



EMPLOYMENT SYSTEMS  
AB 60 FACT SHEET

The “Eight-Hour Day Restoration and Workplace Flexibility Act”, generally known, and used herein, as AB60 took effect on January 1, 2000. A recent “Interim Wage Order”, issued by the Industrial Welfare Commission, has helped clarify the administration and regulatory requirements of the law. It also created a few new conditions. The Interim Wage Order and other information about AB60 and existing wage orders can be accessed through the website of the Department of Industrial Relations: <http://www.dir.ca.gov/>.

**OVERTIME:** AB60 reinstates previous overtime payment regulations and expands upon them as follows:

- Overtime is paid at the rate of one and one-half times an employee’s regular rate of pay for any work performed beyond eight hours in a work day.
- Overtime at time and one half is also required for any work performed beyond forty hours in a normal work week.
- Finally, over time pay at time and one-half is required for the first eight hours of work performed on the seventh consecutive day of work in a regular work week (whether or not the employee had already worked 40 hours).

AB60 adds requirements for paying overtime at a doubletime rate (twice the employee’s normal hourly rate of pay) for:

- Hours worked beyond twelve hours in a regular work day.
- Hours worked beyond the first eight hours on the seventh consecutive day of work in a work week.

The overtime requirement has these additional conditions and modifications:

- Hours that are paid at an overtime premium (1½ times or doubletime) are not counted towards the forty hour threshold in a work week.
- The overtime rate for a full time, salaried, non-exempt employee is calculated by using one fortieth of the employees weekly rate of pay.
- Hours worked beyond forty in a work week are hours actually worked, not hours paid, ie., paid sick leave or holiday time do not count towards the 40 hour threshold in a work week.

**COVERAGE/EXEMPTIONS:** The “Interim Wage Order” has clarified some of the coverage and coverage exemptions that apply to AB60:

- AB60 applies to private sector employees; public sector employees are exempted from this law.
- Generally, agricultural workers (covered by the applicable, existing Wage Order) are currently exempted, but the penalties in AB60 apply to the employers.
- Employees who are covered by a collective bargaining agreement (Union Contract) that states the wages, hours and working conditions of employees, and provides a premium wage rate for overtime, and has a regular hourly rate of pay for employees that is **no less than** thirty percent higher than the state minimum wage (currently \$5.75 per hour) are exempt from the daily overtime, alternative
- workweek, make-up time, and meal period regulations contained in AB60 (and as clarified in the Interim Wage Order).

- Employees who are employed in an administrative, executive, or professional capacity are exempt from overtime coverage, provided that they meet the exemption test, and that they earn a monthly salary of **not less than twice** the minimum wage (that amount currently is \$23,920 per year).
- Registered Nurses and Pharmacists are no longer exempted as professionals under the new regulations.
- The Interim Wage Order amplifies the coverage of AB60 by stating that the overtime requirements apply to on-site construction workers, workers engaged in drilling work, logging work, and in various mining work situations (see the Interim Wage Order, Section 1, for specifics).
- In July, 2000, additional wage order clarification will be issued for employees in the ski industry, stable workers in the horseracing industry, employees of licensed hospitals, and the commercial fishing industry.

**ALTERNATIVE WORK SCHEDULES:** AB60 contains "Workplace Flexibility" provisions with regards to alternative work schedules. Alternative work schedules may involve a work day that is longer than 8 hours, but no longer than 10 hours, without incurring the daily overtime payment requirement, as long as the schedule is 40 hours or less per week (such as the 4/10 or 9/90 schedules). The Interim Wage Order provides additional guidance for implementation and administration of such schedules, including on how to hold an election and where to report the results. All of the conditions pertaining to alternative work schedules cannot be itemized in this brief fact sheet. However, key considerations are:

- An employer may propose an alternative workweek schedule, or a menu of schedules, to a work unit. The schedules should specify the hours and days involved.
- Two thirds of the employees affected by the alternative schedule must ratify it by a secret ballot. The results of the election must be sent to the State Division of Labor Statistics and Research within 30 days after the results are final. The communication must include the following information:
  - The company name, phone #, address, and contact person.
  - The date of the election.
  - A statement of the passage or failure of the election.
  - General election statistics (eg., 50 out of 60 voting employees approved...).
  - Description of the actual alternative schedule that was the subject of the election.
  - If more than one employee voted, a statement that the vote was a written, secret ballot that passed by at least a 2/3 vote; if only one employee voted, a statement that the vote was a written ballot and the one person voted for it.
  - Actual ballots are not mailed, but the information listed above is sent to Division of Labor Statistics and Research, Attention: Alternative Workweek Election Results, P.O. Box 420603, San Francisco, CA 94142. The phone number for questions is 916-322-0167.
- Once an alternative schedule is established, any work that the employee performs beyond the normal schedule is paid at time and one half, up to 12 hours, and double time beyond 12 hours. Also, any time worked beyond 40 hours in an alternative-schedule work week is paid at time and one half. If the employee works on a day beyond the established schedule, the first 8 hours are at time and one half, and work thereafter is at double time. The only exception is "make-up time" discussed below.
- AB60 and the Interim Wage Order prohibit an employer from reducing the hours of work for employees due to the adoption, repeal or nullification of an alternative work schedule.
- The Interim Wage Order contains additional, specific information on how to repeal an existing alternative schedule, and it contains specific information that affects the health care industry, ski industry employees, employees of licensed hospitals, stable hands in the horseracing industry, and commercial fishing industry employees. Those industries will have additional rules promulgated in July, 2000, according to the Department of Industrial Relations.



**MAKE-UP TIME:** This new concept is permitted but not mandated. Make-up time involves time that an employee has missed in the normal work week that can generally be "made up" without the overtime pay rate required. There are conditions and restrictions, however:

- Make-up time must occur in the same work week that the work was missed.
- The time worked is not subject to overtime unless it is more than 11 hours in a day or results in more than 40 hours worked in a week.
- An employer may not encourage the use of make-up time.
- The employee must provide a signed, written request for each occasion of make-up time.

**MEAL PERIODS:** An unpaid meal break of 30 minutes is required if the work period is more than 5 hours (but it can be waived by mutual consent if the work period is only 6 hours long). A second, similar meal break is required if the work period is for more than 10 hours (but can be mutually waived if the work period is no more than 12 hours and the first meal break occurred).

**POSTING OF WAGE ORDERS:** With the issuing of the Interim Wage Order the following posting requirements are now in effect:

- Every California employer must post one (or more, if applicable) of the 15 Industrial Wage Orders that apply to their industry.
- AB60 repealed several Wage Orders that had been adopted after January 1, 1998 (Orders 1, 4, 5, 7, & 9). These are replaced, for now, with previous Orders 1-89, 4-89, 5-89, 7-80, and 9-90 (all as amended).
- Wage Orders 2, 3, 6, 8, 11, 13, 14, & 15 are to be continued to be posted.
- Additionally, the new, Interim Wage Order--2000 must be posted adjacent to the applicable Wage Order. Posting should be in a conspicuous place where employees can read them.

**PENALTIES:** In addition to any civil or criminal penalties that may apply (such as the fines of \$500 to \$10,000 for violation of child labor laws), the following penalties were established for violations of AB60:

- First violation: \$50 for each underpaid employee for each pay period during which the employee was underpaid, plus the recovery of lost wages.
- Subsequent violations: \$100 for each underpaid employee for each pay period during which the employee was underpaid, plus the recovery of lost wages.
- The Labor Commissioner can issue citations to employers who violate the law.
- Penalties apply to the employer or to any other person acting on behalf of the employer. Although the law is silent on the matter, the Industrial Welfare Commission has suggested that it is not the intent of that agency to penalize clerical support staff who are carrying out pay policies formulated by the employer.

**EMERGING ISSUES:** As with any new law of the magnitude of AB60, many specific applications of the rules and regulations involved will have a greater impact on certain industries or groups of employees than on others. One immediate area of impact of AB60, due to a change in the wording in the new law, as opposed to the wording of previous regulations, has been in the area of high tech, software development businesses. In defining "exemption" from overtime requirements, AB60 uses the term "salary" when applied to the professional (and administrative and executive) category of exemption. Because many high tech companies hire software professionals on an interim, hourly basis (and not in a salaried status), one of the first major impacts of AB60 has been to make highly paid, software professionals who are hired on an hourly basis, eligible for overtime. Prior to AB60, the overtime law was interpreted in a way that many,



highly paid computer workers were exempted from overtime as long as they met the minimum monthly "earnings" requirement. Presently, the three options for paying computer related professionals is to:

- limit the hours worked to 8 hours per day, if paid hourly, or
- pay premium overtime per AB60 and the Interim Wage Order, or
- pay the workers a monthly salary of at least twice the minimum wage (which would be \$1,993.33/mo.).

#### APPENDIX (11/2001)

The AB 60 Fact Sheet was prepared in May 2000. The current Wage Orders and other applicable information can be accessed directly at the website of the Industrial Welfare Commission: <http://www.dir.ca.gov/IWC/iwc.html>. At that site, click on Wage Orders 1-2001 through 15-2001, and then click on Wage Order No. 5-2001 for the Order that applies to restaurants and hotels. Subsequent to writing this fact sheet, changes were made in the regulations created by AB 60. These changes took effect as of January 1, 2001, and include:

- A computer professional exemption was created, but with very specific requirements which are noted in the Wage Orders.
- Several categories of Certified Nurse Practitioners were exempted as professionals.
- A penalty of 1-hour straight time pay has been imposed on an employer who denies an employee the required rest breaks or the required meal break.
- However, if a shift is 6 hours or less, a meal period may be waived by mutual consent, or a second meal break on a 12 hour shift may be waived under defined circumstances.
- Exemptions from overtime requirements have been tightened; and exempt employee (Administrative, Executive/Managerial, Professional) must perform exempt duties more than 50% of the time (be "primarily engaged in" is the term).
- Regulations on tips and gratuities were changed with regards to tips and gratuities charged on credit cards.
- Information on pay stubs was expanded in the area of piece work rates and multiple hourly rates earned by an employee (See Section 226 of the Labor Code).
- There was a minor change in "make-up time" regulations.
- Wage Orders Nos. 16-2001 and 17-2001 were added the previous 15 Orders.