bargaining process provided certain conditions are met. Thus, so long as the collective bargaining agreement establishes regular and overtime hours within the work week, establishes premium pay for all such hours worked, and the regular rate of pay is more than (30) percent above the minimum wage, then the exemption established by Labor Code § 514 is applicable.

Personal Attendants: Wage Order 5 previously included an exemption from Section 3, Hours and Days of Work, for personal attendants, adult employees or minors who are permitted to work as adults who have direct responsibility for children under eighteen (18) years of age receiving twenty-four (24) hour care, organized camp counselors, and resident managers of homes for the aged having less than eight (8) beds as long as such employees were not employed more than 54 hours nor more than six (6) days in any workweek, except under certain emergency conditions. The IWC learned, however, that, except for organized camp counselors, the provisions of this exemption violate the requirements of the federal Fair Labor Standards Act. In order to comply with federal law, the IWC reduced the weekly overtime provisions to 40 hours for personal attendants, adult employees or minors who are permitted to work as adults who have direct responsibility for children under eighteen (18) years of age receiving twenty-four (24) hour care, and resident managers of homes for the aged having less than eight (8) beds. It is the IWC's intention is that these employees may work more than eight (8) hours in a day as long as their weekly hours do not exceed 40 and, consistent with prior enforcement practices, any such employees who work more than 40 hours in a workweek must receive overtime pay for any day during that workweek in which they worked more than eight (8)

hours. The IWC notes, however, that personal attendants who are also "employees in the health care industry," who also work in facilities within the meaning of the term "health care industry," may elect to work pursuant to an alternative workweek schedule adopted pursuant to the provisions applicable to such employees.

Ski Industry Employees (See Wage Order 10): Pursuant to Labor Code § 517(b), The IWC conducted a review of the wages, hours, and working conditions of employees working at establishments that offer Alpine and Nordic skiing and related recreational activities to the public. The IWC received testimony and written submissions from employees who overwhelmingly disapproved the special exemption from overtime set forth in former Labor Code § 1182.2 whereby employees could be required to work up to 56 hours in a workweek without the payment of overtime. Employees stated that their income is just above the minimum wage, that they have often worked ten (10) to fourteen (14) hours at straight time without breaks or meal periods, and at their income it is difficult to pay rent or otherwise make ends meet. They asked that they receive the same protections as other employees under AB 60. In addition, labor representatives testified that ski facilities in neighboring Nevada are required to pay overtime to employees after eight (8) hours without any apparent financial hardship.

Employers testified that they are a very small industry of 38 facilities, with a low profit margin that is very dependent upon the vagaries of the weather and a primarily seasonal workforce. Employers further stated that, unlike other industries that are dependent on the weather, ski facilities must be cleared for safe public use every day they are open. They also noted that, the under the federal Fair Labor Standards Act, the ski industry is exempt from having to pay weekly overtime after forty (40) hours, and that, if they are required to comply with all the requirements of AB 60, their profit margin will be eliminated. As a compromise, they requested that the IWC issue regulations requiring overtime to be paid after forty-eight (48) hours in a workweek year-round.

The IWC concluded that it would be inconsistent with the health, safety, and welfare of employees to continue the former statutory exemption from daily overtime in a regulation. Instead, Wage Order 10 will now provide that an employer engaged in the operation of a ski establishment as defined in that order will not be in violation of overtime provisions by instituting a regularly scheduled alternative workweek of 48 hours or less during any month of the year when Alpine or Nordic skiing activities are actually being conducted. However, overtime must be paid at the rate of 1 ½ times the regular rate of pay for all hours worked in excess of ten (10) hours in a day or 48 hours in a workweek.

Commercial Fishing Employees (See Wage Orders 10 and 14): The IWC received testimony from persons employed in the commercial passenger fishing industry that, due to the uncertain length of the work day as well as long established customs in the industry, which is highly dependent on the availability of fish, it would be inappropriate to impose a requirement that employees receive overtime pay. In addition, commercial passenger fishing boats are subject to minimum manning requirements regulated by the United States Coast Guard, Title 46, Code of Federal Regulation, Part 15, which limit the number of hours that crew members may work while at sea. There is also an exemption from overtime requirements for commercial fishing vessels under the Fair Labor Standards Act. Therefore, the IWC concluded that it would continue the exemption from Section 3, Hours and Days of Work, formerly set forth in the Labor Code § 1182.3, for employees of commercial passenger fishing boats when they perform duties as licensed crew members. Such an exemption would not apply to other employees in the industry, such as clerical or maintenance personnel, who do not perform duties as licensed crew members on fishing boats.

The IWC received no compelling evidence to warrant making any other changes in the provisions of Section 3, Hours and Days of Work.

4. MINIMUM WAGES

While there are no changes to present minimum wage levels, the IWC currently is conducting its minimum wage review. A new minimum wage may become effective January 1, 2001. If there is a new minimum wage, it will, in turn, affect the level of meal and lodging credits.

Commercial Fishing: Under former Labor Code § 1182.3 employees in this industry were exempt from the minimum wage. The IWC conducted a review of this industry pursuant to Labor Code § 517 (b), and received testimony from representatives of the commercial passenger fishing industry that the custom in the industry was to pay crew members on the basis of "one-half day," "three-quarter day," "full day," or "overnight" trips. These employers wished to continue this custom consistent with their present obligation to pay the minimum wage for all hours worked. The provisions of Section 4 (E) would allow employers to record pay of crew members in accordance with a formula based on the length of the trip. However, if the trip exceeds the defined hours of the formula, the additional hours would have to be recorded as additional hours worked and compensated accordingly. In practice, this alternative record keeping system may result in employees being paid more than the actual hours worked, but can never result in them being paid less than the actual hours worked. It is, therefore, primarily established as a convenience for employers. It is noted that regulations of the United States Coast Guard establish minimum crew standards which are intended to insure that, when boats are at sea for protracted periods, they receive adequate rest periods.

9. UNIFORMS AND EQUIPMENT

The IWC retained its longstanding policy of requiring employers to provide uniforms, tools and equipment necessary for the performance of a job. Subsection (B) permits an exception to the general rule by allowing an employee who earns more than twice the State minimum wage to be required to provide hand tools and equipment where such tools and equipment are customarily required in a trade or craft. This exception is quite narrow and is limited to hand (as opposed to power) tools and personal equipment, such as tool belts or tool boxes, that are needed by the employee to secure those hand tools. Moreover, such hand tools and equipment must be customarily required in a recognized trade or craft.

11. MEAL PERIODS [5]

Wage Orders 1, 2, 3, 6, 7, 8, 9, 10, 11, 13 and 15 continue the preexisting requirement of a meal period for an employee working for a period of more than five (5) hours, and provide for a second meal period in accordance with Labor Code §512(a).

Senate Bill 88, Stats. 2000, chapter 492, added subsection (b) to Labor Code § 512, which provides that, notwithstanding subsection (a), the IWC may adopt a working condition order that allows a meal period to begin after six hours of work if it determines that the order is consistent with the health and welfare of the affected employees. The IWC made such a determination with regard to Wage Order 12 and continued the existing language providing for a first meal for an employee working for a period of more than six (6) hours, and for a second meal period in accordance with Labor Code §512.

Consistent with the health, safety, and welfare of employees in the health care industry, the IWC determined that Wage Orders 4 and 5 should have somewhat different language regarding meal periods. The IWC received correspondence from members of the health care industry requesting the right to waive a meal period if an employee works more than a 12-hour shift. The IWC notes that Labor Code § 512 explicitly states that, whenever an employee works for more than twelve hours in a

day, the second meal period cannot be waived. However, Labor Code § 516 authorizes the IWC to adopt or amend the orders with respect to break periods, meal periods, and days of rest for all California workers consistent with the health and welfare of those workers.

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5 See Section 9 of the Interim Wage Order.

The IWC received several comments concerning the potential prohibition of on-duty meal periods. Under the current IWC wage orders, an "on-duty meal period" is permitted only when (1) the nature of the work prevents the employee from being relieved of all duty, and (2) the employee and employer have entered into a written agreement permitting an on-duty meal period. An employee must be paid for the entire on-duty meal period since it is considered time worked.

Any employee who works more than six hours in a workday must receive a 30- minute meal period. If an employee works more than five hours but less than six hours in a day, the meal period may be waived by the mutual consent of the employer and employee.

Notwithstanding other provisions regarding meal periods, the IWC adopted proposed language prepared for its consideration by employee and employer representatives of the health care industry. This language provides that employees in the health care industry covered by Wage Orders 4 and 5 who work shifts in excess of eight (8) hours in a workday may voluntarily waive their right to one of their two meal periods, provided that the waiver is in writing and voluntarily signed by the employer and employee. The employee may revoke the waiver at any time by providing the employer with at least one (1) day's written notice of the revocation. However, while the waiver is in effect, the employee must be paid for all working time, including an on-the-job meal period.

During its review of its wage orders and of various industries pursuant to the provisions of AB 60, the IWC heard testimony and received correspondence regarding the lack of employer compliance with the meal and rest period requirements of its wage orders. The IWC therefore added a provision to this section that requires an employer to pay an employee one additional hour of pay at the employee's regular rate of pay for each work day that a meal period is not provided. An employer shall not count the additional hour of pay as "hours worked" for purposes of calculating overtime pay.

The IWC received no compelling evidence, and concluded there was no authority at this time, to warrant making any other change in the provisions of this section other than those required by AB 60.

12. REST PERIODS

As discussed above in Section 11, Meal Periods, the IWC heard testimony and received correspondence regarding the lack of employer compliance with the meal and rest period requirements of its wage orders. The IWC therefore added a provision to this section that requires an employer to pay an employee one additional hour of pay at the employee's regular rate of pay for each work day that a rest period is not provided. An employer shall not count the additional hour of pay as "hours worked" for purposes of calculating overtime pay.

Commercial Fishing Employees: The IWC added the last paragraph of Section 12 to insure that crew members on commercial passenger fishing boats are at sea for periods of twenty-four (24) hours or longer receive no less than eight (8) hours offduty within each twenty-four (24) hour period to permit

the employee to sleep. This rest period is in addition to the meal and rest periods otherwise required under Section 12.

17. EXEMPTIONS

This section previously allowed the Division of Labor Standards Enforcement, after an investigation and finding that enforcement would not materially affect the welfare or comfort of employees and would work an undue hardship on the employer, to exempt the employer and employees from the requirements of certain sections of the IWC's wage orders. After considering the testimony and correspondence it received with regard to meal periods, and in light of the mandatory provisions of Labor Code § 512, the IWC decided to remove Section 11, Meal Periods, from the list of sections that can be exempt from enforcement.

20. PENALTIES [6]

This section sets forth the provisions of Labor Code § 558, which specifies penalties for initial and subsequent violations. In accordance with that section, the IWC voted to extend the penalties provisions to Wage Order 14. The IWC received inquiries as to whether "willfulness" is a required element for the issuance of a civil penalty. There were also concerns over the assessment of penalties against an employer's payroll clerk, payroll supervisor, or a payroll processing service for failure to issue checks reflecting the required overtime compensation. AB 60 fails to address these issues, but the IWC noted that there is no intent to penalize individuals that are merely carrying out policies formulated by an employer.

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6 See Section 10 of the Interim Wage Order.

EXHIBIT G

Senate Bill No. 88

CHAPTER 492

An act to amend Sections 512, 515, and 516 of, and to add Section 515.5 to, the Labor Code, relating to employment, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 16, 2000. Filed with Secretary of State September 19, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

SB 88, Sher. Overtime compensation.

(1) 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 $1^1/_2$ times the regular rate of pay for an employee.

This bill, except as specified, would exempt a professional employee in the computer software field from this overtime compensation requirement if the employee is primarily engaged in work that is intellectual or creative, the employee's hourly rate of pay is not less than $41.00, and the employee meets other requirements.

(2) Existing law authorizes the Industrial Welfare Commission to establish exemptions from the requirement that an overtime rate of compensation be paid for executive, administrative, and professional employees, provided that the employee is primarily engaged in the duties that meet the test of the exemption and the employee earns a monthly salary equivalent to no less than 2 times the state minimum wage for full-time employment.

This bill would further require the executive, administrative, or professional employee to customarily and regularly exercise discretion and independent judgment in performing those duties in order to qualify for the exemption.

(3) Existing law provides that registered nurses employed to engage in the practice of nursing shall not be exempted from the overtime compensation requirements by any order of the commission, unless they individually meet the criteria for exemption established for executive or administrative employees.

This bill would provide that the exclusion from overtime exemptions for a registered nurse does not apply to a certified nurse midwife, a certified nurse anesthetist, or a certified nurse practitioner who is primarily engaged in performing duties for which the respective certification is required.

(4) Existing law authorizes the commission to adopt or amend working condition orders with respect to meal periods. Other existing law prohibits, except as provided, an employer from employing an employee for more than 5 hours per day without providing the employee with a meal period of not less than 30 minutes, or for employing an employee for more than 10 hours per day without providing the employee with a 2nd meal period of not less than 30 minutes.

This bill would prohibit the commission from adopting a working condition order that conflicts with those 30-minute meal period requirements, except that the commission may adopt a working condition order permitting a meal period to commence after 6 hours of work if the commission makes a specified determination.

(5) 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 512 of the Labor Code is amended to read:

512. (a) An employer may not employ an employee for a work 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 of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

(b) Notwithstanding subdivision (a), the Industrial Welfare Commission may adopt a working condition order permitting a meal period to commence after six hours of work if the commission determines that the order is consistent with the health and welfare of the affected employees.

SEC. 2. Section 515 of the Labor Code is amended to read:

515. (a) The Industrial Welfare Commission may establish exemptions from the requirement that an overtime rate of compensation be paid pursuant to Sections 510 and 511 for executive, administrative, and professional employees, provided that the employee is primarily engaged in the duties that meet the test of the exemption, customarily and regularly exercises discretion and independent judgment in performing those duties, and earns a monthly salary equivalent to no less than two times the state minimum wage for full-time employment. The commission shall conduct a review of the duties that meet the test of the exemption.

The commission may, based upon this review, convene a public hearing to adopt or modify regulations at that hearing pertaining to duties that meet the test of the exemption without convening wage boards. Any hearing conducted pursuant to this subdivision shall be concluded not later than July 1, 2000.

(b) (1) The commission may establish additional exemptions to hours of work requirements under this division 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. This paragraph shall become inoperative on January 1, 2005.

(2) Except as otherwise provided in this section and in subdivision (g) of Section 511, nothing in this section requires the commission to alter any exemption from provisions regulating hours of work that was contained in any valid wage order in effect in 1997. Except as otherwise provided in this division, the commission may review, retain, or eliminate any exemption from provisions regulating hours of work that was contained in any valid wage order in effect in 1997.

(c) For the purposes of this section, "full-time employment" means employment in which an employee is employed for 40 hours per week.

(d) For the purpose of computing the overtime rate of compensation required to be paid to a nonexempt full-time salaried employee, the employee's regular hourly rate shall be $^{1}/_{40}$th of the employee's weekly salary.

(e) For the purposes of this section, "primarily" means more than one-half of the employee's worktime.

(f) (1) In addition to the requirements of subdivision (a), registered nurses employed to engage in the practice of nursing shall not be exempted from coverage under any part of the orders of the Industrial Welfare Commission, unless they individually meet the criteria for exemptions established for executive or administrative employees.

(2) This subdivision does not apply to any of the following:

(A) A certified nurse midwife who is 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.

(B) A certified nurse anesthetist who is 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.

(C) A certified nurse practitioner who is 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.

(D) Nothing in this paragraph shall exempt the occupations set forth in subparagraphs (A), (B), and (C) from meeting the requirements of subdivision (a).

SEC. 3. Section 515.5 is added to the Labor Code, to read:

515.5. (a) Except as provided in subdivision (b), an employee in the computer software field shall be exempt from the requirement that an overtime rate of compensation be paid pursuant to Section 510 if all of the following apply:

(1) The employee is primarily engaged in work that is intellectual or creative and that requires the exercise of discretion and independent judgment, and the employee is primarily engaged in duties that consist of one or more of the following:

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

(B) 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.

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

(2) 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.

(3) The employee's hourly rate of pay is not less than forty-one dollars ($41.00). The Division of Labor Statistics and Research 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.

(b) The exemption provided in subdivision (a) does not apply to an employee if any of the following apply:

(1) 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.

(2) 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.

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

(4) 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.

(5) 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.

(6) The employee is engaged in any of the activities set forth in subdivision (a) for the purpose of creating imagery for effects used in the motion picture, television, or theatrical industry.

SEC. 4. Section 516 of the Labor Code is amended to read:

516. Except as provided in Section 512, the Industrial Welfare Commission may adopt or amend working condition orders with respect to break periods, meal periods, and days of rest for any workers in California consistent with the health and welfare of those workers.

SEC. 5. 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 Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order, at the earliest possible time, to protect businesses that rely on the computer industry as well as certain vital health care professions, it is necessary for this act to take effect immediately.

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EXHIBIT H

Senate Bill No. 327

CHAPTER 506

An act to amend Section 516 of the Labor Code, relating to private employment, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 5, 2015. Filed with Secretary of State October 5, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

SB 327, Hernandez. Industrial Welfare Commission: wage orders: meal periods.

Existing law provides it is the continuing duty of the Industrial Welfare Commission to ascertain the wages paid to all employees in this state, to ascertain the hours and conditions of labor and employment in the various occupations, trades, and industries in which employees are employed in this state, and to investigate the health, safety, and welfare of those employees. Existing law establishes the Division of Labor Standards Enforcement in the Department of Industrial Relations for the enforcement of labor laws, including orders of the commission. Existing law, subject to certain exceptions, prohibits an employer from requiring an employee to work more than 5 hours per day without providing a meal period and, notwithstanding that provision, authorizes the commission to adopt a working condition order permitting a meal period to commence after 6 hours of work if the order is consistent with the health and welfare of affected employees. Existing law, except as provided in that described meal period provision, authorizes the commission to adopt or amend working condition orders with respect to break periods, meal periods, and days of rest for any workers in California consistent with the health and welfare of those workers. Existing law requires the commission, by July 1, 2000, to adopt wage, hours, and working condition orders necessary to ensure fairness in the establishment of employee workweek schedules. Existing law further requires the commission, by July 1, 2000, to conduct reviews of wages, hours, and working conditions in specified industries and to adopt or modify regulations necessary to protect the health, safety, and welfare of workers in those industries. Existing wage orders of the commission provide that employees in the health care industry who work shifts in excess of 8 total hours in a workday may voluntarily waive their right to 1 of their 2 meal periods in a prescribed manner. Existing law prohibits an employer from requiring an employee to work during a meal or rest or recovery period mandated by an applicable statute, or applicable regulation, standard, or order of the commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, and establishes penalties for an employer's failure to provide a mandated meal or rest or recovery period.

This bill would provide that the health care employee meal period waiver provisions in those existing wage orders were valid and enforceable on and after October 1, 2000, and continue to be valid and enforceable. The bill would state that the bill is declarative of, and clarifies, existing law.

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. The Legislature finds and declares the following:

(a) From 1993 through 2000, Industrial Welfare Commission Wage Orders 4 and 5 contained special meal period waiver rules for employees in the health care industry. Employees were allowed to waive voluntarily one of the two meal periods on shifts exceeding 12 hours. On June 30, 2000, the Industrial Welfare Commission adopted regulations allowing those rules to continue in place. Since that time, employees in the health care industry and their employers have relied on those rules to allow employees to waive voluntarily one of their two meal periods on shifts exceeding 12 hours.

(b) Given the uncertainty caused by a recent appellate court decision, Gerard v. Orange Coast Memorial Medical Center (2015) 234 Cal.App.4th 285, without immediate clarification, hospitals will alter scheduling practices.

SEC. 2. Section 516 of the Labor Code is amended to read:

516. (a) Except as provided in Section 512, the Industrial Welfare Commission may adopt or amend working condition orders with respect to break periods, meal periods, and days of rest for any workers in California consistent with the health and welfare of those workers.

(b) Notwithstanding subdivision (a), or any other law, including Section 512, the health care employee meal period waiver provisions in Section 11(D) of Industrial Welfare Commission Wage Orders 4 and 5 were valid and enforceable on and after October 1, 2000, and continue to be valid and enforceable. This subdivision is declarative of, and clarifies, existing law.

SEC. 3. 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 Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to confirm and clarify the law applicable to meal period waivers for employees in the health care industry throughout the state, it is necessary that this act take effect immediately.

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EXHIBIT I

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LABOR, HEALTH AND HUMAN SERVICES, EDUCATION
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CONGRESSIONAL ASIAN PACIFIC AMERICAN CAUCUS, *CHAIR EMERITUS*
SUSTAINABLE ENERGY AND ENVIRONMENT COALITION, *VICE CHAIR*
LGBT EQUALITY CAUCUS, *VICE CHAIR*

October 7, 2015

The Honorable Edmund "Jerry" G. Brown, Jr.
Governor of California
State Capitol
Sacramento, CA 95814

RE: SB 327 (Hernandez) – Request for Signature

Dear Governor Brown:

I write today as a principal co-author of SB 88 that was passed by the Legislature and signed by the Governor in 2000. As the principal co-author of SB 88 I have personal knowledge as to the intent of that bill. I am aware of the court's decision in *Gerard v. Orange Coast Memorial Medical Center*, and disagree with its conclusion that SB 88 invalidated the Industrial Welfare Commission's ("IWC") adoption of the healthcare meal period waiver rules in Wage Orders 4 and 5, section 11(D). Thus, I am writing in support of SB 327 that is intended to maintain the status quo, as it existed before the uncertainty created by the *Gerard* decision.

The two primary purposes of SB 88 were to immediately address two significant issues that had arisen after passage of AB 60. The first purpose was to create a computer professional exemption such that highly compensated computer professionals could continue to qualify as exempt even if they were paid on an hourly basis. The second purpose was to authorize the IWC to establish exemptions to the overtime obligation for certain certified nurses. This was necessary because AB 60 created Labor Code 515(f), which precluded registered nurses from qualifying as exempt under the professional exemption. Both of those changes were cited in support of the justification for urgency legislation.

While it was clear that SB 88 amended Labor Code § 516 to limit the IWC's authority to adopt new meal period rules after SB 88 was enacted that were inconsistent with Labor Code § 512, there was no discussion or intent to impact any Wage Order provisions adopted prior to that date, including Wage Orders 4 & 5, section 11(D). In other words, the intent was to limit the IWC's authority only prospectively. Of note, this change was not cited as a justification for the urgency clause.

I am pleased to see the legislature clarify the law to confirm the IWC's adoption of Wage Orders 4 & 5, section 11(D) in June 2000 was valid and continues to be valid. Thus, I ask for your signature on SB 327.

Sincerely,

Michael M. Honda
Member of Congress

EXHIBIT J

CALIFORNIA LEGISLATURE ASSEMBLY RULES COMMITTEE

REQUEST TO EXAMINE COMMITTEE RECORDS ON LEGISLATION

(To be filed with the Assembly committee to which the request is directed)

To: Assembly Committee on Rules

Pursuant to Section 9080 of the Government Code, I hereby request to examine the following committee records concerning legislation:

Committee Name: Assembly Labor Committee

Records Requested: on 10/22/15

All records, including but not limited to, committee analysis, correspondence and memoranda, maintained by the Assembly Labor Committee, which relate to SB 327 (2015), as amended on September 4, 2015.

Name of person making request: Gail Blanchard-Saiger

Representing: California Hospital Association
(organization)

Address: 1215 K Street, Suite 800, Sacramento, CA 95814

Telephone: (916) 552-7620

I was permitted to examine the committee records described above on

_____
(date)

Committees must transmit this form to the Assembly Rules Committee on the same day the committee receives it.

Return to: Assembly Rules Committee
Attention: Debra Gravert, Chief Administrative Officer
State Capitol, Room 3016
Sacramento, CA 95814

(916) 319-2800
Fax (916) 319-2810

Authorized by: _____ Date: 10-22-15

Time In: _____ Time Out: _____

Rev. 7/14

V 10/22

EXHIBIT K

Date of Hearing: September 8, 2015

ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT
Roger Hernández, Chair
SB 327 (Ed Hernandez) – As Proposed to be Amended September 8, 2015

SENATE VOTE: (vote not relevant)

SUBJECT: Industrial Welfare Commission: wage orders: meal periods

SUMMARY: Enacts provisions of law related to the provision of meal periods to employees in the health care industry. Specifically, **this bill:**

1) Provides that, notwithstanding any other law, the healthcare employee meal period waiver provisions of specified Wage Orders of the Industrial Welfare Commission (IWC) were valid and enforceable on and after October 1, 2000, and continue to be valid and enforceable.

2) Provide that this provision is declarative of and clarifies existing law.

3) Makes related legislative findings and declarations.

4) Contains an urgency clause.

FISCAL EFFECT: Unknown

COMMENTS: This bill responds to a recent decision by the California Court of Appeal regarding the provision of meal periods for employees in the health care industry.

In *Gerard v. Orange Coast Memorial Medical Center*, 234 Cal. App. 4th 285 (2015), the Court of Appeal held that certain language contained in a Wage Order of the Industrial Welfare Commission (IWC) was invalid to the extent it conflicts with Labor Code Section 512.

Labor Code Section 512(a) provides in pertinent part as follows:

> "An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, ***except that if the total hours worked is no more than 12 hours, the second meal period may be waived*** by mutual consent of the employer and the employee only if the first meal period was not waived."

Section 512 was enacted in 1999, as part of Assembly Bill 60 which, among other things, codified California's daily overtime requirement and required the IWC to review its wage orders and readopt orders conforming to the Legislature's expressed intentions. Section 512 set out statutory meal period requirements for the first time, which previously had been contained only in the IWC Wage Orders.

Thereafter, the IWC held public hearings and adopted revised wage orders for each industry, including the current version of Wage Order No. 4 and Wage Order No. 5. With only limited exceptions, the IWC's 2001 wage orders embraced section 512's meal period requirements, and

did not impose different ones. Thus, as to the majority of its 2001 wage orders, the IWC did not impose a different meal period requirement than that spelled out in section 512.

The IWC had originally modified the meal waiver requirements in wage order Nos. 4 and 5 in 1993, in response to a health care industry petition to permit its employees to waive a second meal period on longer shifts in order to leave earlier. The IWC later extended similar waiver rights to all employees covered by these wage orders and three others, but that extension was among many wage order changes repealed by the Legislature (under AB 60) in 1999.

Thereafter, health care representatives and other stakeholders persuaded the IWC to at least preserve expanded waiver rights for their industry, along the lines of those originally afforded in 1993. Accordingly, wage orders Nos. 4-2001 and 5-2001 each contains a provision absent from other wage orders, permitting health care employees to waive one of two meal periods on longer shifts.

Specifically, Section 11(D) of Industrial Welfare Commission Wage Orders 4-2001 and 5-2001 states in relevant part:

> "Notwithstanding any other provision of this order, ***employee is 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.***"

Wage Order 4 and 5 define "health care industry" to mean "hospitals, skilled nursing facilities, intermediate care and residential care facilities, convalescent care institutions, home health agencies, clinics operating 24 hours per day, and clinics performing surgery, urgent care, radiology, anesthesiology, pathology, neurology or dialysis."

In addition, Wage Order 4 and 5 define "employees in the health care industry" to mean any of the following:

- Employees in the health care industry providing patient care;
- Employees in the health care industry working in a clinical or medical department, including pharmacists dispensing prescriptions in any practice setting;
- Employees in the health care industry working primarily or regularly as a member of a patient care delivery team; or
- Licensed veterinarians, registered veterinary technicians and unregistered animal health technicians providing patient care.

Section 11(D) of Wage Order 5-2001 first became effective on October 1, 2000. However, prior to that date, the Legislature enacted and the Governor signed Senate Bill 88 as an urgency measure that became effective upon signature. SB 588 enacted Labor Code section 516, which reads as follows:

> "Except as provided in Section 512, the Industrial Welfare Commission may adopt or amend working condition orders with respect to break periods, meal periods, and days of rest for any workers in California consistent with the health and welfare of those workers."

Therefore, the provisions of the statute and of the Wage Order appear to conflict on their face. The Wage Order language authorizes health care employees to waive their second meal period

for any shift over eight hours. However, the language of the statute provides that the second meal period may be waived only if the total hours worked does not exceed 12 hours.

The court resolved this conflict in favor of the statutory provisions, stating:

> "[T]here is a conflict between section 11(D) and section 512(a). As our Supreme Court recognized...section 11(D) permits health care workers to waive their second meal periods, even on shifts in excess of 12 hours, and thus section 11(D) 'conflicts' with section 512(a), which limits second meal period waivers to shifts of 12 hours or less...
>
> ...[T]he conflict between section 11(D) and section 512(a) creates an unauthorized additional exception to the general rule set out in section 512(a), beyond the express exception for waivers on shifts of no more than 12 hours...
>
> ...We see nothing in this legislative history to support hospital's argument the additional regulatory exception embodied in section 11(D) for shifts longer than 12 hours is consistent with the Legislature's intent. To the contrary, everything in this legislative history evidences the intent to prohibit the IWC from amending its wage orders in ways that conflict with meal period requirements in section 512, including the proviso second meal periods may be waived only if the total hours worked is less than 12 hours."

In addition, the Court of Appeal held that the plaintiffs were entitled to seek premium pay under Labor Code section 226.7 for any failure by the hospital to provide mandatory second meal periods before the decision that falls within the governing three-year statutory period. The Court noted, "there is no compelling reason of fairness or public policy that warrants an exception to the general rule of retroactivity for our decision partially invalidating section 11(D)."

The California Supreme Court granted review on May 20, 2015. The Court stated the issues on review as follows:

1) Is the health care industry meal period waiver provision in section 11(D) of Industrial Welfare Commission Order No. 5-2001 invalid under Labor Code section 512, subdivision (a)?
2) Should the decision of the Court of Appeal partially invalidating the Wage Order be applied retroactively?

ARGUMENTS IN SUPPORT

The California Hospital Association supports this measure, stating:

> "This bill will clarify that employees in the healthcare industry can continue to waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when their shift exceeds 12 hours. A recent court ruling, *Gerard v. Orange Coast Memorial Medical Center*, could jeopardize this option, thus jeopardizing the availability to 12-hour shifts. Absent clarification that Wage Orders 4 and 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, hospitals will be liable for a missed meal period premium on any day an employee worked even 1 minute over the 12-hour mark. This could result in millions of dollars in liability, as well as scheduling changes throughout the hospital industry...

...While the California Supreme Court recently accepted review of the *Gerard* case, it nonetheless poses a significant adverse impact on healthcare employers and employees, particularly those working 12-hour shifts who want to waive one of their meal periods so that they do not have to prolong their workday by 30 minutes. Because it is unclear when and how the Supreme Court will resolve the case, hospitals are faced with the decision whether to immediately and significantly change their scheduling practices, which may include extending the shift to 13 hours to accommodate a second, off-duty meal period, reverting to 8-hour shifts or taking some other action to minimize potential liability moving forward. Further, while the *Gerard* appellate decision has been de-published similar cases have already been filed and thus without clarification of the law, hospitals currently risk facing expensive class action litigation and potential retroactive liability in the millions of dollars. As the Supreme Court evaluates the legal issues raised in the *Gerard* case, clarification of the law by the legislature is extremely important to the Court's analysis. Thus, it is critically important for the Legislature to reject the Court of Appeal decision and the rationale on which it is based."

With respect to the legislative history of the IWC Wage Orders and the applicable statute, the California Hospital Association states:

"Since 1993, healthcare employers have been able to offer a meal period waiver that allows employees working 12-hour shifts to voluntarily waive one of their two meal periods. 12-hour shifts are common in the healthcare industry, both in unionized and non-unionized environments. Employees who work 12-hour shifts may frequently work a few minutes more than 12 hours due to clocking in a couple of minutes early or clocking out a couple of minutes late.

In 1999, as part of AB 60, the California Legislature codified the meal period rules which had formerly only been included in the wage order. In Labor Code section 512, the Legislature expressly required that employees working more than 10 hours be provided a second meal period and also expressly provided that employees could voluntarily waive the second meal period so long as they did not work more than 12 hours.

At the same time, the Legislature specifically gave the Industrial Welfare Commission (IWC) authority to determine whether to continue to authorize 12-hour alternative workweek schedules, in Labor Code 517. In Labor Code 516, the Legislature also expressly authorized the IWC to adopt or amend the wage orders with respect to meal periods, notwithstanding the rules set forth in Labor Code 512.

After several hearings on the matter and significant negotiation between labor and hospital representatives, the IWC decided to maintain 12-hour shifts, with some variation, and to maintain the special healthcare meal period waiver rules, allowing employees in the healthcare industry to waive one of their meal periods even when a shift exceeded 12 hours.

This action was taken on June 30, 2000 — the deadline set by the Legislature for the IWC to determine whether to continue 12-hour shifts. These amendments went into effect on October 1, 2000. The time between the adoption date of June 30 and the effective date of October 1 was needed to accomplish administrative activity, such as updating the wage orders.

On September 16, 2000, the Governor signed urgency legislation, SB 88. That bill limited the IWC's authority to establish meal period rules that conflicted with Labor Code section 512. That law went into effect more than two months after the IWC adopted Wage Order 5 and 14 other wage orders.

There is no evidence to suggest that SB 88 was intended to invalidate the action the IWC took on June 30, 2000 with respect to the healthcare meal period rules. In order to preserve the status quo preferred by both hospitals and their employees for over 20 years, as confirmed by the IWC in 2000, a legislative clarification is necessary."

The United Nurses Association of California/Union of Health Care Professionals (UNAC), supports this measure, stating:

"Under this wage order provision, UNAC members have for years enjoyed the flexibility of alternate work schedules, which allows for greater staffing flexibility and better patient care. Patient outcomes are dramatically improved in environments where the nurses and other health care professionals can place priority on the needs of their patients without interruption by an arbitrary meal period when the shift runs long. (RNs are generally able to eat during work time in break rooms.) In addition, allowing health care workers the option of working longer shifts enables them to take extra days off during the work week, which in turn ensures that they are fully rested when they return to work to provide better patient care. Moreover, hospitals have enjoyed the ability to have fewer shift changeovers.

However, in a recent decision, the appellate court declared Section 11(D) invalid because it authorized second meal waivers for shifts longer than 12 hours. This decision completely upends well-established staffing schedules and will result in a severe disruption of the lives of our members, many of whom have built a schedule of work, child care, and other obligations around the ability to waive a second meal period."

Similarly, the Service Employees International Union, United Healthcare Workers West (SEIU-UHW) supports this bill, stating:

"Twelve hour shifts are overwhelming preferred by healthcare workers because they work a shorter work week (3 days on, 4 days off). They spend less time commuting and more time with family and friends. The enhanced work-life balance increases job satisfaction and less burn-out. This is the benefit that nurses cite most often in surveys about their shift preferences. Having four full days away from the job can allow you to enjoy your personal life to a greater extent or spend more time with family. Hospitals find that this in turn translates into better staff morale, less staff turnover, and reduced absenteeism...Rather than risk overturning 22 years of settled regulation we are asking for a legislative solution that would simply codify the existing regulation into law."

REGISTERED SUPPORT / OPPOSITION:

Support

Adventist Health
AFSCME
Anaheim Regional Medical Center

Arroyo Grande Community Hospital
Bakersfield Memorial Hospital
Beverly Hospital
California Children's Hospital Association
California Hospital Association
California Hospital Medical Center, Los Angeles
California Retailers Association
Cedars-Sinai Medical Center
Citrus Valley Health Partners
Community Hospital of San Bernardino
Community Medical Centers
Corona Regional Medical Center
Delano Regional Medical Center
Dignity Health
Dominican Hospital, Santa Cruz
French Hospital Medical Center, San Luis Obispo
Glendale Memorial Hospital & Health Center, Glendale
Glenn Medical Center
Good Samaritan Hospital
Hospital Corporation of America
Keck Hospital of USC
Loma Linda University Health
Lompoc Valley Medical Center
Long Beach and Community Hospital Long Beach
Long Beach Memorial
Madera Community Hospital
Marian Region Medical Center, Santa Maria/West Santa Maria
Marina Del Rey Hospital
Mark Twain St. Joseph's Hospital, San Andreas
MemorialCare Health System
Mercy General, Sacramento
Mercy Hospital, Folsom/Bakersfield
Mercy Medical Center, Merced/Mt. Shasta/Redding
Mercy San Juan Medical Center, Carmichael
Mercy Southwest Hospital, Bakersfield
Methodist Hospital of Sacramento
Miller Children's and Women's Hospital
Northridge Hospital Medical Center
Orange Coast Memorial Medical Center
Palomar Health
Physicians for Healthy Hospitals
Providence Health & Services
Saddleback Memorial Medical Center
Saint Agnes Medical Center
Saint Francis Memorial Hospital, San Francisco
San Gorgonio Memorial Hospital
SEIU United Healthcare Workers West
Sequoia Hospital, Redwood City
Seton Medical Center

Sharp HealthCare
Sierra Nevada Memorial Hospital, Grass Valley
St. Bernardine Medical Center, San Bernardino
St. Elizabeth Community Hospital, Red Bluff
St. John's Pleasant Valley Hospital, Camarillo
St. John's Regional Medical Center, Oxnard
St. Joseph's Behavioral Health Center, Stockton
St. Joseph's Health, Orange
St. Joseph's Medical Center, Stockton
St. Mary's Medical Center, Long Beach/ San Francisco
Stanford Health Care
Sutter Health
United Nurses Association of California/Union of Health Care Professionals (Sponsor)
USC Norris Cancer Hospital
USC Verdugo Hills Hospital
Woodland Healthcare, Woodland

Opposition

None on file.

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

Dignity Health.
Mercy Medical Center

Mercy Medical Center
333 Mercy Avenue
Merced, CA 95340-2800
209-564-5000
www.mercymercedcares.org

Mercy Outpatient Center
2740 M Street
Merced, CA 95340-2800
209-564-5000

Mercy Medical Pavilion
315 Mercy Avenue
Merced, CA 95340-2800
209-564-5000

Via Facsimile
916.558.3160

September 17, 2015

The Honorable Edmund G. Brown, Jr.
Governor of California
State Capitol
Sacramento, California 95814

SUBJECT: SB 327 (HERNANDEZ) – REQUEST FOR SIGNATURE

Dear Governor Brown:

On behalf of Mercy Medical Center, I am writing to ask for your signature on SB 327 (Hernandez, D-Azusa). This bill clarifies that employees in the health care industry can voluntarily waive one of their two meal periods, pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Our employees are represented by a labor union, and the 12-hour shift schedule and opportunity to waive a meal period have been authorized since the inception of the 12-hour shifts. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never before been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee who waived a meal period worked even one minute over the 12-hour mark. This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in a loss of employee scheduling flexibility, and affect the way patient care is delivered.

For these reasons, Mercy Medical Center respectfully asks that you sign SB 327.

Sincerely,

Chuck Kassis
President

c: The Honorable Ed Hernandez, Member of the Senate
Camille Wagner, Secretary, Legislative Affairs, Office of the Governor

cjac
Civil Justice Association of CALIFORNIA
1201 K Street, Suite 1550 | Sacramento, CA 95814 www.cjac.org T 916-443-6930 F 916-443-4316 E cjac@cjac.org

September 8, 2015

TO: Members of the California State Assembly

FROM: Katherine Pettibone, Legislative Director
Kim Stone, President

RE: SB 327 (Hernandez) As Amended September 4

FLOOR ALERT
CJAC POSITION: SUPPORT

The Civil Justice Association of California is pleased to support SB 327 (Hernandez) as amended September 4, a bill that will help protect healthcare employers from unjustified lawsuits when they relied on the Industrial Welfare Commission's Wage Orders 4 and 5, section 11(D) regarding meal period rules.

In 1999 the Legislature empowered the Industrial Welfare Commission (IWC) to adopt or amend wage orders with respect to meal periods. After hearings and stakeholder involvement, the IWC maintained various provisions for healthcare workers, including allowing employees in the healthcare industry to waive one of their meal periods even when a shift exceeded 12 hours.

Employers and employees have been relying on the wage orders in good faith. However, a recent appellate court ruling, *Gerard v. Orange Coast Memorial Medical Center*, brought these orders into question. Absent clarification that Wage Orders 4 and 5, section 11(D) has been valid since 2000, healthcare employers will be subject to crushing liability for a missed meal period, as well as throwing employees scheduling into disarray.

Senate Bill 327 will clarify that employees in the healthcare industry can continue to waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when their shift exceeds 12 hours. Similar to other bills that CJAC has supported, this bill would provide some assurances that companies relying on government agencies' interpretation of the law will not result in unjustified litigation.

California employers already face great uncertainty regarding the correct application of California's numerous labor and employment laws. Providing certainty produces a better business environment, growth in the economy, and an improved work environment for employees.

For these reasons, we support SB 327 (Hernandez) and urge an "aye" vote.

Adventist Health
2100 Douglas Boulevard
Roseville, CA 95661
(916) 781-2000
AdventistHealth.org

LOMA LINDA UNIVERSITY HEALTH
11234 Anderson Street
Loma Linda, CA 92354
(909) 558-4000
lluhealth.org

ASSEMBLY FLOOR ALERT

September 9th, 2015

TO: The Honorable Members of the State Assembly
SUBJECT: SB 327 - Industrial Welfare Commission: wage orders: meal periods.
POSITION: Support

We write jointly, on behalf of Adventist Health and Loma Linda University Health, to express our support for SB 327. The measure will clarify that employees in the healthcare industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, therefore jeopardizing the hospital's ability to schedule 12-hour shifts.

Adventist Health is a faith-based, not-for-profit integrated health care delivery system serving communities in California, Hawaii, Oregon and Washington. Our workforce of 28,600 includes more than 20,500 employees; 4,500 medical staff physicians; and 3,600 volunteers. Founded on Seventh-day Adventist health values, Adventist Health provides compassionate care in 19 hospitals, more than 220 clinics (hospital-based, rural health and physician clinics), 14 home care agencies, seven hospice agencies and four joint-venture retirement centers.

Loma Linda University Health is a faith-based, not-for-profit, academic medical center in the Inland Empire region of Southern California. Our workforce of 16,131 includes 13,181employees; 921 attending physicians, and 2,029 volunteers at Loma Linda University Medical Center (LLUMC) and Children's Hospital, LLUMC – East Campus, Behavioral Medicine Center, Heart and Surgical Hospital, LLUMC-Murrieta and physician clinics. LLUMC is the only Level 1 trauma Center in the San Bernardino, Riverside, Inyo, and Mono counties, which covers over 40,000 square miles in Southern California. With a total of 1076 beds, Loma Linda University Health includes the only children's hospital in the region. Loma Linda University Medical Center sees over 30,000 inpatients and about 500,000 outpatient visits a year and is one of the largest private acute care Med-Cal providers in the state. It also serves as the primary teaching facility for Loma Linda University School of Medicine and conducts significant educational and research activities.

For decades our hospitals have offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Virtually all employees working 12-hour shifts voluntarily waive a meal period. This option allows employees to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to 8-hour shifts, lengthening the 12-hour shift by 30

KAISER PERMANENTE®

Kaiser Foundation Health Plan, Inc.

September 3, 2015

The Honorable Roger Hernandez, Chair
Assembly Labor and Employment Committee
1020 N Street, Room 155
Sacramento, CA 95814

RE: SB 327 *As to be Amended* – SUPPORT

Dear Assemblymember Hernandez:

Kaiser Permanente is in strong support of SB 327 (Hernandez), which would clarify that employees in the healthcare industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, therefore jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades our hospitals have offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Our employees are represented by labor unions, and the 12-hour shift schedule and opportunity to waive a meal period has been authorized since the inception of the 12-hour shifts. Virtually all employees working 12-hour shifts voluntarily waive a meal period. This option allows employees to go home earlier after working 12 hours, and without this option, we would need to change our scheduling practices.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes would occur. For decades, healthcare employers and employees have been able to utilize the special healthcare waiver provision in Wage Order 5, section (11)(D) and there has never been any question about its validity.

Absent clarification that Wage Order 5, section (11)(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, hospitals will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. This could result in scheduling changes across hospitals that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.

For these reasons, we urge your support of SB 327 (Hernandez). If you have any questions, please do not hesitate to contact me at 916-448-9875.

Sincerely,

Angelica V. Gonzalez
Director, Government Relations

cc: The Honorable Ed Hernandez, O.D.
Members, Assembly Labor and Employment Committee
Anthony Archie, Assembly Republican Caucus

Government Relations
1215 K Street, Suite 2030
Sacramento, CA 95814
Phone: 916-448-4912
Fax: 916-973-6476

CalChamber
CALIFORNIA CHAMBER OF COMMERCE

September 8, 2015

TO: Members, Assembly Committee on Labor and Employment

FROM: Jennifer Barrera, Policy Advocate

SUBJECT: SB 327 (HERNANDEZ) INDUSTRIAL WELFARE COMMISSION: WAGE ORDERS: MEAL PERIODS
SUPPORT

The California Chamber of Commerce is pleased to **SUPPORT SB 327 (Hernandez)**, that clarifies the enforceability of meal period waivers contained in the Industrial Welfare Commission (IWC) Wage Orders for employees in the health care industry.

The IWC updated the Wage Orders in 2000 according to various industries, including Wage Orders 4 and 5 with regard to employees in the health care industry. Given the unique circumstances and working conditions of employees in the health care industry, including shifts that are typically 12-hours long, these Wage Orders include special rules with regard to waivers of meal periods. .

SB 327 clarifies the enforceability of these meal period rules to eliminate any uncertainty that can lead to unnecessary litigation. This clarification benefits both employers and employees who requested the IWC to enact such waivers in order to preserve the working conditions in the health care industry.

For these reasons, we are pleased to **SUPPORT SB 327.**

cc: Camille Wagner, Office of the Governor
The Honorable Ed Hernandez
Ben Ebbink, Assembly Committee on Labor and Employment
Anthony Archile; Assembly Republican Caucus
Labor and Workforce Development Agency
Department of Industrial Relations

JB:ll

1215 K Street, Suite 1400
Sacramento, CA 95814
916 444 6670
www.calchamber.com

PALO VERDE HOSPITAL
Bringing Health & Care Together

250 North First Street
Blythe, CA 92225
760.921.5150

September 3, 2015

SEP 1 3 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assembly member Hernandez:

On behalf of Palo Verde Hospital, I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Our employees are represented by a labor union, and the 12-hour shift schedule and opportunity to waive a meal period has been authorized since the inception of the 12-hour shifts. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. **This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.**

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Sandra Anaya
CEO
Palo Verde Hospital

Sandra.anaya@paloverdehospital.org

RIVERSIDE
Community Hospital

September 8, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol
Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of Riverside Community Hospital I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Our employees are represented by a labor union, and the 12-hour shift schedule and opportunity to waive a meal period has been authorized since the inception of the 12-hour shifts. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard vs. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. **This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.**

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Patrick D. Brilliant
President and CEO

4445 Magnolia Avenue, Riverside, CA 92501 • 951-788-3000 • Fax: 951-788-3201 • www.rchc.org
An Affiliate of Riverside Healthcare System, L.L.C.

Kindred Hospital
Rancho

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assembly member Hernandez:

On behalf of Kindred - Ontario / Rancho Cucamonga, I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Our employees are represented by a labor union, and the 12-hour shift schedule and opportunity to waive a meal period has been authorized since the inception of the 12-hour shifts. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. **This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.**

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Vincent Trac
Market CEO
Kindred - Ontario / Rancho Cucamonga

10841 White Oak Avenue Rancho Cucamonga CA, 91730 – 909.581.6400 – www.kindredhealthcare.com

St. Rose
HOSPITAL

September 2, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of St. Rose Hospital, I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Most of our employees are represented by two labor unions, the California Nurses Association and Teamsters Local 856, and the 12-hour shift schedule and opportunity to waive a meal period has been authorized since the inception of the 12-hour shifts. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. **This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.**

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Michael J. Sarrao
General Counsel

Saint Louise Regional Hospital

9400 No Name Lane
Gilroy, California 95020-3528
408 848-2000

September 4, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol
Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assembly member Hernandez:

On behalf of Saint Louise Regional Hospital, I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Our employees are represented by a labor union, and the 12-hour shift schedule and opportunity to waive a meal period has been authorized since the inception of the 12-hour shifts. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. **This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.**

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Lori Katterhagen, DNP,RN, CENP
Vice President of Patient of Patient Care and Clinical Services/Chief Nurse Executive
Saint Louise Regional Hospital

MONTEREY PARK HOSPITAL
AHMC

Friday September 4, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of Monterey Park Hospital I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Some of our employees are represented by a labor union, and the 12-hour shift schedule and opportunity to waive a meal period has been authorized since the inception of the 12-hour shifts. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. **This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.**

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Philip A. Collen
Chief Executive Officer
And Executive Vice President
for AHMC Healthcare

900 South Atlantic Blvd., Monterey Park, CA 91754
Tel: (626) 570-9000

SOUTHWEST HEALTHCARE SYSTEM
INLAND VALLEY MEDICAL CENTER
RANCHO SPRINGS MEDICAL CENTER

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of Southwest Healthcare System Murrieta & Wildomar, I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. **This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.**

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Bradley D. Neet, CEO
Southwest Healthcare System

Dignity Health.
Marian Regional Medical Center

1400 East Church Street
Santa Maria, CA 93454
Direct: 805.739.3000
mariamedicalcenter.org

Via Facsimile
916-319-2191

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of Marian Regional Medical Center I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Our employees are represented by a labor union, and the 12-hour shift schedule and opportunity to waive a meal period has been authorized since the inception of the 12-hour shifts. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in Gerard v. Orange Coast Memorial Medical Center will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Chas Cova
President & CEO, Marian Regional Medical Center
Senior VP, Operations, Dignity Health Central Coast

cc: Dawn Vicari, California Hospital Assoc. (via fax: 916-554-2275)

Dignity Health.
Mercy Medical Center
Mt. Shasta

Administration
914 Pine Street
Mt. Shasta, CA 96067

VIA FACSIMILE
(916) 319-2191

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of Mercy Medical Center Mt. Shasta I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Our employees are represented by a labor union, and the 12-hour shift schedule and opportunity to waive a meal period has been authorized since the inception of the 12-hour shifts. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. **This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.**

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Ken Platou
President
Mercy Medical Center Mt. Shasta

cc: The Honorable Members of the Assembly Labor and Employment Committee

Dignity Health.
Mercy Medical Center
Redding

Administration
2175 Rosaline Ave.
P.O. Box 496009
Redding, CA 96049-6009

VIA FACSIMILE
(916) 319-2191

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of Mercy Medical Center Redding I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Our employees are represented by a labor union, and the 12-hour shift schedule and opportunity to waive a meal period has been authorized since the inception of the 12-hour shifts. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. **This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in**

the loss of scheduling flexibility for employees and affect the way patient care is delivered.

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Mark Korth
President & CEO
Mercy Medical Center Redding

cc: The Honorable Members of the Assembly Labor and Employment Committee

Dignity Health.
St. Elizabeth Community Hospital

Administration
2550 Sister Mary Columba Dr.
Red Bluff, CA 96080

VIA FACSIMILE
(916) 319-2191

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of St. Elizabeth Community Hospital I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Our employees are represented by a labor union, and the 12-hour shift schedule and opportunity to waive a meal period has been authorized since the inception of the 12-hour shifts. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. **This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in**

the loss of scheduling flexibility for employees and affect the way patient care is delivered.

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

A. Todd Smith

Todd Smith
President
St. Elizabeth Community Hospital

cc: The Honorable Members of the Assembly Labor and Employment Committee

Dignity Health.
Mercy Hospital of Folsom

1650 Creekside Drive
Folsom, CA 95630
direct (916) 983-7400

VIA FACSIMILE

(916) 319-2191

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of Dignity Health Mercy Hospital Folsom, I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Our employees are represented by a labor union, and the 12-hour shift schedule and opportunity to waive a meal period has been authorized since the inception of the 12-hour shifts. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our

hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark.

This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Edmundo Castañeda
President
Mercy Hospital Folsom

cc: The Honorable Members of the Assembly Labor and Employment Committee

4001 J Street
Sacramento, CA 95819
direct (916) 453-4545
fax (916) 453-4587
dignityhealth.org

VIA FACSIMILE

(916) 319-2191

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of Dignity Health Mercy General Hospital, I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Our employees are represented by a labor union, and the 12-hour shift schedule and opportunity to waive a meal period has been authorized since the inception of the 12-hour shifts. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our

hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark.

This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Edmundo Castañeda
President
Mercy General Hospital

cc: The Honorable Members of the Assembly Labor and Employment Committee

Dignity Health.

St. John's Pleasant Valley Hospital
2309 Antonio Ave.
Camarillo, CA 93010
(805) 389-5800

St. John's Regional Medical Center
1600 N Rose Ave.
Oxnard, CA 93030
(805) 988-2500

VIA FACSIMILE
(916) 319-2191

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of St. John's Regional Medical Center and St. John's Pleasant Valley Hosital, I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospitals have offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Our employees are represented by a labor union, and the 12-hour shift schedule and opportunity to waive a meal period has been authorized since the inception of the 12-hour shifts. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. **This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.**

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Darren W. Lee
President and CEO
St. John's Regional Medical Center
St. John's Pleasant Valley Hospital

cc: The Honorable Members of the Assembly Labor and Employment Committee

Dignity Health.
Mercy Medical Center
Redding

2175 Rosaline Avenue
Redding, CA 96001
direct 530-225-6133
fax 530-225-7297
dignityhealth.org

VIA FACSIMILE
(916) 319-2191

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of Dignity Health / Mercy Medical Center Redding, I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Our employees are represented by a labor union, and the 12-hour shift schedule and opportunity to waive a meal period has been authorized since the inception of the 12-hour shifts. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Stephan Hosler
VP Service Area Human Resources
Dignity Health North State

cc: The Honorable Members of the Assembly Labor and Employment Committee

Dignity Health.

St. John's Pleasant Valley Hospital
2309 Antonio Ave.
Camarillo, CA 93010
(805) 389-5800

St. John's Regional Medical Center
1600 N Rose Ave.
Oxnard, CA 93030
(805) 988-2500

VIA FACSIMILE
(916) 319-2191

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of St. John's Regional Medical Center and St. John's Pleasant Valley Hospital, I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospitals have offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Our employees are represented by a labor union, and the 12-hour shift schedule and opportunity to waive a meal period has been authorized since the inception of the 12-hour shifts. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. **This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.**

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Darren W. Lee
President and CEO
St. John's Regional Medical Center
St. John's Pleasant Valley Hospital

cc: The Honorable Members of the Assembly Labor and Employment Committee

Dignity Health.
Mercy Hospitals

2215 Truxtun Avenue
Bakersfield, CA 93301
direct 661-632-5337
fax 661-632-5393
mercybakersfield.org

VIA FACSIMILE
(916) 319-2191

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of Mercy Hospitals I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Our employees are represented by a labor union, and the 12-hour shift schedule and opportunity to waive a meal period has been authorized since the inception of the 12-hour shifts. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Bruce Peters
President/CEO
Mercy Hospitals

cc: The Honorable Members of the Assembly Labor and Employment Committee

Dignity Health.
Glendale Memorial Hospital
and Health Center

1420 South Central Avenue
Glendale, CA 91204
direct 818.502.2201
Jack.Ivie@DignityHealth.org
glendalememorialhospital.org

VIA FACSIMILE
(916) 319-2191

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of Dignity Health Glendale Memorial Hospital and Health Center, I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Our employees are represented by a labor union, and the 12-hour shift schedule and opportunity to waive a meal period has been authorized since the inception of the 12-hour shifts. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. **This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.**

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Jack Ivie
President & CEO

cc: The Honorable Members of the Assembly Labor and Employment Committee

Dignity Health.
St. Joseph's Behavioral Health Center

VIA FACSIMILE
(916) 319-2191

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of St. Joseph's Behavioral Health Center I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Our employees are represented by a labor union, and the 12-hour shift schedule and opportunity to waive a meal period has been authorized since the inception of the 12-hour shifts. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. **This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.**

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Paul Raine

Paul Raine, President
St. Joseph's Behavioral Health Center

cc: The Honorable Members of the Assembly Labor and Employment Committee

Dignity Health.
Northridge Hospital
Medical Center

18300 Roscoe Boulevard
Northridge, California 91328
818.885.8500 Telephone
www.NorthridgeHospital.org

VIA FACSIMILE
(916) 319-2191

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of Dignity Health Northridge Hospital Medical Center I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Our employees are represented by a labor union, and the 12-hour shift schedule and opportunity to waive a meal period has been authorized since the inception of the 12-hour shifts. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. **This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.**

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Ron Rozanski

Ron Rozanski
Sr Vice President of Ancillary & Support Services

cc: The Honorable Members of the Assembly Labor and Employment Committee

Dominican Hospital
A Dignity Health Member

1555 Soquel Drive
Santa Cruz, CA 95065
direct 831.462.7700
dominicanhospital.org

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

Via Facsimile
916 319 2191

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of Dignity Health Dominican Hospital I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Our employees are represented by a labor union, and the 12-hour shift schedule and opportunity to waive a meal period has been authorized since the inception of the 12-hour shifts. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. **This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.**

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Nanette Mickiewicz, M.D.
President
Dignity Health Dominican Hospital

cc: The Honorable Members of the Assembly Labor and Employment Committee

Dignity Health.
St. Mary Medical Center

1050 Linden Avenue
Long Beach, CA 90813-3393
direct 562.491.9000
fax 562.436.6378
stmarymedicalcenter.org

VIA FACSIMILE
(916) 319-2191

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of Dignity Health St. Mary Medical Center, I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Our employees are represented by a labor union, and the 12-hour shift schedule and opportunity to waive a meal period has been authorized since the inception of the 12-hour shifts. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period; or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Joel P. Yuhas
President / CEO
St. Mary Medical Center

cc: The Honorable Members of the Assembly Labor and Employment Committee

Dignity Health.
St. Bernardine Medical Center

dignityhealth.org/stbernardinemedical
2101 N. Waterman Ave
San Bernardino, CA 92404

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol Room 5016
Sacramento, CA 95814

Sent via fax: (916) 319-2191

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of Dignity Health – St. Bernardine Medical Center I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Our employees are represented by a labor union, and the 12-hour shift schedule and opportunity to waive a meal period has been authorized since the inception of the 12-hour shifts. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section 11(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. **This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.**

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Daryl VandenBosch
President, Dignity Health St. Bernardine Medical Center

June Collison
President, Dignity Health Community Hospital of San Bernardino

Dignity Health.
St. Joseph's Medical Center

Administration
1800 North California Street
Stockton, CA 95204
direct 209.467.6315
fax 209.461.3299
dignityhealth.org

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

VIA FACSIMILE
(916) 319-2191

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of St. Joseph's Medical Center, Stockton, I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Our employees are represented by a labor union, and the 12-hour shift schedule and opportunity to waive a meal period has been authorized since the inception of the 12-hour shifts. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. **This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.**

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Sister Abby Newton, OP
Vice President Mission Integration

cc: The Honorable Members of the Assembly Labor and Employment Committee

Dignity Health.
Mercy Medical Center
Redding

2175 Rosaline Avenue
Redding, CA 96001
direct 530-225-6133
fax 530-225-7197
dignityhealth.org

VIA FACSIMILE
(916) 319-2191

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of Dignity Health / Mercy Medical Center Redding, I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Our employees are represented by a labor union, and the 12-hour shift schedule and opportunity to waive a meal period has been authorized since the inception of the 12-hour shifts. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Stephan Hosler
VP Service Area Human Resources
Dignity Health North State

cc: The Honorable Members of the Assembly Labor and Employment Committee

Dignity Health.
California Hospital
Medical Center

1401 South Grand Avenue
Los Angeles, CA 90015
direct 213-748-2411
fax 213-742-6405
chmcla.org

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of Dignity Health California Hospital Medical Center, I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Our employees are represented by a labor union, and the 12-hour shift schedule and opportunity to waive a meal period has been authorized since the inception of the 12-hour shifts. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. **This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.**

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Margaret R. Peterson, PhD
Hospital President

Glendale Adventist Medical Center
Adventist Health

Administration
1509 Wilson Terrace
Glendale, CA 91206
Tel. 818-409-8300

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

September 3, 2015

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of Glendale Adventist Medical Center, I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. **This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.**

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Kevin A. Roberts, CEO/President
Glendale Adventist Medical Center

Dignity Health.
Sequoia Hospital

September 3, 2015

Via Facsimile
916.319.2191

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of Sequoia Hospital I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Our employees are represented by a labor union, and the 12-hour shift schedule and opportunity to waive a meal period has been authorized since the inception of the 12-hour shifts. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. This could

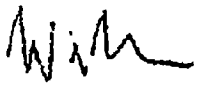
170 Alameda de las Pulgas
Redwood City, CA 94062-2799
650.369.5811
sequoiahospital.org

Dignity Health.
Sequoia Hospital

result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,



Bill Graham
President, Sequoia Hospital

BG/blm

c: The Honorable Members of the Assembly Labor and Employment Committee
Dawn Vicari 916.554.2276

170 Alameda de las Pulgas
Redwood City, CA 94062-2799
650.369.5811
sequoiahospital.org

Dignity Health.
Sequoia Hospital

September 3, 2015

Via Facsimile
916.319.2191

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of Sequoia Hospital I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Our employees are represented by a labor union, and the 12-hour shift schedule and opportunity to waive a meal period has been authorized since the inception of the 12-hour shifts. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

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170 Alameda de las Pulgas
Redwood City, CA 94062-2799
650.369.5811
sequoiahospital.org

Dignity Health.
Sequoia Hospital

result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Bill Graham
President, Sequoia Hospital

BG/blm

c: The Honorable Members of the Assembly Labor and Employment Committee
Dawn Vicari 916.554.2275

170 Alameda de las Pulgas
Redwood City, CA 94062-2799
650.369.5811
sequoiahospital.org

Dignity Health.
St. Mary's Medical Center

St. Mary's Medical Center
450 Stanyan Street
San Francisco, CA 94117
415.668.1000

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of St. Mary's Medical Center in San Francisco, I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Our employees are represented by a labor union, and the 12-hour shift schedule and opportunity to waive a meal period, has been authorized since the inception of 12-hour shifts. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. **This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.**

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Michael Carter
Interim President and CEO
Dignity Health St. Mary's Medical Center

cc: The Honorable Members of the Assembly Labor and Employment Committee

Dignity Health.
French Hospital Medical Center

1911 Johnson Avenue
San Luis Obispo, CA 93401
phone: 805.543.5353
frenchmedicalcenter.org

Via Facsimile
916-319-2191

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of French Hospital Medical Center I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Our employees are represented by a labor union, and the 12-hour shift schedule and opportunity to waive a meal period has been authorized since the inception of the 12-hour shifts. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in Gerard v. Orange Coast Memorial Medical Center will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Alan Iftinink
President & CEO
French Hospital Medical Center

cc: Dawn Vicari, California Hospital Assoc. (via fax: 916-554-2275)

Saint Francis
Memorial Hospital.
A Dignity Health Member

900 Hyde Street
San Francisco, CA 94109
direct 415.353.6000
fax 415.353.6812
saintfrancismemorial.org

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814
Fax: (916) 319-2191

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of Saint Francis Memorial Hospital, I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Our employees are represented by a labor union, and the 12-hour shift schedule and opportunity to waive a meal period has been authorized since the inception of the 12-hour shifts. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

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For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

James P. Houser
Interim President & CEO
Saint Francis Memorial Hospital

cc: The Honorable Members of the Assembly Labor and Employment Committee

09/04/2015 14:45 Risk & Patient Relations FAX4153536849 P.001/001

Parkview
Community Hospital
Medical Center

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of Parkview Community Hospital Medical Center, I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Our employees are represented by a labor union, and the 12-hour shift schedule and opportunity to waive a meal period has been authorized since the inception of the 12-hour shifts. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

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For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Steve Popkin
Chief Executive Officer

3865 Jackson Street, Riverside, CA 92503 (951) 688-2211 pchmc.org

O'Connor Hospital
It's the Way We Care

2105 Forest Avenue
San Jose, California 95128-1471
(408) 947-2500
www.oconnorhospital.org
facebook.com/oconnorhospital

September 4, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol
Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assembly member Hernandez:

On behalf of O'Connor Hospital I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Our employees are represented by a labor union, and the 12-hour shift schedule and opportunity to waive a meal period has been authorized since the inception of the 12-hour shifts. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

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For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Dawn Goeringer, MSN, RN
Sr. Vice President, Chief Clinical Care Officer
O'Connor Hospital

PALO VERDE HOSPITAL
Bringing Health & Care Together

250 North First Street
Blythe, CA 92225
760.921.5150

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assembly member Hernandez:

On behalf of Palo Verde Hospital, I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Our employees are represented by a labor union, and the 12-hour shift schedule and opportunity to waive a meal period has been authorized since the inception of the 12-hour shifts. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

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For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Sandra Anaya
CEO
Palo Verde Hospital

Sandra.anaya@paloverdehospital.org

LOS ROBLES
HOSPITAL & MEDICAL CENTER

215 West Janss Road | Thousand Oaks, California 91360
www.LosRoblesHospital.com

September 4, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of Los Robles Hospital & Medical Center I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

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LOS ROBLES
HOSPITAL & MEDICAL CENTER
www.LosRoblesHospital.com

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Adam Blackstone
Vice President, Marketing and Public Relations
Los Robles Hospital & Medical Center

9/4/2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol
Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of Kindred Hospital SFBA I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

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For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

ASSEMBLY 061

Mark R Brown RN
Chief Clinical Officer
Kindred Hospital
San Francisco Bay Area
Office (510) 357-8300 x4581
Cell (559) 217-4077
mark.brown3@kindred.com

PIONEERS MEMORIAL HealthcareDistrict

207 West Legion Road, Brawley, CA 92227 voice 760.351.3333 fax 760.344.4401

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of Pioneers Memorial Healthcare District I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

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For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Julie Cunningham
Chief Human Resources Officer/Community Relations
Pioneers Memorial Healthcare District

DESERT VALLEY HOSPITAL

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assembly member Hernandez:

On behalf of Desert Valley Hospital, I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

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For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Fred Hunter
CEO
Desert Valley Hospital

Kindred Hospital
Riverside

Dedicated

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assembly member Hernandez:

On behalf of Kindred Hospital - Riverside, I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

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For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Jonathan Jean-Marie
Interim CEO

2224 Medical Center Drive • Perris, California 92571
951.436.3535 • 951.657.3958 fax • 800.735.2922 TDD/TTY
www.khriverside.com

St.JosephHealth
St. Jude Medical Center
A member of the St. Joseph Hoag Health alliance

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of St. Jude Medical Center in Fullerton, I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

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For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Lee Penrose
President and CEO
St. Jude Medical Center

101 E. Valencia Mesa Dr. • Fullerton, CA 92835-3875
T: (714) 871-3280

Stanford HEALTH CARE STANFORD MEDICINE ValleyCare

September 4, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of Stanford Health Care - ValleyCare I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in Gerard v. Orange Coast Memorial Medical Center will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Scott Gregerson
President
Stanford Health Care - ValleyCare

1111 E. Stanley Boulevard | Livermore, CA 94550 (mailing address)
5555 W. Las Positas Boulevard | Pleasanton, CA 94588

VISTA del MAR
Behavioral Healthcare Hospital

September 4, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of Aurora Vista del Mar Hospital, I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. **This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.**

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Mayla Krebsbach
CEO
Aurora Vista del Mar Hospital

801 Seneca Street • Ventura, CA 93001 • Phone (805) 653-6434 • Fax (805) 652-2065

Dignity Health.
French Hospital Medical Center

1911 Johnson Avenue
San Luis Obispo, CA 93401
phone: 805.543.5353
frenchmedicalcenter.org

Via Facsimile
916-319-2191

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of French Hospital Medical Center I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Our employees are represented by a labor union, and the 12-hour shift schedule and opportunity to waive a meal period has been authorized since the inception of the 12-hour shifts. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in Gerard v. Orange Coast Memorial Medical Center will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Alan Iftiniuk
President & CEO
French Hospital Medical Center

cc: Dawn Vicari, California Hospital Assoc. (via fax: 916-554-2275)

MARSHALL
MEDICAL CENTER
It's about you

September 4, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assembly Member Hernandez:

On behalf of Marshall Medical Center, I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

James Whipple
CEO - Administrator

1100 Marshall Way, Placerville, CA 95667 t: 530-622-1441 www.marshallmedical.org

tenet HEALTH

September 4, 2015

Honorable Ed Hernandez
California State Senate
State Capitol, Room 2080
Sacramento, CA 95814

Re: **TENET SUPPORT – SENATE BILL 327 – WAGE ORDER CLARIFICATION – MEAL WAIVERS**

Dear Senator Hernandez:

Tenet Healthcare owns and operates thirteen acute care hospitals in California as well as several outpatient facilities, while also providing a disproportionate share of care to Medi-Cal, underserved and uninsured populations. We also employ thousands of workers in California and fully support Senate Bill (SB) 327 to restore important IWC Wage Order provisions, thereby preserving many years of established practice in our labor accords with nurses and other healthcare employees wherein they may voluntarily waive the second meal period when working 12-hour shifts.

SB 327 is needed because of a recent Court of Appeals decision that upsets this key wage order provision that has become standard throughout the hospital industry, enabling nurses and various other healthcare workers to enjoy flexible, alternate work schedules, while at the same time creating a collaborative environment that facilitates more consistent, quality patient care. We find that our patients greatly appreciate the continuity of care provided by the same nurses without interruption for longer periods during their hospital stay.

Finally, permitting health care workers the option of working longer 12-hour shifts without mandating multiple meal periods enables them to schedule more flexible work and personal time periods while at the same time generating fewer shift changeovers inside our hospital facilities. As a result, it should come as no surprise why this work option is strongly supported by a majority of health care workers, particularly Registered Nurses.

Tenet greatly appreciates your leadership on SB 327 and will be supporting the bill as it being considered. Thank you for considering our views on this important matter.

Sincerely,

Jeffrey Koury
CEO, Western Region

Tenet Healthcare
[illegible] T [illegible]

ASSEMBLY 071

SEIU California
Stronger Together

1130 K Street
Suite 300
Sacramento, CA 95814
916.442.3838
Fax: 916.442.0976

3055 Wilshire Blvd.
Suite 1050
Los Angeles, CA 90010
213.368.7400
Fax: 213.381.7348

www.seiuca.org

September 4, 2015

Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
Legislative Office Building
1020 N Street, Suite 155
Sacramento, CA 95814

Dear Assemblymember Hernandez:

On behalf of our 700,000 members, including 30,000 registered nurses, the California State Council of Service Employees International Union (SEIU California) is pleased to support SB 327 (Hernandez). SB 327 would codify existing practice in health care workplaces, affecting nurses and other personnel who work shifts longer than 12 hours.

Existing practice has allowed these workers to waive, in writing, a second meal period when their shift extends beyond 12 hours in one day. This has been allowed pursuant to the common interpretation of Industrial Welfare Commission (IWC) Orders 4 and 5, which allows for workers in the health care industry to voluntarily waive their second meal period in writing when working beyond 8 hours. A recent court case, *Gerard v. Orange Coast Medical Center*, involved nurses who sued their employer because they argued that this practice was in violation of Labor Code Section 512, which only allows for the waiver of the second meal period up to 12 hours. The appellate court ruled in the plaintiff's favor in March of this year and the matter is now pending review before the California Supreme Court.

Our workers fear two things: first, that employer hospitals will be required to pay retroactively for the second meal periods retroactively and prospectively, which will create a significant financial hardship for some struggling hospitals; and second, some of our nurses value the ability to bargain for a 12 hour shift, and are fine with the waiver of the second meal period when they work beyond the 12 hours. Employers have threatened to deny them the ability to continue to work 12 hour shifts should this case be upheld by the California Supreme Court due to fears around liability.

In order to preserve the 12 hour work day for nurses, relieve employer hospitals of possible retroactive and prospective liability, and to codify existing practice in the industry, SEIU California supports SB 327 and respectfully requests your "aye" vote when the bill comes before you in committee.

Sincerely,

Michelle Dory Cabrera
Healthcare and Research Director

1201 K Street, Suite 1850 | Sacramento, CA 95814 www.cjac.org T 916-443-4900 F 916-443-4306 E cjac@cjac.org

Civil Justice Association of CALIFORNIA

15

September 4, 2015

TO: The Honorable Roger Hernández, Chair, Assembly Labor and Employment Committee
The Honorable Matthew Harper, Vice-Chair, Assembly Labor and Employment Committee
Members, Assembly Labor and Employment Committee

FROM: Katherine Pettibone, Legislative Director
Kim Stone, President

RE: SB 327 (Hernandez)

CJAC POSITION: SUPPORT

The Civil Justice Association of California is pleased to support SB 327 (Hernandez) a bill that will help protect healthcare employers from unjustified lawsuits when they relied on the Industrial Welfare Commission's Wage Orders 4 and 5, section 11(D) regarding meal period rules.

In 1999 the Legislature empowered the Industrial Welfare Commission (IWC) to adopt or amend wage orders with respect to meal periods. After hearings and stakeholder involvement, the IWC maintained various provisions for healthcare workers, including allowing employees in the healthcare industry to waive one of their meal periods even when a shift exceeded 12 hours.

Employers and employees have been relying on the wage orders in good faith. However, a recent appellate court ruling, *Gerard v. Orange Coast Memorial Medical Center*, brought these orders into question. Absent clarification that Wage Orders 4 and 5, section 11(D) has been valid since 2000, healthcare employers will be subject to crushing liability for a missed meal period, as well as throwing employees scheduling into disarray.

Senate Bill 327 will clarify that employees in the healthcare industry can continue to waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when their shift exceeds 12 hours. Similar to other bills that CJAC has supported, this bill would provide some assurances that companies relying on government agencies' interpretation of the law will not result in unjustified litigation.

California employers already face great uncertainty regarding the correct application of California's numerous labor and employment laws. Providing certainty produces a better business environment, growth in the economy, and an improved work environment for employees.

For these reasons, we support SB 327 (Hernandez) and urge an "aye" vote.

cc: The Honorable Ed Hernandez
Graciela Castillo-Krings, Deputy Legislative Secretary, Office of the Governor
Ben Ebbink, Consultant, Assembly Labor and Employment Committee
Anthony Archie, Consultant, Assembly Republican Caucus

Alvarez, Lorie

From: Ebbink, Benjamin
Sent: Friday, September 04, 2015 4:30 PM
To: Alvarez, Lorie
Subject: Fwd: **LETTER OF SUPPORT FOR SB 327 (HERNANDEZ) FROM CITY OF HOPE**
Attachments: ATT00001.htm

Sent from my iPhone

Begin forwarded message:

From: "Torres, Juan" <Juan.Torres@asm.ca.gov>
Date: September 4, 2015 at 4:25:59 PM PDT
To: "Ebbink, Benjamin" <Benjamin.Ebbink@asm.ca.gov>
Subject: FW: **LETTER OF SUPPORT FOR SB 327 (HERNANDEZ) FROM CITY OF HOPE**

Juan Carlos Torres
Office of Assemblyman Roger Hernández
(916) 319-2048

From: Maureen O'Haren [mailto:maureen@oharen.com]
Sent: Friday, September 04, 2015 4:15 PM
To: Maureen O'Haren
Subject: **LETTER OF SUPPORT FOR SB 327 (HERNANDEZ) FROM CITY OF HOPE**
Importance: High

Hello:

Attached please find a letter of support from City of Hope for SB 327 (Hernandez), which is a top priority for California Hospitals. Please contact me if you have questions regarding City of Hope's position.

Maureen

Maureen O'Haren
O'Haren Government Relations
P.O. Box 1047
Sacramento, CA 95812
Cell: 916.498.1900
E-mail: maureen@oharen.com

Dignity Health

251 S. Lake Avenue, Suite 800
Pasadena, CA 91101
direct (626) 774-2300
fax (626) 395-0498
dignityhealth.org

VIA FACSIMILE
(916) 319-2191

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Chair Hernandez:

On behalf of Dignity Health and our 32 hospitals (see attached list), I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. For our employees represented by a labor union, the 12-hour shift schedule and opportunity to waive a meal period has been authorized since the inception of the 12-hour shifts. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over

ASSEMBLY 077

the 12-hour mark. **This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.**

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Rachelle Reyes Wenger
Director, Public Policy & Community Advocacy

cc: The Honorable Members of the Assembly Labor and Employment Committee

Dignity Health Acute Care Facilities

- Arroyo Grande Community Hospital, Arroyo Grande
- Bakersfield Memorial Hospital, Bakersfield
- California Hospital Medical Center, Los Angeles
- Community Hospital of San Bernardino, San Bernardino
- Dominican Hospital, Santa Cruz
- French Hospital Medical Center, San Luis Obispo
- Glendale Memorial Hospital & Health Center, Glendale
- Marian Regional Medical Center, Santa Maria
- Marian Regional Medical Center – West, Santa Maria
- Mark Twain St. Joseph's Hospital, San Andreas
- Mercy General Hospital, Sacramento
- Mercy Hospital of Folsom, Folsom
- Mercy Hospital, Bakersfield
- Mercy Medical Center Merced, Merced
- Mercy Medical Center Mt. Shasta, Mt. Shasta
- Mercy Medical Center Redding, Redding
- Mercy San Juan Medical Center, Carmichael
- Mercy Southwest Hospital, Bakersfield
- Methodist Hospital of Sacramento, Sacramento
- Northridge Hospital Medical Center, Northridge
- Saint Francis Memorial Hospital, San Francisco
- Sequoia Hospital, Redwood City
- Sierra Nevada Memorial Hospital, Grass Valley
- St. Bernardine Medical Center, San Bernardino
- St. Elizabeth Community Hospital, Red Bluff
- St. John's Pleasant Valley Hospital, Camarillo
- St. John's Regional Medical Center, Oxnard
- St. Joseph's Behavioral Health Center, Stockton
- St. Joseph's Medical Center, Stockton
- St. Mary Medical Center, Long Beach
- St. Mary's Medical Center, San Francisco
- Woodland Healthcare, Woodland

CEDARS-SINAI

September 3, 2015

The Honorable Roger Hernandez, Chair
Assembly Labor Committee
State Capitol
Sacramento, CA 95814

RE: SB 327 (Support)

Dear Assemblymember Hernandez,

On behalf of Cedars-Sinai Medical Center, I am writing in strong support of SB 327 (Hernandez). This bill will clarify that employees in the healthcare industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, therefore jeopardizing the hospital's ability to schedule 12-hour shifts.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and thereby could disrupt patient care. **For over 30 years, healthcare employers and employees have been able to utilize the special healthcare waiver provision in Wage Order 5, section (11)(D) and there has never been any question about its validity.**

For decades, **in accordance with the Wage Orders cited above,** Cedars-Sinai has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Virtually all employees working 12-hour shifts voluntarily waive one meal period. This option allows employees to go home at the end of 12.5 hours; after working 12 hours, and taking a 30 minute unpaid meal period[1], in additional to paid breaks.

Absent clarification that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, Cedars-Sinai will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even 1 minute over the 12-hour mark. **This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.**

Without the option of the waiver of a second meal period, in order to avoid these penalties, we would need to change our scheduling practices, and need to choose among scheduling options all of which would likely be very unpopular to our staff. Among our options would be: a) eliminating 12-hr shifts and implementing 8-hour shifts instead, or b) lengthening the workday

[1] It should be noted, that Cedars-Sinai provides a 45-minute meal period: 15 minutes paid, plus 30 minutes unpaid. We add the additional 15 minutes of pay at our own accord.

8700 Beverly Boulevard office 310.423.3277 cedars-sinai.edu
Los Angeles, CA 90048

for every 12-hour shift by 30 minutes (to a total of 13 hours, rather than 12.5 hours) in order to accommodate a second 30-minute unpaid meal period, or c) keeping the length of the workday 12.5 hours, which would result in total work and paid time of 11.5 rather than 12 hours. This results in a loss of 30 minutes of pay for every 12-hr shift. All of these options are likely to be very unpopular with our staff, detrimental to our staffing and therefore have a detrimental effect on our patient care.

For these reasons, we ask for your "YES" vote on SB 327 (Hernandez).

Sincerely,

Thomas M. Priselac
President and CEO

Good Samaritan Hospital

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of Good Samaritan Hospital (GSH), Los Angeles, California, I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Our employees are represented by a labor union, and the 12-hour shift schedule and opportunity to waive a meal period has been authorized since the inception of the 12-hour shifts. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. **This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.**

An Affiliated Hospital of the University of Southern California
1225 Wilshire Boulevard, Los Angeles, California 90017-2395 • Tel (213) 977-2121

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Andrew B. Leeka
President and CEO
Good Samaritan Hospital
Los Angeles, CA 90017

AHMC ANAHEIM
Regional Medical Center

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of AHMC Anaheim Regional Medical Center, I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. **This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.**

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Patrick Peere
Chief Executive Officer

1111 West La Palma Avenue • Anaheim, CA 92801-2881 • Phone: 714-774-1450

DELANO
REGIONAL
MEDICAL CENTER

1401 GARCES HIGHWAY
P.O. BOX 460
DELANO, CA 93216-0460

(661) 725-4800
TDD: (661) 725-5443

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of Delano Regional Medical Center I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Bahram Ghaffari
President
Delano Regional Medical Center

MCH
Madera Community Hospital

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of Madera Community Hospital, I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Our employees are not represented by a labor union, and the 12-hour shift schedule and opportunity to waive a meal period has been authorized since the inception of the 12-hour shifts and has been the employee's preference. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Christine Watts Johnson
Assistant Vice President

Human Resources

1250 EAST ALMOND AVENUE • MADERA, CALIFORNIA 93637 • TELEPHONE (559) 675-5555

ORANGE COAST MEMORIAL
MEMORIALCARE HEALTH SYSTEM

September 3, 2015

The Honorable Roger Hernandez, Chair
Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

Subject: **SUPPORT SB 327 (Hernandez) AS PROPOSED TO BE AMENDED**

Dear Assembly Member Hernandez,

As Chief Executive Officer of Orange Coast Memorial Medical Center, a member of the MemorialCare Health System, a nonprofit, integrated delivery system in Los Angeles and Orange Counties which represents over 11,000 employees I am writing today to express strong support of SB 327 (Hernandez) as proposed to be amended. This bill will clarify that employees in the healthcare industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling in a case where Orange Coast Memorial Medical Center is a named party, jeopardizes this option, and therefore jeopardizes the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to 8-hour shifts, or lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or exploring other unattractive options that employees and the hospital would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, healthcare employers and employees have been able to utilize the special healthcare waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

9920 Talbert Avenue • Fountain Valley, CA 92708 | Phone: (714) 378-7000 | memorialcare.org/orangecoast

Absent the clarification provided by SB 327 as proposed to be amended that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, a claim could be made that the hospital is liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. **If such a claim were successful, it could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.**

For these reasons, we ask for your "YES" vote on SB 327 as proposed to be amended.

Sincerely,

Marcia Manker
Chief Executive Officer

9920 Talbert Avenue • Fountain Valley, CA 92708 | Phone: (714) 378-7000 | memorialcare.org

Sutter Health
We Plus You

2200 River Plaza Drive
Sacramento, CA 95833

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of Sutter Health and our 25 affiliated hospitals, I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospitals have offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. **This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.**

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Patrick E. Fry
President and CEO

Southern California Region
20555 Earl Street
Torrance, CA 90503

california.providence.org

PROVIDENCE
Health & Services
Southern California

September 3, 2015

The Honorable Roger Hernandez
Chai, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SB 327 (Hernandez), AS PROPOSED TO BE AMENDED – SUPPORT

Dear Assembly Member Hernandez:

Providence Health & Services supports SB 327, which will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

Providence operates six award-winning medical centers in Southern California: Providence Holy Cross in Mission Hills, Providence Little Company of Mary Medical Centers in San Pedro and Torrance, Providence Saint John's in Santa Monica, Providence Saint Joseph in Burbank and Providence Tarzana.

Providence has continuously offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Many of our employees are represented by a labor union; and the 12-hour shift schedule and opportunity to waive a meal period has been authorized since the inception of the 12-hour shifts. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our six hospitals will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. **This could result in significant costs, as well as scheduling changes across our hospitals that would result in the loss of scheduling flexibility for employees and adversely impact our continuity of care.**

For these reasons, Providence asks for your "AYE" vote on SB 327.

Sincerely,

Pamela Stahl, MS, RN
Chief Human Resources Officer

ASSEMBLY 090

BEN EBBINK
CONSULTANT
ASSEMBLY LABOR AND EMPLOYMENT
COMMITTEE
1020 N STREET, ROOM 155

Adventist Health
2100 Douglas Boulevard
Roseville, CA 95661
(916) 781 2000
AdventistHealth.org

LOMA LINDA UNIVERSITY HEALTH
11234 Anderson Street
Loma Linda, CA 92354
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lluhealth.org

CALIFORNIA HOSPITALS

ADVENTIST HEALTH
Adventist Medical Center – Hanford
Hanford, CA
Adventist Medical Center – Reedley
Reedley, CA
Adventist Medical Center – Selma
Selma, CA
Central Valley General Hospital
Hanford, CA
Feather River Hospital
Paradise, CA
Glendale Adventist Medical Center
Glendale, CA
Frank R. Howard Memorial Hospital
Wilits, CA
Lodi Memorial Hospital
Lodi, CA
St. Helena Hospital Center for Behavioral Health
Vallejo, CA
St. Helena Hospital Clear Lake
Clearlake, CA
St. Helena Hospital Napa Valley
St. Helena, CA
San Joaquin Community Hospital
Bakersfield, CA
Simi Valley Hospital
Simi Valley, CA
Sonora Regional Medical Center
Sonora, CA
Ukiah Valley Medical Center
Ukiah, CA
White Memorial Medical Center
Los Angeles, CA

LOMA LINDA UNIVERSITY HEALTH
Loma Linda University Behavioral Medicine Center
Redlands, CA
Loma Linda University Children's Hospital
Loma Linda, CA
Loma Linda University Medical Center
Loma Linda, CA
Loma Linda University Medical Center East Campus
Loma Linda, CA
Loma Linda University Medical Center Murrieta
Murrieta, CA
Loma Linda University Surgical Hospital
Redlands, CA

September 3, 2015

The Honorable Roger Hernandez, Chair
Assembly Labor & Employment Committee
State Capitol
Sacramento, CA 95814

RE: SB 327 (Hernandez) – SUPPORT – AS PROPOSED TO BE AMENDED

Dear Assembly Member Hernandez,

We write jointly, on behalf of Adventist Health and Loma Linda University Health, to express our support for SB 327. The measure will clarify that employees in the healthcare industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, therefore jeopardizing the hospital's ability to schedule 12-hour shifts.

Adventist Health is a faith-based, not-for-profit integrated health care delivery system serving communities in California, Hawaii, Oregon and Washington. Our workforce of 28,600 includes more than 20,500 employees; 4,500 medical staff physicians; and 3,600 volunteers. Founded on Seventh-day Adventist health values, Adventist Health provides compassionate care in 19 hospitals, more than 220 clinics (hospital-based, rural health and physician clinics), 14 home care agencies, seven hospice agencies and four joint-venture retirement centers.

Loma Linda University Health is a faith-based, not-for-profit, academic medical center in the Inland Empire region of Southern California. Our workforce of 16,131 includes 13,181employees; 921 attending physicians, and 2,029 volunteers at Loma Linda University Medical Center (LLUMC) and Children's Hospital, LLUMC – East Campus, Behavioral Medicine Center, Heart and Surgical Hospital, LLUMC-Murrieta and physician clinics. LLUMC is the only Level 1 trauma Center in the San Bernardino, Riverside, Inyo, and Mono counties, which covers over 40,000 square miles in Southern California. With a total of 1076 beds, Loma Linda University Health includes the only children's hospital in the region. Loma Linda University Medical Center sees over 30,000 inpatients and about 500,000 outpatient visits a year and is one of the largest private acute care Med-Cal providers in the state. It also serves as the primary teaching facility for Loma Linda University School of Medicine and conducts significant educational and research activities.

For decades our hospitals have offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Virtually all employees working 12-hour shifts voluntarily waive a meal period. This option allows employees to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to 8-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes would occur. For over 30 years, healthcare employers and employees have been able to utilize the special healthcare waiver provision in Wage Order 5, section (11)(D) and there has never been any question about its validity.

Absent clarification that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospitals will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even 1 minute over the 12-hour mark. **This could result in millions of dollars in liability, as well as scheduling changes across hospitals that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.**

For these reasons, we respectfully request your "YES" vote on SB 327 (Hernandez). In the event that you have questions or need more information, please contact our legislative advocates, Nathan Manske at 916-552-2643, or David Ford at 916-448-9777.

Sincerely,

Richard Hart

Scott Reiner
President & CEO
Adventist Health

Richard Hart, MD, DrPH
President & CEO
Loma Linda University | Health

cc: The Honorable Members, Assembly Labor & Employment Committee
The Honorable Ed Hernandez, O.D.
Benjamin Ebbink, Chief Consultant, Assembly Labor & Employment Committee
Anthony Archie, Assembly Republican Policy Consultant
Donna Campbell, Deputy Legislative Secretary, Governor's Office

SEIU-UHW

UNITED HEALTHCARE WORKERS WEST
SERVICE EMPLOYEES INTERNATIONAL UNION, CLC

Dave Regan - President
Stan Lytes - Vice President

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510-251-1250
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5480 Ferguson Drive
Los Angeles, CA 90022
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FAX 323-721-3538

www.SEIU-UHW.org

The Hon. Dr. Ed Hernandez
Senator, Twenty-second District
State Capitol, Room 2080
Sacramento, CA 95814

Re: Support for SB 327

Dear Dr. Hernandez:

SEIU-UHW is pleased to support your SB 327. SB 327 will codify long-standing regulations regarding 12 hour shifts in healthcare settings. A recent court decision (Gerard v. Orange Coast Memorial Medical Center) invalidated these longstanding special healthcare rules adopted by the Industrial Welfare Commission (IWC) in 1992 and reaffirmed by the IWC in 2000. This long-standing rule allows employees to waive one of their two meal periods when they work more than 10 hours. Employees generally like to waive one of their two meal periods because they are scheduled for 12 ½ hours (to accommodate one off duty meal period) rather than 13 hours (to accommodate 2 off duty meal periods).

The court decision is currently on appeal at the California State Supreme Court, but a decision could be years away. In the meantime hospitals and healthcare workers are waiting in limbo, trying to figure out what potential impact the ruling may have on current shift practices.

If it stands, the impact of this ruling on healthcare workers is significant. Hospitals would have to change their shift practices. Options include going back to 8-hour shifts, requiring employees to take a second meal period-which means they would be scheduled for 13 hours rather than 12 ½ or maintaining the current 12 ½ hour scheduling but paying employees for 11 ½ hours of work to accommodate two meal periods. None of these are very desirable options, either for patient safety, healthcare workers and their families or for hospitals.

A wholesale disruption of current shift practices across every hospital in the state could result in in increased patient care issues as healthcare workers try to adjust to new hours and new work patterns. If the industry adopts 8 hour shifts continuity of care will suffer. It's a well-known fact that communication errors often occur at shift changes. These "handoff errors," as they are sometimes called, can put patients at risk. When there are two shift changes in a day instead of three, patients will benefit from better continuity of care.

Twelve hour shifts are overwhelming preferred by healthcare workers because they work a shorter work week (3 days on, 4 days off). They spend less time commuting and more time with family and friends. The enhanced work-life balance increases job satisfaction and less burn-out. This is the benefit that nurses cite most often in surveys about their shift preferences. Having four full days away from the job can allow you to enjoy your personal life to a greater extent or spend more time with family. Hospitals find that this in turn translates into better staff morale, less staff turnover, and reduced absenteeism.

Rather than risk overturning 22 years of settled regulation we are asking for a legislative solution that would simply codify the existing regulation into law. SB 327 does that.

Sincerely,

David Kieffer
SEIU-UHW Director of Government Affairs

CALIFORNIA HOSPITAL ASSOCIATION

Providing Leadership in Health Policy and Advocacy

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SB 327 (Ed Hernandez) – SUPPORT AS PROPOSED TO BE AMENDED

Dear Assembly Member Hernandez:

On behalf of over 400 California hospitals and health systems, the California Hospital Association is pleased to sponsor and support SB 327 (Hernandez). This bill will clarify that employees in the healthcare industry can continue to waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when their shift exceeds 12 hours. A recent court ruling, *Gerard v. Orange Coast Memorial Medical Center*, could jeopardize this option, thus jeopardizing the availability to 12-hour shifts. Absent clarification that Wage Orders 4 and 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, hospitals will be liable for a missed meal period premium on any day an employee worked even 1 minute over the 12-hour mark. **This could result in millions of dollars in liability, as well as scheduling changes throughout the hospital industry. Thus, it is critically important for the Legislature to construe and clarify the meaning of and effect of existing law and to abrogate the court's decision on this issue in *Gerard*.**

While the California Supreme Court recently accepted review of the *Gerard* case, it nonetheless poses a significant adverse impact on healthcare employers and employees, particularly those working 12-hour shifts who want to waive one of their meal periods so that they do not have to prolong their workday by 30 minutes. Because it is unclear when and how the Supreme Court will resolve the case, hospitals are faced with the decision whether to immediately and significantly change their scheduling practices, which may include extending the shift to 13 hours to accommodate a second, off-duty meal period, reverting to 8-hour shifts or taking some other action to minimize potential liability moving forward. Further, while the *Gerard* appellate decision has been de-published similar cases have already been filed and thus without clarification of the law, hospitals currently risk facing expensive class action litigation and potential retroactive liability in the millions of dollars. As the Supreme Court evaluates the legal issues raised in the *Gerard* case, clarification of the law by the legislature is extremely important to the Court's analysis. Thus, it is critically important for the Legislature to reject the Court of Appeal decision and the rationale on which it is based.

Since 1993, healthcare employers have been able to offer a meal period waiver that allows employees working more than 12 hours to voluntarily waive one of their two meal periods. 12-hour shifts are common in the healthcare industry, both in unionized and non-unionized environments. Employees who work 12-hour shifts may frequently work a few minutes more than 12 hours due to clocking in a couple of minutes early or clocking out a couple of minutes late.

In 1999, as part of AB 60, the California Legislature codified the meal period rules which had formerly only been included in the wage order. In Labor Code section 512, the Legislature expressly required that employees working more than 10 hours be provided a second meal period and also expressly provided that employees could voluntarily waive the second meal period so long as they did not work more than 12 hours.

1215 K Street, Suite 800, Sacramento, CA 95814 · *Telephone:* 916.443.7401 · *Facsimile:* 916.552.7596 · www.calhospital.org

At the same time, the Legislature specifically gave the Industrial Welfare Commission (IWC) authority to determine whether to continue to authorize 12-hour alternative workweek schedules, in Labor Code 517. In Labor Code 516, the Legislature also expressly authorized the IWC to adopt or amend the wage orders with respect to meal periods, notwithstanding the rules set forth in Labor Code 512.

After several hearings on the matter and significant negotiation between labor and hospital representatives, the IWC decided to maintain 12-hour shifts, with some variation, and to maintain the special healthcare meal period waiver rules, allowing employees in the healthcare industry to waive one of their meal periods even when a shift exceeded 12 hours.

This action was taken on June 30, 2000 — the deadline set by the Legislature for the IWC to determine whether to continue 12-hour shifts. These amendments went into effect on October 1, 2000. The time between the adoption date of June 30 and the effective date of October 1 was needed to accomplish administrative activity, such as updating the wage orders.

On September 16, 2000, the Governor signed urgency legislation, SB 88. That bill limited the IWC's authority to establish meal period rules that conflicted with Labor Code section 512. That law went into effect more than two months after the IWC adopted Wage Order 4 and 5, as well as other wage orders.

There is no evidence to suggest that SB 88 was intended to invalidate the action the IWC took on June 30, 2000 with respect to the healthcare meal period rules. In order to preserve the status quo preferred by both hospitals and their employees for over 20 years, as confirmed by the IWC in 2000, a legislative clarification is necessary.

Therefore, CHA respectfully request your YES vote on SB 327.

Sincerely,

Kathryn Austin Scott
Legislative Advocate

KAS:dlv

cc: The Honorable Ed Hernandez
The Honorable Members of Assembly Labor and Employment Committee
Ben Ebbink, Consultant, Assembly Labor and Employment Committee
Anthony Archie, Consultant, Assembly Republican Caucus

UNAC/UHCP

United Nurses Associations of California/Union of Health Care Professionals

UNAC/UHCP is affiliated with NUHHCE, AFSCME and the AFL-CIO

955 Overland Court, Suite 150 San Dimas, CA 91773-1718
Telephone: (909) 599-8622
Fax: (909) 599-8655
Website: http://www.unac-ca.org

September 2, 2015

The Honorable Assembly Member Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Rm. 5016
Sacramento, CA 95814
Fax: (916) 319-2148

RE: SB 327 (Hernandez)—Sponsor

Dear Assembly Member Hernandez:

The United Nurses Associations of California/Union of Health Care Professionals (UNAC/UHCP) is pleased to sponsor SB 327, which would allow nurses to continue having the option to waive their second unpaid meal period a choice they have had—and gladly exercised—for many years. UNAC/UHCP – a proud affiliate of NUHHCE and the American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO – represents 25,000 RNs and health care professionals in California, including PAs, NPs, and CNMs.

This bill is necessary because a recent Court of Appeal decision upset years of established practice regarding the voluntary waiver of the second meal period by employees in the health care industry and would lead to staffing disarray at hospitals, where most RNs work 12-hour shifts and sometimes must extend their shifts to provide necessary patient care. Current law entitles employees who work a shift of longer than 10 hours to a second meal period and allows employees to waive their second meal period if the shift does not exceed 12 hours. A special provision in IWC Wage Order No. 5-2001 (Cal. Code Regs., tit. 8, § 11050) provides that health care industry employees who work shifts in excess of eight total hours in a workday may voluntarily waive their right to one of their two meal periods, even if the shift exceeds 12 hours. This provision, which is Section 11(D) to Wage Order No. 5, recognizes the special scheduling needs of health care industry employees who provide patient care.

Under this wage order provision, UNAC members have for years enjoyed the flexibility of alternate work schedules, which allows for greater staffing flexibility and better patient care. Patient outcomes are dramatically improved in environments where the nurses and other health care professionals can place priority on the needs of their patients without interruption by an arbitrary meal period when the shift runs long. (RNs are generally able to eat during work time in break rooms.) In addition, allowing health care workers the option of working longer shifts enables them to take extra days off during the work week, which in turn ensures that they are fully rested when they return to work to provide better patient care. Moreover, hospitals have enjoyed the ability to have fewer shift changeovers.

However, in a recent decision, the appellate court declared Section 11(D) invalid because it authorized second meal waivers for shifts longer than 12 hours. This decision completely upends well-established staffing schedules and will result in a severe disruption of the lives of our members, many of whom have built a schedule of work, child care, and other obligations around the ability to waive a second meal period.

This bill is intended to clarify existing law to abrogate the holding invalidating the voluntary waiver of the second meal period even when the RN works over 12 hours from the appellate court decision in *Gerard v. Orange Coast Medical Center* (2015) 234 Cal.App.4th 285.

Please contact UNAC/UHCP's contract advocate, Brooks Ellison of Ellison Wilson Advocacy, LLC at (916) 448-2187 with any questions.

Sincerely,

Eric Robles
Political and Legislative Director, UNAC/UHCP

cc: Honorable Members, Assembly Labor and Employment Committee
Senator Ed Hernandez
Brian Allison, Political and Legislative Director, AFSCME Int.
Brooks Ellison, Ellison Wilson Advocacy, LLC

Providing Leadership in Health Policy and Advocacy

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SB 327 (Ed Hernandez) - SUPPORT

Dear Assembly Member Hernandez:

On behalf of over 400 California hospitals and health systems, the California Hospital Association is pleased to sponsor and support SB 327 (Hernandez). This bill will clarify that employees in the healthcare industry can continue to waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when their shift exceeds 12 hours. A recent court ruling, *Gerard v. Orange Coast Memorial Medical Center*, could jeopardize this option, thus jeopardizing the availability to 12-hour shifts. Absent clarification that Wage Orders 4 and 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, hospitals will be liable for a missed meal period premium on any day an employee worked even 1 minute over the 12-hour mark. **This could result in millions of dollars in liability, as well as scheduling changes throughout the hospital industry. Thus, it is critically important for the Legislature to construe and clarify the meaning of and effect of existing law and to abrogate the court's decision on this issue in *Gerard*.**

While the California Supreme Court recently accepted review of the *Gerard* case, it nonetheless poses a significant adverse impact on healthcare employers and employees, particularly those working 12-hour shifts who want to waive one of their meal periods so that they do not have to prolong their workday by 30 minutes. Because it is unclear when and how the Supreme Court will resolve the case, hospitals are faced with the decision whether to immediately and significantly change their scheduling practices, which may include extending the shift to 13 hours to accommodate a second, off-duty meal period, reverting to 8-hour shifts or taking some other action to minimize potential liability moving forward. Further, while the *Gerard* appellate decision has been de-published similar cases have already been filed and thus without clarification of the law, hospitals currently risk facing expensive class action litigation and potential retroactive liability in the millions of dollars. As the Supreme Court evaluates the legal issues raised in the *Gerard* case, clarification of the law by the legislature is extremely important to the Court's analysis. Thus, it is critically important for the Legislature to reject the Court of Appeal decision and the rationale on which it is based.

Since 1993, healthcare employers have been able to offer a meal period waiver that allows employees working more than 12 hours to voluntarily waive one of their two meal periods. 12-hour shifts are common in the healthcare industry, both in unionized and non-unionized environments. Employees who work 12-hour shifts may frequently work a few minutes more than 12 hours due to clocking in a couple of minutes early or clocking out a couple of minutes late.

In 1999, as part of AB 60, the California Legislature codified the meal period rules which had formerly only been included in the wage order. In Labor Code section 512, the Legislature expressly required that employees working more than 10 hours be provided a second meal period and also expressly provided that employees could voluntarily waive the second meal period so long as they did not work more than 12 hours.

1215 K Street, Suite 800, Sacramento, CA 95814 · *Telephone* 916.443.7401 · *Facsimile* 916.552.7598 · www.calhospital.org
Corporate Members: Hospital Council of Northern and Central California, Hospital Association of Southern California, and Hospital Association of San Diego and Imperial Counties

At the same time, the Legislature specifically gave the Industrial Welfare Commission (IWC) authority to determine whether to continue to authorize 12-hour alternative workweek schedules, in Labor Code 517. In Labor Code 516, the Legislature also expressly authorized the IWC to adopt or amend the wage orders with respect to meal periods, notwithstanding the rules set forth in Labor Code 512.

After several hearings on the matter and significant negotiation between labor and hospital representatives, the IWC decided to maintain 12-hour shifts, with some variation, and to maintain the special healthcare meal period waiver rules, allowing employees in the healthcare industry to waive one of their meal periods even when a shift exceeded 12 hours.

This action was taken on June 30, 2000 — the deadline set by the Legislature for the IWC to determine whether to continue 12-hour shifts. These amendments went into effect on October 1, 2000. The time between the adoption date of June 30 and the effective date of October 1 was needed to accomplish administrative activity, such as updating the wage orders.

On September 16, 2000, the Governor signed urgency legislation, SB 88. That bill limited the IWC's authority to establish meal period rules that conflicted with Labor Code section 512. That law went into effect more than two months after the IWC adopted Wage Order 4 and 5, as well as other wage orders.

There is no evidence to suggest that SB 88 was intended to invalidate the action the IWC took on June 30, 2000 with respect to the healthcare meal period rules. In order to preserve the status quo preferred by both hospitals and their employees for over 20 years, as confirmed by the IWC in 2000, a legislative clarification is necessary.

Therefore, CHA respectfully request your YES vote on SB 327.

Sincerely,

Kathryn Austin Scott
Legislative Advocate

KAS:dlv

cc: The Honorable Ed Hernandez
The Honorable Members of Assembly Labor and Employment Committee
Ben Ebbink, Consultant, Assembly Labor and Employment Committee
Anthony Archie, Consultant, Assembly Republican Caucus

LONG BEACH MEMORIAL
COMMUNITY HOSPITAL LONG BEACH
Miller Children's & Women's Hospital Long Beach
MEMORIALCARE HEALTH SYSTEM

September 3, 2015

The Honorable Roger Hernandez, Chair
Assembly Labor Committee
State Capitol
Sacramento, CA 95814

RE: SB 327 (Support) As Proposed to be Amended

Dear Assemblymember Hernandez,

As Chief Executive Officer of **Long Beach Memorial, Miller Children's and Women's Hospital Long Beach and Community Hospital Long Beach, members of MemorialCare Health System**, a not-for-profit, integrated delivery system in Los Angeles and Orange Counties which represents over 11,000 employees, I am writing today to express strong support of SB 327 (Hernandez) as proposed to be amended. This bill will clarify that employees in the healthcare industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, therefore jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades our hospitals have offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Employees in three of our six award-winning hospitals are represented by a labor union and the 12-hour shift schedule and opportunity to waive a meal period has been authorized since the inception of the 12-hour shifts. Virtually all employees working 12-hour shifts voluntarily waive a meal period. This option allows employees to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to 8-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes would occur. In fact, **our Long Beach facilities** are acutely aware of the potential disruption in employee relations; **Orange Coast Memorial Medical Center** is also a member of the **MemorialCare Health System.** For over 30 years, healthcare employers and employees have been able to utilize the special healthcare waiver provision in Wage Order 5, section (11) (D) and there has never been any question about its validity.

MEMORIALCARE®
2801 Atlantic Avenue
Long Beach, CA 90806
562.933.5437
www.memorialcare.org

Absent clarification that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, this hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even 1 minute over the 12-hour mark. **This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.**

For these reasons, **Long Beach Memorial, Miller Children's and Women's Hospital Long Beach and Community Hospital Long Beach** asks for your "YES" vote on SB 327 (Hernandez) as proposed to be amended.

Sincerely,

John Bishop
Chief Executive Officer
Long Beach Memorial
Miller Children's and Women's Hospital Long Beach
Community Hospital Long Beach

SHARP.

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Mr. Chairman:

On behalf of Sharp HealthCare (Sharp), San Diego's largest provider of health care and largest private employer, I write in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could endanger this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Some Sharp employees are represented by a labor union, and the 12-hour shift schedule and opportunity to waive a meal period has been authorized since the inception of the 12-hour shifts. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. **This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.**

For these reasons, Sharp requests your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Daniel L. Gross
Executive Vice President, Hospital Operations

SHARP ORGANIZATIONS
Sharp HealthCare ■ Sharp Memorial Hospital ■ Sharp Grossmont Hospital ■ Sharp Chula Vista Medical Center
Sharp Coronado Hospital and Healthcare Center ■ Sharp Mesa Vista Hospital ■ Sharp Mary Birch Hospital for Women & Newborns
Sharp McDonald Center ■ Sharp Rees-Stealy Medical Centers ■ Sharp Health Plan
Sharp HealthCare Foundation ■ Grossmont Hospital Foundation

8695 Spectrum Center Boulevard ■ San Diego, California 92123-1486

COMMUNITY
MEDICAL CENTERS

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of nonprofit Community Medical Centers, I am writing in strong support of SB 327. This bill will clarify that employees in the healthcare industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, healthcare employers and employees have been able to utilize the special healthcare waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Tim A. Joslin
President and Chief Executive Officer
Community Medical Centers

P.O. Box 1232, Fresno, California 93715-1232 • www.communitymedical.org

Seton Medical Center
Seton Coastside
Member of Daughters of Charity Health System

1900 Sullivan Avenue
Daly City, CA 94015
setonmedicalcenter.org
P 650-992-4000
F 650-991-6024

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of Seton Medical Center, I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Our employees are represented by a labor union, and the 12-hour shift schedule and opportunity to waive a meal period has been authorized since the inception of the 12-hour shifts. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. **This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.**

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Joanne E. Allen
President and CEO
Seton Medical Center

PHYSICIANS FOR HEALTHY HOSPITALS

HEMET VALLEY MEDICAL CENTER MENIFEE VALLEY MEDICAL CENTER

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of Physicians for Healthy Hospitals I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Our employees are represented by a labor union, and the 12-hour shift schedule and opportunity to waive a meal period has been authorized since the inception of the 12-hour shifts. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. **This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.**

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Michele Bird

Michele Bird, MHSA, PHR
Vice President, Human Resources
Physicians for Healthy Hospitals, INC. (PHH)
Hemet Valley Medical Center/Menifee Valley Medical Center

Direct line: 951-925-6397
Fax: 951-766-6415
michele.bird@phh.ms

MEMORIALCARE
HEALTH SYSTEM
Excellence in Health Care

September 3, 2015

The Honorable Roger Hernandez, Chair
Assembly Labor Committee
State Capitol
Sacramento, CA 95814

RE: SB 327 (Support) As Proposed to be Amended

Dear Assemblymember Hernandez,

As President and Chief Executive Officer of **MemorialCare Health System**, a nonprofit, integrated delivery system in Los Angeles and Orange Counties which represents over 11,000 employees, I am writing today to express strong support of SB 327 (Hernandez) as proposed to be amended. This bill will clarify that employees in the healthcare industry can voluntarily waive one of their two meal periods pursuant to Wage Orders, including specific provisions of Wage Order 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, therefore jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospitals have offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Employees in three of our six award-winning hospitals are represented by a labor union and the 12-hour shift schedule and opportunity to waive a meal period has been authorized since the inception of the 12-hour shifts. Virtually all employees working 12-hour shifts voluntarily waive a meal period. This option allows employees to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to 8-hour shifts, or lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or explore other unattractive options that employees and hospitals would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes would occur. In fact, **MemorialCare Health System** is acutely aware of then potential disruption in employee relations; **Orange Coast Memorial Medical Center** is one of our member facilities. For over 30 years, healthcare employers and employees have been able to utilize the special healthcare waiver provision in Wage Order 5, section (11) (D) and there has never been any question about its validity.

17360 Brookhurst Street • Fountain Valley, CA 92708 | Phone: (714) 377-2900 | memorialcare.org

Absent clarification that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, this hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even 1 minute over the 12-hour mark. **This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.**

For these reasons, **MemorialCare Health System** asks for your "YES" vote on SB 327 (Hernandez) as proposed to be amended.

Sincerely,

Barry S. Arbuckle, Ph.D.
President and Chief Executive Officer
MemorialCare Health System

GLENN MEDICAL CENTER

Glenn Medical Center Inc., dba Glenn Medical Center
1133 West Sycamore Street • Willows, CA 95988
Administration • (530) 934-1881 • Fax (530) 934-1818
www.glennmed.org

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of Glenn Medical Center I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. **This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.**

This institution is an equal opportunity provider and employer.

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Barbara Rydgren

Barbara Rydgren
Administrator
Glenn Medical Center

This institution is an equal opportunity provider and employer.

SADDLEBACK MEMORIAL
MEMORIALCARE HEALTH SYSTEM

September 3, 2015

The Honorable Roger Hernandez, Chair
Assembly Labor Committee
State Capitol
Sacramento, CA 95814

RE: SB 327 (Support) As Proposed to be Amended

Dear Assemblymember Hernandez,

As Chief Executive Officer of **Saddleback Memorial Medical Center**, a member of the **MemorialCare Health System**, a nonprofit, integrated delivery system in Los Angeles and Orange Counties which represents over 11,000 employees, I am writing today to express strong support of SB 327 (Hernandez) as proposed to be amended. This bill will clarify that employees in the healthcare industry can voluntarily waive one of their two meal periods pursuant to Wage Orders, including specific provisions of Wage Order 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, therefore jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospitals have offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Employees in three of our six award-winning hospitals are represented by a labor union and the 12-hour shift schedule and opportunity to waive a meal period has been authorized since the inception of the 12-hour shifts. Virtually all employees working 12-hour shifts voluntarily waive a meal period. This option allows employees to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to 8-hour shifts, or lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or explore other unattractive options that employees and hospitals would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes would occur. In fact, **Saddleback Memorial** is acutely aware of then potential disruption in employee relations; **Orange Coast Memorial Medical Center** is also a member of **MemorialCare Health System** For over 30 years, healthcare employers and employees have been able to utilize the special healthcare waiver provision in Wage Order 5, section (11) (D) and there has never been any question about its validity.

Laguna Hills 24451 Health Center Drive • Laguna Hills, CA 92653 | Phone: (949) 837-4500 | memorialcare.org
San Clemente 654 Camino de los Mares • San Clemente, CA 92673 | Phone: (949) 496-1122 | memorialcare.org

Absent clarification that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, this hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even 1 minute over the 12-hour mark. **This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.**

For these reasons, **Saddleback Memorial Medical Center** asks for your "YES" vote on SB 327 (Hernandez) as proposed to be amended. .

Sincerely,

Stephen B. Geidt, FACHE
Chief Executive Officer
Saddleback Memorial Medical Center

CITRUS VALLEY HEALTH PARTNERS

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of Citrus Valley Health Partners, I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Our employees are represented by a labor union, and the 12-hour shift schedule and opportunity to waive a meal period has been authorized since the inception of the 12-hour shifts. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in Gerard v. Orange Coast Memorial Medical Center will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Robert H. Curry
President & CEO

210 W. San Bernardino Road • P.O. Box 6108 • Covina, CA 91722-5108 • (626) 331-7331
www.cvhp.org

Inter-Community Hospital • Queen of the Valley Hospital • Foothill Presbyterian Hospital • Citrus Valley Hospice • Citrus Valley Home Health

BEN EBBINK
CONSULTANT
ASSEMBLY LABOR AND EMPLOYMENT
COMMITTEE
1020 N STREET, ROOM 155

USC Verdugo Hills Hospital
Keck Medicine of USC

PAUL CRAIG
Interim Chief Executive Officer
USC Verdugo Hills Hospital

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of USC Verdugo Hills Hospital I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

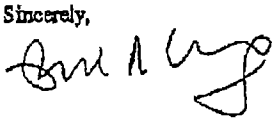
The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.

University of Southern California
1812 Verdugo Boulevard, Glendale, California 91208 • Tel: 818 952 2208 • Fax: 818 952 4649

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,



Paul Craig
Interim CEO
USC Verdugo Hills Hospital

BEVERLY HOSPITAL

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of Beverly Hospital I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Our employees are represented by a labor union, and the 12-hour shift schedule and opportunity to waive a meal period has been authorized since the inception of the 12-hour shifts. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. **This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.**

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Alice Cheng
President & CEO
Beverly Hospital Association

309 West Beverly Boulevard • Montebello, California 90640 • Telephone 323-726-1222

Saint Agnes Medical Center
1303 East Herndon Avenue
Fresno, California 93720
www.samc.com

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of Saint Agnes Medical Center I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. **This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.**

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Stacy Vaillancourt
Chief Administrative Officer
Saint Agnes Medical Center

cc: The Honorable Members of the Assembly Labor and Employment Committee

Marina Del Rey Hospital

4650 Lincoln Boulevard • Marina Del Rey • CA • 90292
310.823.8911 • www.marinahospital.com

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of Marina Del Rey Hospital I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Our employees are represented by a labor union, and the 12-hour shift schedule and opportunity to waive a meal period has been authorized since the inception of the 12-hour shifts. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. **This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.**

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Sean Fowler
President
Marina Del Rey Hospital

CORONA REGIONAL MEDICAL CENTER

Partners in Health and Healing

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of Corona Regional Medical Center, I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Our employees are represented by a labor union, and the 12-hour shift schedule and opportunity to waive a meal period has been authorized since the inception of the 12-hour shifts. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Main Hospital 800 South Main Street, Corona, California 92882-3400 (951) 737-4343
Rehabilitation Hospital 730 Magnolia Avenue, Corona, California 92879-3190 (951) 736-7200
A Universal Health Services Facility • www.coronaregional.com

CORONA REGIONAL MEDICAL CENTER

Partners In Health and Healing

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Mark Uffer
CEO
Corona Regional Medical Center

Main Hospital 800 South Main Street, Corona, California 92882-3400 (951) 737-4343
Rehabilitation Hospital 730 Magnolia Avenue, Corona, California 92879-3190 (951) 736-7200
A Universal Health Services Facility • www.coronaregional.com

Dignity Health.
St. John's Hospitals

1600 North Rose Avenue
Oxnard, CA 93030
direct 805-988-2518
fax 916-858-3395
dignityhealth.org

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assembly member Hernandez:

On behalf of St. John's Hospitals I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Our employees are represented by a labor union, and the 12-hour shift schedule and opportunity to waive a meal period has been authorized since the inception of the 12-hour shifts. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay

on any day an employee worked even one minute over the 12-hour mark. This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Amy J. Mantell

Amy J. Mantell
Director, Human Resources

ADMINISTRATION

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor & Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of Palomar Health, I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, hospitals may be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. **This could result in millions of dollars in liability, as well as scheduling changes for hospitals that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.**

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez). If you have questions, about Palomar Health's support to SB 327, please contact Elly Garner at elly.garner@palomarhealth.org.

Sincerely,

Bob Hemker
President and CEO
Palomar Health

456 W. Grand Ave., Escondido, CA 92025 Tel 760.740.6393 Web www.palomarhealth.org
A California Health Care District

CALIFORNIA RETAILERS ASSOCIATION
980 Ninth Street, Suite 2100 Sacramento, CA 95814
(916) 443-1975 calretailers.com

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

I am writing today in my role of the Chair of the Industrial Welfare Commission from 2000 through 2004 and in strong support of SB 327. In my role of Chair of the IWC in 2000, I was personally involved in the development of, and negotiations related to, continuation of the special healthcare meal period waiver rules found in Wage Orders 4 and 5, section 11(D). At the IWC public hearing on June 30, 2000, the IWC unanimously adopted section 11(D), which was part and parcel of the unanimous IWC vote to authorize employees in the healthcare industry to continue to have the option to work 12-hour alternative workweek schedules.

The IWC Commissioners and staff were aware that the Governor later signed SB 88 as urgency legislation on September 19, 2000. However, it was generally understood that SB 88 had prospective application only and did not impact any Wage Order provisions adopted prior to that date, including Wage Orders 4 & 5, section 11(D).

When I reviewed the Gerard v. Orange Coast Memorial Medical Center decision, I was surprised by the ruling that Wage Order 5, section 11(D) was invalid and disagreed with that conclusion. I am pleased to see the legislature clarify the law to confirm the IWC's adoption of Wage Orders 4 & 5, section 11(D) was valid and continues to be valid.

Sincerely,

B. Dombrowski

Bill Dombrowski
President & CEO

Cc: The Honorable Members of Assembly Labor & Employment Committee
Ben Ebbink, Consultant, Assembly Labor & Employment Committee
Anthony Archie, Consultant, Assembly Republican Caucus

105
155

AFSCME
We Make America Happen

AFSCME Council 36

AFSCME Council 57

AFSCME/MWD Local 1902
Metropolitan Water District

AFSCME/MAPA Local 1001
Metropolitan Water District

AFSCME/UAPD Local 206
Union Of American
Physicians And Dentists

AFSCME/UC Local 3299
University of California

AFSCME/UNAC/UHCP
United Nurses Associations
Of California
Union of Health Care
Professionals

September 3, 2015

TO: The Honorable Roger Hernández, Chair
The Honorable Members of the Assembly Committee on Labor and Employment

RE: Senate Bill 327 (Hernandez) – AFSCME SUPPORTS

The American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO, would like to inform you of our **support for Senate Bill 327**, as amended on September 3rd, 2015.

On February 10, 2015, the California Court of Appeal for the 4th District concluded that Wage Order 5, Section 11 (D) was partially invalid to the extent that it conflicted with labor Code Section 512 (*Gerard v. Orange Coast Memorial Medical Center*). This prohibited employees from waiving their second meal period when they work more than 12 hours; which is commonplace due to employees coming in early and clocking out late.

Since 1993, healthcare employers have been able to offer a meal period waiver that allows employees working 12-hour shirts to voluntarily waive one of their two meal periods. Eliminating this practice will potentially lead to staffing disarray at hospitals due to drastically decreased staffing flexibility, which may in turn lead to less effective patient care. Patient outcomes are dramatically improved in environments where the nurses and other health care professionals can place priority on the needs of their patients without interruption.

For these reasons, AFSCME, in conjunction with the United Nurses Associations of California/ Union of Health Care Professionals (UNAC/UHCP), emphatically support SB 327 in rectifying a decision that upends well-established staffing schedules, severely disrupts the lives of our members, and could potentially affect the quality of care provided to patients.

Please join us in supporting Senate Bill 327.

Should you have any questions regarding our position in this matter, you may call me at your earliest convenience. AFSCME also reserves the right to change our position in the event of future amendments.

Sincerely,

Brian A. Allison
Political and Legislative Director, California

American Federation of State, County and Municipal Employees, AFL-CIO
TEL (916) 441-1570 FAX (916) 441-3426 WEB www.calafscme.org 1127 11th Street, Suite 804 • Sacramento, California 95814-3814

Redlands Community Hospital

350 Terracina Blvd.
P.O. Box 3391
Redlands, CA 92373-0742
909-335-5500
Fax 909-335-6497

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol
Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of Redlands Community Hospital I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. **This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.**

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

James R. Holmes
President/Chief Executive Officer

MAMMOTH HOSPITAL
Elevate Your Health

2014 Press Ganey Guardian of Excellence Award Winner

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of Southern Mono healthcare District dba Mammoth Hospital, I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. **This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.**

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Melanie Van Winkle
Chief Financial Officer

P.O. Box 660 | 85 Sierra Park Road | Mammoth Lakes, CA 93546 | 760.924.4114 | Fax 760.924.4104
www.mammothhospital.com

METICULOUS CARE * MEMORABLE PEOPLE * MAJESTIC LOCATION

SAN JOAQUIN VALLEY REHABILITATION HOSPITAL

Hospital & Outpatient Center
7173 N. Sharon
Fresno, California 93720
559-436-3600
559-436-3606 FAX

Fresno Outpatient & Fitness Center
7033 N. Fresno St., Suite 101
Fresno, California 93720
559-431-2635
559-431-2650 FAX

Oakhurst Outpatient Center
40232 Junction Drive
Oakhurst, California 93644
559-658-6490
559-658-6491 FAX

Balance and Dizziness Center
1865 E. Alluvial, Suite 104
Fresno, California 93720
559-326-1155
559-326-1154 FAX

Clovis Outpatient & Fitness Center
1315 Shaw Ave., Suite 102
Clovis, California 93612
559-325-5601
559-325-5605 FAX

Selma Outpatient Center
2711 Cinema Way, Suite 103
Selma, CA 93662
559-257-5970
559-318-9184 FAX

9/3/15

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of San Joaquin Valley Rehabilitation Hospital, I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in Gerard v. Orange Coast Memorial Medical Center will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Mary Jo Jacobson, PT CEO
San Joaquin Valley Rehabilitation Hospital

975 S. Fairmont Ave.
P.O. Box 3004
Lodi, California 95240
209.334.3411
lodihealth.org

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of Lodi Memorial Hospital I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Daniel Wolcott, CEO
Lodi Memorial Hospital

El Camino Hospital
THE HOSPITAL OF SILICON VALLEY

2500 Grant Road
Mountain View, CA 94040-1378
Phone: 650-940-7000
www.elcaminohospital.org

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of El Camino Hospital I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Many of our hourly employees are represented by labor unions, and the 12-hour shift schedule and opportunity to waive a meal period has been authorized since the inception of the 12-hour shifts. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and our employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Tomi Ryba

Tomi Ryba
President & CEO

SAN ANTONIO
REGIONAL HOSPITAL

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814
VIA Fax: (916) 554-2275

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of San Antonio Regional Hospital, I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in Gerard v. Orange Coast Memorial Medical Center will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. This could result in a significant economic penalty, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Harris F. Koenig
President and Chief Executive Officer

HK:bp

Dignity Health.
St. Joseph's Medical Center

Administration
1800 North California Street
Stockton, CA 95204
direct 209.467.6315
fax 209.461.3299
dignityhealth.org

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

VIA FACSIMILE
(916) 319-219(

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of St. Joseph's Medical Center, Stockton, I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Our employees are represented by a labor union, and the 12-hour shift schedule and opportunity to waive a meal period has been authorized since the inception of the 12-hour shifts. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. **This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.**

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Sister Abby Newton, OP
Vice President Mission Integration

cc: The Honorable Members of the Assembly Labor and Employment Committee

Keck Medical Center of USC

Hospital Administration
Rodney Hanners
Chief Operating Officer, Keck Medicine of USC
& Chief Executive Officer for Keck Hospitals

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of Keck Hospital of USC and USC Norris Cancer Hospital, I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Rodney Hanners
Chief Operating Officer, Keck Medicine of USC
Chief Executive Officer for Keck Hospitals of USC

University of Southern California
1500 San Pablo Street, Los Angeles, California 90033 • Tel: 323 442 8500 • Fax: 323 442 5257

SAN GORGONIO
MEMORIAL HOSPITAL

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol
Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of San Gorgonio Memorial Hospital I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. **This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.**

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Mark Turner
Chief Executive Officer

600 North Highland Springs Ave. • Banning, CA 92220 • 951.845.1121 • Fax 951.845.2836

Dignity Health.
St. Joseph's Behavioral Health Center

VIA FACSIMILE
(916) 319-2191

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of St. Joseph's Behavioral Health Center I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Our employees are represented by a labor union, and the 12-hour shift schedule and opportunity to waive a meal period has been authorized since the inception of the 12-hour shifts. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Paul Raine

Paul Raine, President
St. Joseph's Behavioral Health Center

cc: The Honorable Members of the Assembly Labor and Employment Committee

CALIFORNIA
CHILDREN'S
HOSPITAL
ASSOCIATION

1215 K STREET SUITE 1430
SACRAMENTO CA 95814
916 552 7611
916 552 7619 FAX

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of the California Children's Hospital Association, I am writing in strong support of SB 327 (Hernandez). This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, stifling our member hospitals' abilities to schedule 12-hour shifts.

For many years, our hospitals have offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Without the option, hospitals would have to change scheduling practices, either moving to eight-hour shifts or lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or otherwise reducing scheduling flexibility for employees. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted, hospitals will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. This could result in millions of dollars in liability. Children's hospitals care for the most vulnerable children in California – severely ill or injured – and over 62% of visits to children's hospitals in 2012 were paid for by Medi-Cal. The financial liabilities could increase stress on these important safety net institutions.

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Bernardette Arellano
Director of Government Affairs

ASSEMBLY 139

Stanford
HEALTH CARE
STANFORD MEDICINE

MAGNET RECOGNIZED

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of Stanford Health Care, I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. **This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.**

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Nancy J. Lee, RN, MSN, NEA-BC
Chief Nursing Officer and Vice President, Patient Care Services
Stanford Health Care

cc: Dawn Vicari, California Hospital Association via email dvicari@calhospital.org

Office of the CNO | 300 Pasteur Drive | Room H3200, M/C 5230 | Stanford, CA 94305

St. Joseph Health
St. Joseph Hospital

September 3, 2015

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of St. Joseph Hospital in Orange, I am writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospital has offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Virtually all employees working 12-hour shifts voluntarily waive a meal period because it allows them to go home earlier after working 12 hours. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Steven C. Moreau, President and CEO
St. Joseph Hospital

1100 West Stewart Drive • Orange, CA 92868
T: (714) 633-9111

LOMPOC VALLEY MEDICAL CENTER
Lompoc Healthcare District

Chief Human Resources Officer
P: 805-737-3307
F: 805-737-6740
E: braxtone@lompocvmc.com

September 3, 2015

The Honorable Katcho Achadjian
State Capitol
Sacramento, CA 94249

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assembly Member Achadjian:

On behalf of Lompoc Valley Medical Center, I am writing in strong support of SB 327. This bill will clarify that employees in the healthcare industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, healthcare employers and employees have been able to utilize the special healthcare waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. **This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.**

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Very respectfully,

Edwin R. Braxton, MSHRM
Chief Human Resources Officer

9/3/15

CAPITOL STRATEGIC ADVISORS LLC

The Honorable Roger Hernandez
Chair, Assembly Labor and Employment Committee
State Capitol, Room 5016
Sacramento, CA 95814

SUBJECT: SUPPORT SB 327 (HERNANDEZ) AS PROPOSED TO BE AMENDED

Dear Assemblymember Hernandez:

On behalf of our client, Hospital Corporation of America, we are writing in strong support of SB 327. This bill will clarify that employees in the health care industry can voluntarily waive one of their two meal periods pursuant to Wage Orders 4 and 5-2001, even when they work more than 12 hours. A recent court ruling could jeopardize this option, thereby jeopardizing the hospital's ability to schedule 12-hour shifts.

For decades, our hospitals have offered employees working 12-hour shifts the opportunity to voluntarily waive one of their two meal periods. Our employees are represented by a labor union, and the 12-hour shift schedule and opportunity to waive a meal period has been authorized since the inception of the 12-hour shifts. Without the option, we would change our scheduling practices, either moving to eight-hour shifts, lengthening the 12-hour shift by 30 minutes to accommodate a second 30-minute unpaid meal period, or developing another option that the hospital and employees would not favor.

The decision in *Gerard v. Orange Coast Memorial Medical Center* will disrupt scheduling and could disrupt patient care if more shift changes occur. For more than 20 years, health care employers and employees have been able to utilize the special health care waiver provision in Wage Order 5, section (11)(D), and there has never been any question about its validity.

Absent the clarification provided by SB 327 that Wage Order 5, section 11(D) has been valid since it was adopted by the Industrial Welfare Commission in June 2000, our hospital will be liable for a missed meal period premium equal to an extra hour of pay on any day an employee worked even one minute over the 12-hour mark. **This could result in millions of dollars in liability, as well as scheduling changes across the hospital that would result in the loss of scheduling flexibility for employees and affect the way patient care is delivered.**

For these reasons, we ask for your "AYE" vote on SB 327 (Hernandez).

Sincerely,

Shaun Flanigan
Partner

James Jack
Partner

1215 K Street, Suite 1760 Sacramento, CA 95814

CONSUMER ATTORNEYS OF CALIFORNIA

Seeking Justice for All

President Brian D Chase | CEO • Chief Lobbyist Nancy Drabble | Legislative Director Nancy Peverini | Legislative Counsel Jacqueline Serna Anguiano | Associate Staff Counsel Sovrena K. Takhar | Political Director Lea-Ann Tranas

September 4, 2015

TO: SENATOR ED HERNANDEZ

FR: BRIAN CHASE, PRESIDENT
ADVOCATE CONTACT: JACQUELINE SERNA ANGUIANO

RE: SB 327 (HERNANDEZ) OPPOSE UNLESS AMENDED

Consumer Attorneys of California opposes SB 327, unless it is amended to be prospective only. Should this bill be enacted, it would impact pending litigation before the California Supreme Court, overturn a recent California Appellate Court decision, *Gerard v. Orange Coast Memorial Medical Center* 234 Cal. App. 4th 285 (2015), and affected workers could lose wages as a result of its passage.

CAOC has always opposed, and will continue to oppose, any effort to affect pending litigation. It is simply against public policy to legislatively affect a consumer's existing legal right in a manner that retroactively guts a claim that was already filed, in good faith, with the law of the date of filing applicable. We appreciate the author's frankness that this is their main concern, and have met with the author to express our concerns. However, it is largely unprecedented for the Legislature to pass legislation that guts pending litigation and retroactively affect a pending case; we respectfully argue that once the Legislature ignores this policy practice and goal, all cases will be open to such action, which would be a horrible result. We believe the legislature should think long and hard before opening this pandora's box.

Gerard holding. The plaintiffs in *Gerard* prevailed in an appellate court decision invalidating a health care worker wage order, Wage Order 5 Subdivision 11(D), which allowed for the waiver of second meal periods by healthcare workers who work over 12 hours. In finding for the workers, the *Gerard* court found that the wage order violated Labor Code sections 516 and 512 and applied its ruling retroactively. Now, the sponsors of this measure are introducing a last minute gut and amend aimed at abrogating that decision in order to avoid potential liability for past wages owed. These issues could be decided as early as next year. Rather than introduce a later gut and amend, we feel that the best action would be to wait for the Supreme Court to issue its ruling.

SB 327 Impacts Pending Litigation. The California Supreme Court granted review on May 20, 2015 so this is pending litigation. The Court stated the issues on review as follows: (1) Is the health care industry meal period waiver provision in section 11(D) of Industrial Wage Commission Order No. 5-2001 invalid under Labor Code section 512, subdivision (a)? (2) Should the decision of the Court of Appeal partially invalidating the Wage Order be applied retroactively? The proposed language would expressly make the invalidated wage order *valid* and would state that it is "declaratory of existing law." This bill is designed to impact this pending court case.

Legislative Department
770 L Street • Suite 1200 • Sacramento • CA 95814 • T (916) 442-6902 • F (916) 442-7734 • www.caoc.org

Fairness requires that employees get paid for the work performed and that employers are not unjustly enriched. In *Murphy v Kenneth Cole Productions, Inc.* (2007) 40 cal.4th 1094, 1113-1144, the California Supreme Court recognized that premium payments required by Labor Code section 226.7 for missed meal and rest periods are wages, not penalties. The term "wages" is defined by Labor Code section 200(a) to include "all amounts for labor performed by employees..." The effect of this legislation, granting hospitals retroactive relief from liability for unpaid wages, could be to deny workers past wages they have already earned. Again, the Court has already decided to issue a ruling on these issues and we think it is best to wait for the Court to issue its ruling in *Gerard*.

Contrary to its terms, the bill is not declarative of existing law, and violates the Constitutional separation of powers by usurping a judicial function. "Under fundamental principles of separation of powers, the legislative branch of government enacts laws. Subject to constitutional constraints, it may change the law. But interpreting the law is a judicial function. After the judiciary definitively and finally interprets a statute,...the Legislature may amend the statute to say something different. But if it does so, it changes the law; it does not merely state what the law always was. Any statement to the contrary is beyond the Legislature's power." (*McClung v Employment Development Department* (2004) 34 Cal.4th 467, 470.) The proposed legislation suffers from the identical constitutional defect as the law at issue in *McClung*. In response to a prior decision of the California Supreme Court interpreting certain provisions of the Fair Employment and Housing Act ("FEHA"), the legislature amended FEHA to impose personal liability on individual employees. The amended legislation contained a statement that its provisions were "declaratory of existing law." The Supreme Court concluded that the provisions of FEHA, as amended, could not be applied retroactively to impose liability on individual employees for conduct that occurred before the effective date of the amendments to FEHA.

SB 327 is designed to affect pending litigation. CAOC has always opposed, and will continue to oppose, any effort to affect pending litigation. For these reasons, we must respectfully oppose unless the bill is amended to apply its provisions prospectively only.

cc: Assembly Labor Committee
Senate Labor Committee
Assembly Judiciary Committee
Senate Judiciary Committee

770 L Street • Suite 1200 • Sacramento • CA 95814 • T (916) 442-6902 • F (916) 442-7734 • www.caoc.com

EXHIBIT L

COMPLETE BILL HISTORY

BILL NUMBER : S.B. No. 327
AUTHOR : Hernandez
TOPIC : Industrial Welfare Commission: wage orders: meal periods.

TYPE OF BILL :
Inactive
Urgency
Non-Appropriations
2/3 Vote Required
Non-State-Mandated Local Program
Non-Fiscal
Non-Tax Levy

BILL HISTORY
2015
Oct. 5 Chaptered by Secretary of State. Chapter 506, Statutes of 2015.
Oct. 5 Approved by the Governor.
Sept. 17 Enrolled and presented to the Governor at 4:45 p.m.
Sept. 11 Urgency clause adopted. Assembly amendments concurred in. (Ayes 36. Noes 0. Page 2770.) Ordered to engrossing and enrolling.
Sept. 11 From committee: That the Assembly amendments be taken up for consideration. (Ayes 4. Noes 0. Page 2787.)
Sept. 11 From committee: Be re-referred to Com. on L. & I.R. pursuant to Senate Rule 29.10(d). (Ayes 5. Noes 0.) Re-referred to Com. on L. & I.R.
Sept. 11 In Senate. Concurrence in Assembly amendments pending. Re-referred to Com. on RLS. pursuant to Senate Rule 29.10(d).
Sept. 11 Read third time. Urgency clause adopted. Passed. (Ayes 78. Noes 0. Page 3126.) Ordered to the Senate.
Sept. 10 Read second time. Ordered to third reading.
Sept. 9 Read second time and amended. Ordered to second reading.
Sept. 8 From committee: Do pass as amended. (Ayes 6. Noes 0.) (September 8).
Sept. 4 Read third time and amended. Ordered to third reading. Re-referred to Com. on L. & E. pursuant to Assembly Rule 77.2.
Sept. 3 From inactive file. Ordered to third reading.
Sept. 2 Notice of intention to remove from inactive file given by Assembly Member Holden.
Aug. 20 From consent calendar. Ordered to inactive file on request of Assembly Member Holden.
Aug. 17 Read second time. Ordered to consent calendar.
July 16 From committee: Do pass. Ordered to consent calendar. (Ayes 18. Noes 0.) (July 15).
May 22 Referred to Com. on G.O.
May 5 In Assembly. Read first time. Held at Desk.
May 4 Read third time. Passed. (Ayes 35. Noes 0. Page 883.) Ordered to the Assembly.
Apr. 29 Read second time. Ordered to consent calendar.
Apr. 28 From committee: Do pass. Ordered to consent calendar. (Ayes 7. Noes 0. Page 795.) (April 28).
Apr. 22 From committee with author's amendments. Read second time and amended. Re-referred to Com. on G.O.
Apr. 14 Set for hearing April 28.
Apr. 13 April 14 set for first hearing canceled at the request of author.
Apr. 6 From committee with author's amendments. Read second time and amended. Re-referred to Com. on G.O.

Apr. 2 Set for hearing April 14.
Mar. 5 Referred to Com. on G.O.
Feb. 24 From printer. May be acted upon on or after March 26.
Feb. 23 Introduced. Read first time. To Com. on RLS. for assignment. To print.

EXHIBIT M

ALTSHULER BERZON LLP
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JEFFREY B. DEMAIN
JAMES M. FINBERG
KRISTIN M. GARCÍA
EILEEN B. GOLDSMITH
SCOTT A. KRONLAND
DANIELLE E. LEONARD
STACEY M. LEYTON
MATTHEW J. MURRAY
PETER D. NUSSBAUM
ZOE PALITZ
P. CASEY PITTS
DANIEL T. PURTELL
MICHAEL RUBIN
PEDER J. THOREEN
LAURA S. TRICE
JONATHAN WEISSGLASS

FRED H. ALTSHULER
FOUNDING PARTNER EMERITUS

TONY LOPRESTI
FELLOW

April 3, 2015

Chief Justice Tani Cantil-Sakauye
and Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102

Re: *Gerard v. Orange Coast Memorial Medical Center*
Supreme Court Case No. S225205
Court of Appeal Case No. G048039
Letter in Support of Petition for Review

Dear Chief Justice and Associate Justices:

This letter is submitted on behalf of *amici curiae* United Nurses Associations of California/Union of Health Care Professionals and Service Employees International Union Local 121RN. The *amici* urge the Court to grant the petition for review. The Court of Appeal erred by invalidating a provision of Industrial Welfare Commission (IWC) Wage Order 5 that governs meal periods for employees in the healthcare industry. The erroneous decision would disrupt long-established, collectively bargained shift schedules for nurses at healthcare facilities throughout California.

Since 1993, IWC Wage Order 5 has included a provision allowing employees in the healthcare industry to voluntarily waive a second, off-duty meal period, regardless of the length of the shift. The current version of that provision is Section 11(D) of Wage Order 5, which the IWC adopted in June 2000, after public hearings at which testimony was presented by dozens of labor and management representatives from the healthcare industry. The final language of Wage Order 5-2000 reflected a joint proposal from labor and management representatives.

Collective bargaining agreements (CBAs) in the healthcare industry, including the CBAs negotiated by *amici* on behalf of the nurses they represent, have been negotiated

against the backdrop of the IWC's wage orders. The Court of Appeal decision invalidating Section 11(D) threatens to unravel settled shift-scheduling practices that cover thousands of California nurses.

The Court of Appeal reasoned that Section 11(D) is inconsistent with statute because Senate Bill 88 (2000) took away the IWC's authority to adopt wage order provisions that deviate from the meal period standards in Labor Code §512. But Senate Bill 88 was passed by unanimous votes of the Assembly and Senate in August 2000 -- two months *after* the IWC already had adopted Wage Order 5-2000 on June 30, 2000 to meet a deadline set by the Legislature. The intent of Senate Bill 88 was to take away IWC authority to deviate from Labor Code §512 going forward, not to abrogate the healthcare industry meal period provision that had existed since 1993 and that the IWC had just re-adopted by a 5-0 vote two months earlier with support from labor and management.

If Senate Bill 88 had been intended to retroactively take away the IWC's authority to adopt the healthcare meal period exemption in IWC Wage Order 5-2000, then Senate Bill 88 would have been a very controversial measure. The potential effect of Senate Bill 88 on the healthcare meal period provision also would have been reflected in the legislative analyses of the bill. Moreover, labor and management representatives in the healthcare industry who negotiated CBAs that they believed were in full compliance with California law would not now be surprised to learn that Section 11(D) of Wage Order 5-2000 was invalidated by a statute adopted by unanimous vote of the Legislature nearly 15 years ago.

Interest of the Amici Curiae

United Nurses Associations of California/Union of Health Care Professionals, NUHHCE, AFSCME, AFL-CIO ("UNAC/UHCP") represents more than 25,000 registered nurses and other healthcare professionals in California. UNAC/UHCP is affiliated with the National Union of Hospital and Health Care Employees, a national labor organization with thousands of healthcare members; the American Federation of State, County and Municipal Employees; and the American Federation of Labor and Congress of Industrial Organizations.

UNAC/UHCP is party to 15 collective-bargaining agreements, covering 28 hospitals and numerous clinics throughout California. These CBAs are premised on the validity of Wage Order 5. The majority of UNAC/UHCP's members are registered

nurses who work 12-hour shifts with one unpaid meal break and waive the second unpaid meal break.

Service Employees International Union Local 121RN (SEIU Local 121RN) is a labor union representing about 8,500 registered nurses and other healthcare professionals employed at hospitals throughout Southern California. SEIU Local 121RN is affiliated with the Service Employees International Union (SEIU).

SEIU Local 121RN is a party to 19 CBAs and is in the process of negotiating two additional CBAs. These CBAs are premised on the validity of IWC Wage Order 5. Nearly all of the RNs represented by SEIU Local 121RN work 12-hour shifts with one unpaid meal break and waive the second unpaid meal break.

Representatives from UNAC/UHCP and from SEIU were among the labor representatives who participated in the IWC public hearings that preceded the IWC's adoption of Wage Order 5-2000 by a 5-0 vote on June 30, 2000.

Reasons for Granting Review

A. The Court of Appeal Decision Would Disrupt Collectively Bargained Shift Schedules in the Healthcare Industry

The Court of Appeal decision threatens the current 12-hour shift with one unpaid 30-minute meal period that is a common practice for registered nurses (RNs) working in healthcare facilities, including RNs working under CBAs negotiated by *amici.* Rather than take a second, 30-minute meal period, RNs can use shorter rest breaks to go to the designated break room where there are refrigerators for staff to keep food for the shift (generally each floor has one) or to the hospital's cafeteria.

Under Labor Code §512, employees generally may not waive a second, 30-minute, uninterrupted off-duty meal period if the shift extends beyond 12 hours. But Section 11(D) of Wage Order 5 allows such waivers in the healthcare industry. Section 11(D) provides:

> 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.

This special meal period waiver provision applicable to health care industry employees reflects the often unpredictable demands of patient care, and Section 2(G) of Wage Order 5 defines "Employees in the Healthcare Industry" to mean employees involved in patient care or working in a clinical or medical department.[1]

RNs often must stay past the end of a 12-hour shift to finish patient charting, which must be done on the same day and cannot wait until that RN's next shift or be done by the oncoming RN. Also, at each shift change, there typically is an overlapping 30-minute period when the off-going RN meets with the oncoming RN to provide a report and hand-off, and the time necessary to accomplish this may extend past 30 minutes if there is a large amount of information to share. There also are staff meetings that may occur during shift changes. There also are situations in which a unit is understaffed, and it may take additional time to find coverage before the RN can leave because RNs cannot abandon patients or exceed the state-mandated nurse to patient staffing ratios. There are also situations in which an RN may need to stay with a patient being transferred to an operating room or intensive care unit until the transfer is completed and charting is finished.

RNs also stay beyond a 12-hour shift if a patient has just been admitted to the unit shortly before shift change and the RN cannot immediately hand off the assignment. There are also situations in which chemotherapy has not been completed, and the RN stays until it is finished. Or there may be an emergency during the shift, and an off-going RN may need to stay to replenish the crash cart so it will be ready for another emergency. In a med-surge department or post-surgical department, many patients have PCA (Patient-Controlled Analgesia) pumps, and there is a detailed workflow that the off-going and oncoming RNs must go through together for each patient, which can prevent the off-going RN from leaving immediately at the end of a scheduled shift. RNs also must stay if a narcotic log is wrong until the discrepancy is resolved. Or the RN may be in the middle of a family support conference or a patient's condition may decline unexpectedly.

---

[1] The same meal break waiver provision for health care industry employees is included in Wage Order 4, which covers some health care industry employees. That provision has the same history as the provision in Wage Order 5.

In short, RNs have vital responsibilities for patient care, and those responsibilities can prevent RNs from leaving promptly at the end of a 12-hour shift. The RNs receive overtime pay when they work overtime, but it would not make sense for an RN who has voluntarily waived a second 30-minute unpaid meal period to stop immediately for such a meal period if the shift unexpectedly runs long – because the very reason the shift has run long is likely that the RN in the midst of necessary work. Nor would the RN typically want to take a 30-minute, off-duty meal period at that point, rather than finish the necessary work and go home.

The consequence of the Court of Appeal's decision would be to disrupt a well-established pattern for scheduling 12-hour shifts for nurses that both labor and management representatives have accepted and that the IWC endorsed. Many nurses started working 12-hour shifts in the late 1970s and early 1980s because they allow for more continuity of care and, as many nurses are parents, more days off to care for children. The trade-off between longer shifts and fewer work days has been a recruitment tool for hospitals and has attracted professionals to a physically and emotionally challenging job. To comply with the Court of Appeal's decision, hospitals would demand to renegotiate nurses' collectively bargained shift schedules. Changing collectively bargained shift schedules now would be disruptive to nurses' lives and to patient care.

B. The Court of Appeal Erred in its Application of Senate Bill 88 to the Healthcare Industry Meal Period Provision

The Court of Appeal erred by not correctly understanding the relationship between Senate Bill 88 (2000) and the IWC healthcare industry meal period provision that the IWC adopted in Wage Order 5-2000. The petition for review is correct that the chronology is crucial to understanding the Legislature's intent.

1. In 1993, the IWC amended Wage Order 5 to allow healthcare industry employees to waive one meal period on shifts longer than 8 hours. Section 11(C) of IWC Wage Order 5-1989, as amended in 1993, provided in pertinent part: "[E]mployees in the healthcare industry who work shifts in excess of eight (8) total hours in a workday may voluntarily waive their right to a meal period."

The IWC explained in its 1993 "Statement as to the Basis of Amendments to Sections 2, 3, and 11 of Industrial Welfare Commission Order No. 5-89" that this provision permits healthcare employees to "waiv[e] 'a' meal period or 'one' meal period,

not 'any' meal period" and that, "[s]ince the waiver of one meal period allows employees freedom of choice combined with the protection of at least one meal period on a long shift, on June 29 1993, the IWC adopted language which permits [healthcare] employees [to] waive a second meal period."

2. Toward the end of the administration of Governor Pete Wilson, the IWC amended its wage orders to eliminate the requirement that employers pay daily overtime after 8 hours of work. This elimination of daily overtime was reflected in new wage orders effective January 1, 1998, including IWC Wage Order 5-1998. IWC Wage Order 5-1998 also extended the healthcare industry meal period waiver provision to cover all employees covered by Wage Order 5, not just employees in the healthcare industry.

3. After the election of Governor Gray Davis, the Legislature adopted Assembly Bill 60 (1999), the "Eight-Hour-Day Restoration and Workplace Flexibility Act of 1999."

Assembly Bill 60 immediately reinstated the wage orders that had been issued in 1993, including the 1993 version of IWC Wage Order 5, which contains the healthcare employee meal period exemption, pending the issuance of new wage orders that would be consistent with Assembly Bill 60: "Wage Orders number 1-98, 4-98, 5-98, 7-98, and 9-98 adopted by the Industrial Welfare Commission are null and void, and Wage Orders 1-89, 4-89 as amended in 1993, 5-89 as amended in 1993, 7-80, and 9-90 are reinstated until the effective date of wage orders issued pursuant to [AB 60]." AB 60 (1999), §21.

Assembly Bill 60 directed the IWC to hold public hearings and adopt new wage orders consistent with Assembly Bill 60 by no later than July 1, 2000. AB 60 (1999), §11 ("The Industrial Welfare Commission shall, at a public hearing to be concluded by July 1, 2000, adopt wage, hours, and working conditions orders consistent with this chapter without convening wage boards, which orders shall be final and conclusive for all purposes.").

Assembly Bill 60 also added Labor Code §512, which requires a second meal period on shifts longer than 10 hours, and allows waiver of the second meal period only if the shift will not exceed 12 hours. AB 60 (1999), §6. But Assembly Bill 60 gave the IWC authority to deviate from Labor Code §512's requirements in its wage orders: "*Notwithstanding any other provision of law*, the Industrial Welfare Commission may adopt or amend working condition orders with respect to break periods, meal periods, and days of rest for any workers in California consistent with the health and welfare of those workers." AB 60 (1999), §10 (adopting Labor Code §516) (emphasis supplied).

4. The IWC, which now included members appointed by Governor Davis, fulfilled its duties under AB 60 by adopting new wage orders on June 30, 2000, including Wage Order 5-2000, which contains the current version of the healthcare industry meal period waiver provision in Section 11(D). The adoption of Wage Order 5 followed public meetings at which dozens of representatives of the healthcare industry testified. The final language of IWC Wage Order 5 reflected a compromise between labor and management that the IWC adopted by a 5-0 vote. *See* Transcript, June 30, 2000, at pp. 12-25, available at www.dir.ca.gov/iwc/PUBHRG6302000.pdf.

5. In August 2000, two months after adoption of IWC Wage Order 5-2000, the Assembly and the Senate passed Senate Bill 88 (2000) by unanimous votes, and that bill became immediately effective when signed into law by Governor Davis on September 19, 2000. The main purpose of Senate Bill 88 was to exempt from overtime requirements certain professional employees in the computer software industry and certain certified nurse midwives, certified nurse anesthetists, and certified nurse practitioners. SB 88 (2000), §§1-3.

Senate Bill 88 also amended Labor Code §516 to take away the IWC's authority to adopt and amend Wage Orders in ways that would deviate from the standards set by Labor Code §512. The change was as follows:

> 516. ~~Notwithstanding any other provision of law~~ *Except as provided in Section 512*, the Industrial Welfare Commission may adopt or amend working condition orders with respect to break periods, meal periods, and days of rest for any workers in California consistent with the health and welfare of those workers.

SB 88 (2000), §4 (new language in *italics*; language removed in ~~strikeout~~).

As explained above, when the Legislature adopted Senate Bill 88 to take away the IWC's authority to deviate from Labor Code §512, the IWC already had exercised its authority to adopt IWC Wage Order 5-2000, which would become effective on October 1, 2000. Moreover, the healthcare industry meal period waiver provision in Wage Order 5-2000 was essentially a continuation of the same provision in Wage Order 5-1989, as amended in 1993, which the Legislature itself in Assembly Bill 60 had "reinstated until the effective date of wage orders issued pursuant to [AB 60]." AB 60 (1999), §21.

Nothing in the text of Senate Bill 88 (2000) reflects an intent to retroactively take away the authority the IWC already exercised on June 30, 2000 when it adopted

Wage Order 5-2000 to meet the deadline set by the Legislature in Assembly Bill 60 (1999). Nor does the legislative history of Senate Bill 88 reflect any intent to eliminate the healthcare meal period waiver provision that had existed since 1993 and that the IWC had recently decided to maintain.

The Court of Appeal decision reasons that the amendment of Labor Code §516 that was made by Senate Bill 88 applies to Wage Order 5-2000 because Wage Order 5-2000 had not yet become effective when Governor Davis signed Senate Bill 88:

> [H]ospital argues the amended version of section 516 is irrelevant, because Wage Order No. 5 was promulgated on June 30, 2000, *before* the September 19, 2000 amendment to section 516 which narrowed the IWC's authority. Again hospital is mistaken. The September 19, 2000 amendment was adopted as an urgency measure and became effective that same day. (Sen. Bill No. 88 (1999-2000 Reg. Sess.); Stats. 2000, ch. 492, § 4 (SB 88).) But Wage Order No. 5 first became effective on October 1, 2000, *after* the September 19, 2000 amendment. (Cal. Code Regs., tit. 8, § 11050.) Therefore, Wage Order No. 5 is subject to the amended version of section 516.

Court of Appeal Opinion at 10 (emphases in original).

But Labor Code §516, which Senate Bill 88 amended, is a provision that addresses the IWC's authority to take certain actions. Section 516 provides for the circumstances in which "the Industrial Welfare Commission may adopt or amend working condition orders." Labor Code §516. By the time Senate Bill 88 was enacted, the IWC already had exercised its authority to "adopt" Wage Order 5-2000. Moreover, the IWC had done so to meet the deadline set by the Legislature itself in Assembly Bill 60 and had exercised authority to adopt meal break provisions that deviated from Labor Code §512 that the Legislature had given to the IWC in Assembly Bill 60.

Even if there is some ambiguity in the plain language of Senate Bill 88, moreover, the unanimous votes on Senate Bill 88 and the absence of any reference in the legislative history to an intent to abrogate the recently reaffirmed healthcare industry meal period waiver provision makes clear that Senate Bill 88 was not intended to undo what the IWC had just done. Rather, Senate Bill 88 was intended to take away the IWC's future authority to deviate from Labor Code §512 absent legislative authorization.

* * *

For the foregoing reasons, the Court should grant the petition for review.

Sincerely,

ALTSHULER BERZON LLP

By: Scott Kronland

Scott A. Kronland
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Attorneys for amici curiae
United Nurses Associations of
California/Union of Health Care
Professionals and Service Employees
International Union Local 121RN

PROOF OF SERVICE
Code of Civil Procedure §1013

CASE: *Gerard v. Orange Coast Memorial Medical Center*

CASE NO: California Supreme Court #S225205

I am employed in the City and County of San Francisco, California. I am over the age of eighteen years and not a party to the within action; my business address is 177 Post Street, Suite 300, San Francisco, California 94108. On April 3, 2015, I served the following document(s):

Amicus Letter to the Supreme Court

on the parties, through their attorneys of record, by placing true copies thereof in sealed envelopes addressed as shown below for service as designated below:

By First Class Mail: I placed the envelope, sealed and with first-class postage fully prepaid, for collection and mailing following our ordinary business practices. I am readily familiar with the practice of Altshuler Berzon LLP for the collection and processing of correspondence for mailing with the United States Postal Service. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Mail Postal Service in San Francisco, California, for collection and mailing to the office of the addressee on the date shown herein.

ADDRESSEE	**PARTY**
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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. Executed this April 3, 2015, at San Francisco, California.

Jean Perley

EXHIBIT N

No. S225205

IN THE

SUPREME COURT OF CALIFORNIA

JAZMINA GERARD, et al.,
Plaintiffs and Appellants,

v.

ORANGE COAST MEMORIAL MEDICAL CENTER,
Defendant and Respondent.

On Review from a Decision of the Court of Appeal of the State of California, Fourth Appellate District, Division Three, Case No. G048039

APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF AND PROPOSED BRIEF OF AMICI CURIAE UNITED NURSES ASSOCIATIONS OF CALIFORNIA/UNION OF HEALTH CARE PROFESSIONALS AND SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 121RN IN SUPPORT OF DEFENDANT AND RESPONDENT

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Pursuant to Rule of Court 8.208, I certify that no entity or person has an ownership interest of 10 percent or more in amicus curiae United Nurses Associations of California/Union of Health Care Professionals or amicus curiae Service Employees International Union Local 121RN. I further certify that I am aware of no person or entity, not already made known to the Justices by the parties or amici curiae, having a financial or other interest in the outcome of the proceedings that the Justices should consider in determining whether to disqualify themselves, as defined in Rule 8.208(e)(2).

Dated: January 7, 2016

By: */s/ Scott A. Kronland*
Scott A. Kronland

Attorneys for Amici Curiae United Nurses Associations of California/Union of Health Care Professionals and Service Employees International Union Local 121RN

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United Nurses Associations of California/Union of Health Care Professionals, NUHHCE, AFSCME, AFL-CIO ("UNAC/UHCP") and Service Employees International Union Local 121RN ("SEIU Local 1021RN") apply for leave to file the attached brief as amici curiae in support of defendant and respondent Orange Coast Memorial Medical Center.

Interest of the Amici Curiae

UNAC/UHCP represents more than 25,000 registered nurses ("RNs") and other healthcare professionals in California. UNAC/UHCP is affiliated with the National Union of Hospital and Health Care Employees, a national labor organization with thousands of healthcare members; the American Federation of State, County and Municipal Employees; and the American Federation of Labor and Congress of Industrial Organizations. UNAC/UHCP is party to 15 collective-bargaining agreements, covering 28 hospitals and numerous clinics throughout California. The majority of UNAC/UHCP's members are RNs who work 12-hour shifts with one unpaid meal break and waive the second unpaid meal break, as permitted by Industrial Welfare Commission ("IWC") Wage Order 5.

SEIU Local 121RN is a labor union representing about 8,500 RNs and other healthcare professionals employed at hospitals throughout Southern California. SEIU Local 121RN is affiliated with the Service Employees International Union ("SEIU"). SEIU Local 121RN is a party to 19 CBAs and is in the process of negotiating two additional CBAs. Nearly all of the RNs represented by SEIU Local 121RN work 12-hour shifts with one unpaid meal break and waive the second unpaid meal break, as permitted by IWC Wage Order 5.

Representatives from UNAC/UHCP and from SEIU were among the labor representatives who participated in the public hearings before the IWC that preceded its adoption of Wage Order 5-2000—which included the healthcare employee meal period waiver provision—by a 5-0 vote on June 30, 2000. The many collective bargaining agreements that UNAC/UHCP and SEIU Local 121RN have entered into since that time have been premised on the continuing validity of the healthcare employee meal period waiver provision.

Reasons Why the Proposed Brief Will Assist the Court

The main question presented by this case is whether the Legislature intended Senate Bill 88 (2000) to invalidate the health care employee meal period waiver provision that the IWC had adopted shortly before the Legislature enacted Senate Bill 88. Amici seek to assist the Court in answering that question by explaining the practical importance of the meal period waiver provision for RNs and by setting out the history of the IWC's adoption of the waiver provision in 1993 and again in 2000 after labor and management representatives testified at public hearings.

The proposed brief argues that the language of Senate Bill 88 does not reflect an intent to invalidate the healthcare employee meal period waiver provision that the IWC had just adopted. Moreover, the legislative history and contemporaneous reaction to the enactment of Senate Bill 88 are not consistent with an intent to invalidate the waiver provision: Senate Bill 88 was enacted by unanimous votes of the Assembly and the Senate; the health care industry meal period waiver provision is not mentioned in Senate Bill 88's legislative history; and the IWC did not amend Wage Order 5-2000 to remove the waiver provision after the enactment of Senate Bill 88. Additionally, the Legislature's recent enactment of Senate Bill 327 (2015) to endorse the continued validity of the waiver provision supports

the conclusion that the Legislature never intended to abrogate that provision.

Because the Court of Appeal erred in construing Senate Bill 88 to invalidate the waiver provision, this Court need not (and should not) address the question whether the Court of Appeal should have applied its decision only prospectively.[1]

Conclusion

The Court should grant the application for leave to file the proposed amicus curiae brief.

Dated: January 7, 2016

Respectfully submitted,

Scott A. Kronland
ALTSHULER BERZON LLP

by: */s/ Scott A. Kronland*
Scott A. Kronland

Attorneys for Amici Curiae United Nurses Associations of California/Union of Health Care Professionals and Service Employees International Union Local 121RN

[1] No party or counsel for a party in the pending appeal authored the proposed amicus brief in whole or in part or made a monetary contribution intended to fund the preparation or submission of the brief. No person or entity made a monetary contribution intended to fund the preparation or submission of the brief, other than the amici curiae, their members, or their counsel in the pending appeal.

BRIEF AMICI CURIAE OF UNITED NURSES ASSOCIATIONS OF CALIFORNIA/UNION OF HEALTH CARE PROFESSIONALS AND SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 121RN

INTRODUCTION

Under the California Labor Code, employees generally may not waive a second, 30-minute, uninterrupted, off-duty meal period if the employee's shift extends beyond 12 hours. *See* Labor Code §512. But Section 11(D) of Industrial Welfare Commission ("IWC") Wage Order 5 allows employees in the healthcare industry to waive one of the two required off-duty meal periods, even if a shift extends beyond 12 hours. The Court of Appeal ruled here that this special waiver provision applicable to healthcare employees was invalid because, in the Court of Appeal's view, Section 11(D) was inconsistent with statute.

After the Court of Appeal's decision, the Legislature enacted Senate Bill 327 (2015) by unanimous votes of the Assembly and Senate. Senate Bill 327 amended Labor Code Section 516 to provide: "Notwithstanding ... any other law ... the healthcare employee meal period waiver provisions in Section 11(D) of Industrial Welfare Commission Wage Orders 4 and 5 [are] valid and enforceable." The Legislature further declared that Section 11(D) always had been "valid and enforceable" and that Senate Bill 327 was intended only to clarify the law.

The amici submit that, as the unanimous enactment of Senate Bill 327 suggests, the Court of Appeal erred in its conclusion that the Legislature had intended to abrogate the special healthcare industry meal period waiver provision. As will be demonstrated below, the Court of Appeal made that error by not considering the language of Senate Bill 88 (2000) in its proper context. Because the Court of Appeal misinterpreted Senate Bill 88, this Court need not (and should not) consider whether the Court of Appeal decision should apply only prospectively.

ARGUMENT

I. The healthcare employee meal period waiver provision has great practical significance for registered nurses

Before turning to the statutory interpretation question at issue here, it facilitates analysis to begin by explaining why Section 11(D) of IWC Wage Order 5 is not an obscure provision but one that has everyday relevance for many registered nurses ("RNs").

Many RNs in healthcare facilities (including RNs working under collective bargaining agreements negotiated by the amici) are regularly scheduled for 12-hour shifts and take one unpaid 30-minute meal period during the shift. Rather than take a second, off-the-clock, 30-minute meal period during these 12-hour shifts, RNs voluntarily waive the second meal period and use their shorter, paid rest breaks to go to the designated break room where there are refrigerators for staff to keep food for the shift (generally each floor has one) or to the hospital's cafeteria.

The scheduling of RNs for 12-hour shifts is commonplace because these shifts allow for more continuity of care and, as many RNs are parents, more days off to care for children. The trade-off between longer shifts and fewer work days is a recruitment tool for hospitals and has attracted professionals to a physically and emotionally challenging job.

Because of important patient care demands, RNs often must work past the end of a scheduled 12-hour shift. An RN may need to finish patient charting, which must be done on the same day and cannot wait until that RN's next shift or be done by the oncoming RN. Also, at each shift change, there typically is an overlapping 30-minute period when the off-going RN meets with the oncoming RN to provide a report and hand-off, and the time necessary to accomplish this may extend past 30 minutes if there is a large amount of information to share. Staff meetings also sometimes take place during shift changes. There also are situations in

which a unit is understaffed, and it may take additional time to find coverage before the RN can leave because RNs cannot abandon patients or violate the state-mandated nurse-to-patient staffing ratios. There are also situations in which an RN may need to stay with a patient being transferred to an operating room or intensive care unit until the transfer is completed and charting is finished.

RNs also may need to stay beyond the scheduled end of a shift if a patient has just been admitted to the unit shortly before shift change and the RN cannot immediately hand off the assignment. There are also situations in which chemotherapy has not been completed, and the RN must stay until it is finished. Or there may be an emergency during the shift, and an off-going RN may need to stay to replenish the crash cart so it will be ready for another emergency. In a med-surge department or post-surgical department, many patients have PCA (Patient-Controlled Analgesia) pumps, and there is a detailed workflow that the off-going and oncoming RNs must go through together for each patient, which can prevent the off-going RN from leaving immediately at the end of a scheduled shift. RNs also must stay if a narcotic log is wrong until the discrepancy is resolved. Or the RN may be in the middle of a family support conference or a patient's condition may decline unexpectedly, making it impossible for the RN to leave at the end of the shift.

In short, RNs have vital responsibilities for patient care, and those responsibilities can prevent RNs from leaving promptly at the end of a shift. The RNs receive overtime pay when they must work this overtime. But it would not make sense for an RN who had voluntarily waived a second 30-minute unpaid meal period to stop immediately for such a meal period if the RN's scheduled, 12-hour shift unexpectedly runs long — because the very reason the shift has run long is likely that the RN in the midst of necessary work. Nor would the RN typically want to take a 30-

minute, off-duty meal period at that point, rather than finish the necessary work and go home.

By providing healthcare industry employees involved in patient care with the opportunity to waive a second, off-duty meal period even when a shift runs longer than 12 hours, Section 11(D) of IWC Wage Order 5 takes into account the pattern of nurse shift schedules and the demands of patient care work. As such, the existence or non-existence of this special meal period waiver provision is an issue of everyday importance for nurses, their union representatives, and healthcare industry employers. Absent this waiver provision, shift scheduling and shift changes would have to be handled differently.

II. Prior to Senate Bill 88, the IWC had twice adopted the meal period waiver provision after public hearings

Before turning to the statutory interpretation question at issue here, it is also facilitates analysis to set out the history of the healthcare employee meal period waiver provision prior to the adoption of Senate Bill 88 (2000).

In 1993, the California Association of Hospitals and Health Systems petitioned the IWC to adopt a special meal period waiver provision for health care employees. The IWC held three public hearings on that petition, and "[t]he vast majority of employees testifying at public hearings supported the . . . proposal." *See* Statement as to the Basis of Amendments to Sections 2, 3, and 11 of IWC Wage Order No. 5-89.[2] The IWC therefore adopted an amendment to Wage Order 5 that allowed healthcare employees to waive second meal periods, regardless of the length of a shift. Section 11(C) of IWC Wage Order 5-1989, as amended in 1993, provided in pertinent part: "[E]mployees in the health care industry who work shifts in

[2] https://www.dir.ca.gov/iwc/Wageorder5_89_Amendments.html (last visited Jan. 6, 2016).

excess of eight (8) total hours in a workday may voluntarily waive their right to a meal period."

In 1997, toward the end of the administration of Governor Pete Wilson, the IWC amended its wage orders to eliminate the requirement that employers pay daily overtime after 8 hours of work. This elimination of daily overtime was reflected in new wage orders effective January 1, 1998, including IWC Wage Order 5-1998. IWC Wage Order 5-1998 also extended the healthcare employee meal period waiver provision to all employees covered by Wage Order 5 (which applies to the "public housekeeping industry"), not just employees in the healthcare industry.

The elimination of daily overtime was very controversial and, in 1999, after the election of Governor Gray Davis, the Legislature adopted Assembly Bill 60 (1999), the "Eight-Hour-Day Restoration and Workplace Flexibility Act of 1999." Assembly Bill 60 immediately reinstated the wage orders that had been issued in 1993, including the 1993 version of IWC Wage Order 5 (which contained the healthcare employee meal period waiver provision) pending the issuance of new wage orders that would be consistent with Assembly Bill 60. AB 60 (1999), §21 ("Wage Orders number 1-98, 4-98, 5-98, 7-98, and 9-98 adopted by the Industrial Welfare Commission are null and void, and Wage Orders 1-89, 4-89 as amended in 1993, 5-89 as amended in 1993, 7-80, and 9-90 are reinstated until the effective date of wage orders issued pursuant to [AB 60].").

Assembly Bill 60 also directed the IWC to hold public hearings and "adopt" new wage orders consistent with Assembly Bill 60 by no later than July 1, 2000. AB 60 (1999), §11 ("The Industrial Welfare Commission shall, at a public hearing to be concluded by July 1, 2000, adopt wage, hours, and working conditions orders consistent with this chapter without convening wage boards, which orders shall be final and conclusive for all purposes.").

Assembly Bill 60 also added Labor Code Section 512, which requires a second meal period on shifts longer than 10 hours, and allows waiver of the second meal period only if the shift will not exceed 12 hours. AB 60 (1999), §6. But Assembly Bill 60 gave the IWC authority to deviate from Labor Code Section 512's requirements for meal periods in its new wage orders, providing: "*Notwithstanding any other provision of law*, the Industrial Welfare Commission may adopt or amend working condition orders with respect to break periods, meal periods, and days of rest for any workers in California consistent with the health and welfare of those workers." AB 60 (1999), §10 (adopting Labor Code §516) (emphasis supplied).

On June 30, 2000, the IWC, which now included members appointed by Governor Davis, fulfilled its duties under AB 60 by adopting new wage orders, including Wage Order 5-2000. Wage Order 5-2000 contains the current version of the healthcare employee meal period waiver provision in Section 11(D), and that provision is essentially a continuation of the waiver provision first added in 1993. The adoption of Wage Order 5-2000 followed public meetings at which dozens of representatives of the healthcare industry testified, and the IWC adopted the final language by a 5-0 vote. *See* Transcript, June 30, 2000, at pp. 12-25, available at www.dir.ca.gov/iwc/PUBHRG6302000.pdf (last visited Jan. 6, 2016).[3]

[3] Plaintiffs assert that there was a brief period of time after the adoption of IWC Interim Wage Order 2000 (March 1, 2000) when the healthcare employee meal period waiver provision was not in effect. Answer Brief on the Merits at 10-11. But, under Section 7 of Interim Wage Order 2000, the Interim Wage Order's meal period requirements did not apply to employees covered by valid collective bargaining agreements, so there was no disruption of collectively bargained shift schedules during this brief time period. *See* www.dir.ca.gov/iwc/SummaryInterimWageorder2000.html (last visited Jan. 6, 2016).

As such, prior to the adoption of Senate Bill 88 (2000), the health care employee meal period waiver provision had been endorsed twice by the IWC after public hearings (in 1993 and 2000).

III. The language of Senate Bill 88 does not reflect an intent to overturn the meal period waiver provision

Having established that Section 11(D) of IWC Wage Order 5 addresses an issue of practical importance and that the IWC had adopted Wage Order 5 by unanimous vote on June 30, 2000, we turn to the Legislature's intent in enacting Senate Bill 88 (2000).

In August 2000, the Assembly and Senate passed Senate Bill 88 (2000) by unanimous votes, and the bill became immediately effective when signed into law by Governor Davis on September 19, 2000. The main purpose of Senate Bill 88 was to exempt from overtime requirements certain professional employees in the computer software industry and certain certified nurse midwives, certified nurse anesthetists, and certified nurse practitioners. SB 88 (2000), §§1-3.

Senate Bill 88 also amended Labor Code Section 516 to take away the IWC's authority to "adopt or amend" Wage Orders in ways that would deviate from the standards set by Labor Code Section 512. The change was as follows:

> 516. ~~Notwithstanding any other provision of law~~ *Except as provided in Section 512*, the Industrial Welfare Commission may adopt or amend working condition orders with respect to break periods, meal periods, and days of rest for any workers in California consistent with the health and welfare of those workers.

SB 88 (2000), §4 (new language in *italics*; language removed in strikeout).

The Court of Appeal reasoned that this amendment of Labor Code Section was intended to invalidate Section 11(D) of IWC Wage Order 5-

2000 because Wage Order 5-2000 had not yet become *effective* when Governor Davis signed Senate Bill 88:

> [H]ospital argues the amended version of section 516 is irrelevant, because Wage Order No. 5 was promulgated on June 30, 2000, *before* the September 19, 2000 amendment to section 516 which narrowed the IWC's authority. Again hospital is mistaken. The September 19, 2000 amendment was adopted as an urgency measure and became effective that same day. (Sen. Bill No. 88 (1999-2000 Reg. Sess.); Stats. 2000, ch. 492, § 4 (SB 88).) But Wage Order No. 5 first became effective on October 1, 2000, *after* the September 19, 2000 amendment. (Cal. Code Regs., tit. 8, § 11050.) Therefore, Wage Order No. 5 is subject to the amended version of section 516.

Slip. Op. at 10 (emphases in original).

The Court of Appeal's reasoning, however, is not supported by the language of Senate Bill 88. Labor Code Section 516, which Senate Bill 88 amended, is a provision that addresses the IWC's authority to take certain actions. Section 516 provides for the circumstances in which "the Industrial Welfare Commission may adopt or amend working condition orders." Labor Code §516. By the time Senate Bill 88 was enacted, the IWC already had exercised its authority to "adopt" Wage Order 5-2000. There was nothing more for the IWC to do. As such, removing some of the IWC's authority to "adopt or amend" wage orders would not affect Wage Order 5-2000.

Moreover, as stated above, the IWC had adopted Wage Order 5-2000 on June 30, 2000, to meet the July 1 deadline set by the Legislature itself in Assembly Bill 60: "The Industrial Welfare Commission shall, at a public hearing to be concluded by July 1, 2000, adopt wage, hours, and working conditions orders consistent with this chapter...." AB 60 (1999), §11. Thus, the Legislature would have understood the statutory term

"adopt" to refer to the vote by the IWC to approve a wage order, not to the date the wage order becomes effective

As such, the most natural interpretation of the plain words of Senate Bill 88 is that the Legislature did not intend to undo provisions that the IWC already had "adopt[ed]" to carry out the Legislature's own prior directive in Assembly Bill 60. Rather, the language of Senate Bill 88 suggests an intent to preclude the IWC from adopting or amending wage orders *in the future* in ways that deviated from Labor Code Section 512's meal period requirements.

IV. Had Senate Bill 88 been intended to overturn the meal period waiver provision, there would be some contemporaneous indication of that intent

Even if the Court of Appeal's reading of the plain language of Senate Bill 88 is a plausible one, the Court of Appeal failed to consider other indicia of legislative intent, which weigh strongly against the Court of Appeal's interpretation.

As set out above, the healthcare employee meal period waiver provision had been adopted by the IWC in 1993 after public hearings at which employees testified in support of the provision. The IWC then heard more testimony from labor and management representatives at more public hearings before including essentially the same waiver provision in Wage Order 5-2000. The Assembly and the Senate voted to enact Senate Bill 88 just two months after the IWC's adoption of Wage Order 5-2000.

Had Senate Bill 88 been intended to abrogate the meal period waiver provision the IWC had just voted to adopt, then the legislative history of Senate Bill 88 would have mentioned this issue. The healthcare industry in California is not small, and there were reasons why labor and management representatives had supported a special meal period waiver provision for the healthcare industry. The waiver provision also has great practical

significance for the schedules of RNs. *See* pp. 10-12, *supra*. Yet the policy issue of meal period waivers in the healthcare industry is not discussed at all in SB 88's legislative history.[4]

Moreover, if Senate Bill 88 had been intended to abrogate the meal period waiver provision, then SB 88 would likely have been a very controversial measure. Yet SB 88 was enacted by unanimous votes in the Assembly and Senate, and there is no record of any opposition to Senate Bill 88 by the labor and management groups that had just supported adoption of Wage Order 5-2000.

Even more, after the enactment of Senate Bill 88, the IWC did not change Wage Order 5-2000 (which had been adopted but was not yet effective) to remove the meal period waiver provision. Plaintiffs' theory is that Senate Bill 88's amendment of Labor Code Section 516 was intended to be a "swift and sure" "legislative rebuke" of the IWC for adopting the meal period waiver provision. Answer Brief on the Merits at 18. But, if the Legislature's purpose in adopting Senate Bill 88 was to invalidate that waiver provision, then it is likely that someone would have informed the IWC, which never removed the provision from the Wage Order or otherwise informed the public that the provision was invalid. A "legislative rebuke" is not effective if the agency being "rebuk[ed]" is never notified.

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[4] Plaintiffs point to a statement in the Senate Third Reading Analysis of Senate Bill 88 that the amendment of Labor Code Section 516 "clarifies" the law. Answer Brief on the Merits at 17. But, even on the Court of Appeal's reading of Senate Bill 88, the amendment to Labor Code Section 516 did *not* just "clarif[y]" the law in the sense of removing ambiguity—the amendment removed the IWC's authority to adopt wage order provisions that deviated from Labor Code Section 512. The question here is whether the Legislature intended this amendment of Labor Code Section 516 to nullify a wage order provision that the IWC already had adopted. As such, the description of the amendment in the Senate Third Reading analysis does not provide any guidance on the intent of the amendment.

Plaintiffs also do not offer a viable theory as to *why* the Legislature would have wanted to "rebuke" the IWC for including the healthcare employee meal period waiver provision in Wage Order 5-2000. The Legislature itself, in Assembly Bill 60, had given the IWC the authority to adopt meal period provisions for its new round of wage orders "[n]otwithstanding any other provision of law." Moreover, essentially the same healthcare employee meal period waiver provision was included in Wage Order 5 in 1993. This particular waiver provision was *not* part of the IWC actions taken at the end of the Wilson Administration that led to the enactment of Assembly Bill 60. Additionally, after Assembly Bill 60 was enacted, both labor and management representatives urged the IWC (which now included Governor Davis' appointees) to adopt Wage Order 5-2000 with the meal period waiver provision, and the IWC vote to adopt Wage Order 5 was unanimous.

Under these circumstances, the absence of any contemporaneous evidence that the Legislature intended Senate Bill 88 to make what would have been a significant, controversial, and puzzling change in policy, like the "dog that didn't bark," is powerful evidence that no such change was intended. *Cf. Chisom v. Roemer* (1991) 501 U.S. 380, 396 ("We reject that construction because we are convinced that if Congress had such an intent, Congress would have made it explicit in the statute, or at least some of the Members would have identified or mentioned it...."); *id.* at 396 n. 23 ("Congress' silence in this regard can be likened to the dog that did not bark. *See* A. Doyle, Silver Blaze, The Complete Sherlock Holmes 335 (1927)."); *Church of Scientology of California v. I.R.S.* (1987) 484 U.S. 9, 17-18 ("All in all, we think this is a case where common sense suggests, by analogy to Sir Arthur Conan Doyle's "dog that didn't bark," that an amendment having the effect petitioner ascribes to it would have been differently described by its sponsor, and not nearly as readily accepted by

the floor manager of the bill."); *Koons Buick Pontiac GMC, Inc. v. Nigh* (2004) 543 U.S. 50, 63 (similar reasoning).

V. The Legislature's unanimous endorsement of the meal period waiver provision makes it unlikely the Legislature intended to repudiate that provision

While the views of the current Legislature are not dispositive as to the intent of a prior Legislature, the enactment of Senate Bill 327 (2015) to endorse the continued validity of the healthcare employee meal period waiver provision also points strongly to the conclusion that the Legislature did not intend Senate Bill 88 to invalidate that provision.

Senate Bill 327 was enacted as an urgency measure by unanimous votes of the Assembly and the Senate, with the support of a long list of labor and management groups, including the amici and the California Hospital Association. *See* Senate Floor Analysis of SB 327 (Sept. 11, 2015). Plaintiffs have not pointed to any change in the healthcare industry that would explain why the Assembly and Senate would unanimously vote to endorse the continued validity of the meal period waiver provision now, if the Legislature previously had intended to "rebuke" the IWC for adopting that provision. Answer Brief on the Merits at 18.

CONCLUSION

The Court of Appeal's ruling about the validity of the healthcare employee meal period waiver provision should be reversed.

Dated: January 7, 2016

Respectfully submitted,

ALTSHULER BERZON LLP

by: */s/ Scott A. Kronland*
Scott A. Kronland (SBN 171693)

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CERTIFICATE OF WORD COUNT

I hereby certify pursuant to Rule 8.520(c)(1) of the California Rules of Court that the foregoing brief is proportionally spaced, has a typeface of 13 points or more, and contains 3,687 words, excluding the cover, tables, signature block, and this certificate, which is fewer than the number of words permitted by the Rules of Court. Counsel relies on the word count of the word processing program used to prepare this brief.

Dated: January 7, 2016

By: */s/ Scott A. Kronland*
Scott A. Kronland

Attorneys for Amici Curiae United Nurses Associations of California/Union of Health Care Professionals and Service Employees International Union Local 121RN

PROOF OF SERVICE

Code of Civil Procedure §1013

CASE: *Gerard v. Orange Coast Memorial Medical Center*

CASE NO: California Supreme Court #S225205

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Application for Leave to File Amici Curiae Brief and Proposed Brief of Amici Curiae United Nurses Associations of California/Union of Health Care Professionals and Service Employees International Union Local 121RN in Support of Defendant and Respondent

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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. Executed this January 7, 2016, at San Francisco, California.

/s/ Jean Perley
Jean Perley

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 2029 Century Park East, Suite 3500, Los Angeles, California 90067-3021. On December 2, 2016, I served the following document:

***AMICUS CURIAE* CALIFORNIA HOSPITAL ASSOCIATION'S MOTION FOR JUDICIAL NOTION IN SUPPORT OF SUPPLEMENTAL BRIEF**

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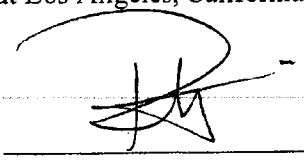

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Case No. S225205

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Superior Court

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I am employed in the County of San Diego; I am over the age of eighteen years and not a party to the within entitled action; my business address is 501 West Broadway, Suite 1900, San Diego, CA 92101.

On October 12, 2017, I served the following document(s) described as

COMPILATION OF EXHIBITS FOR RESPONDENT ORANGE COAST MEMORIAL MEDICAL CENTER'S MOTION FOR JUDICIAL NOTICE

on interested party(ies) in this action by placing true copies thereof enclosed in sealed envelopes and/or packages addressed as follows:

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

Executed on October 12, 2017 at San Diego, California.

Pamela Parker

Pamela Parker