

Lawyer Insights

Calif. 4-Day Workweek Proposal Would Fuel Employer Exodus

By Julia Trankiem and Timothy Kim
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California A.B. 2932, a new bill proposed by California Assembly Members Evan Low, D-Campbell, and Cristina Garcia, D-Bell Gardens, would amend Section 510 of the California Labor Code to change the workweek from the standard 40-hour workweek to a 32-hour workweek.

A.B. 2932's New Overtime Requirements

Presently, California employees are entitled to overtime pay for any time worked after eight hours in a day or 40 hours in a week. Overtime is paid at one and one-half times the employee's regular rate of pay.

California is one of the few states with the eight-hour daily overtime threshold. The remaining states all comply with the Fair Labor Standards Act, which only requires overtime after 40 hours in a week.

If passed, A.B. 2932 would make California the only state in the country to lower its 40-hour weekly overtime threshold to 32 hours, further cementing its status as the most anti-employer jurisdiction in the country. Employers with less than 500 employees in total would be exempt from A.B. 2932.

If passed, the law would mark the first change to the definition of the standard 40-hour workweek in the United States since 1926 — when the [Ford Motor Co.](#) first adopted a five-day, 40-hour workweek. However, since being proposed in February, the bill has been subject to controversy and criticism from assembly members, interest groups and media outlets.¹

A.B. 2932 Would Significantly Increase Costs on Employers

By reducing the weekly overtime threshold to 32 hours, A.B. 2932 would not actually limit the amount of time an employee can work, but instead would impose significant costs on employers regardless of whether the employee works 32 or 40 hours in a workweek.

Notably, A.B. 2932 provides that "[t]he compensation rate of pay at 32 hours shall reflect the previous compensation rate of pay at 40 hours, and an employer shall not reduce an employee's regular rate of pay as a result of this reduced hourly workweek requirement."

Under the plain language of this provision, an employer would be required under A.B. 2932 to pay the employee the same total compensation that they are presently earning at 40 hours for only 32 hours of work.

By way of example, an employee making \$15 per hour presently makes \$600 after 40 hours of work.

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Under A.B. 2932, this employee would be required to make \$600 after just 32 hours of work, meaning their hourly rate would become \$18.75 per hour — a 25% increase.

If the employer needs the employee to work overtime, the regular rate of pay — assuming no other forms of compensation in the calculation — would be at least \$28.12 per hour. A business would therefore be paying the employee \$28.12 for every hour worked on the fifth day — an 87% increase from \$15 per hour.

In this challenging economic and regulatory environment, such a significant rise in labor costs will not be sustainable for many businesses. Rather, such a large increase in labor costs will greatly reduce the ability of businesses — particularly small and medium-sized businesses — to hire or create new job positions and will therefore limit job growth in California.

A.B. 2932 Would Not Actually Increase Employee Flexibility

While A.B. 2932 would force employers to subsidize a backdoor increase in wages and overtime, there is no reason to believe that it will result in the imagined improvements to quality of life and work-life balance promoted by Garcia — particularly given that the bill does not address exempt employees.²

Thus, A.B. 2932 simply pays lip service to these goals rather than coming up with workable alternative solutions that could actually benefit both employers and employees in California.

For example, instead of imposing new costs on employers, the California Legislature could reform the state's unnecessarily rigid wage and hour laws to allow employees greater flexibility in their weekly schedules that would be better aligned with the modern workplace.

Currently, California's inflexible Labor Code, draconian penalty system and convoluted alternative workweek schedule process dissuade employers from allowing employees to have more flexibility during their workday. Indeed, many employers are hesitant to continue to offer telecommuting after the pandemic precisely because California's wage and hour laws were not designed with telecommuting employees in mind.

However, any failure by employers to adhere to these rules could immediately trigger penalties and attorney fees under various Labor Code provisions. Rather than increasing employee flexibility, A.B. 2932 will only serve to further fuel the ongoing employer exodus from California to more pro-business states.

A.B. 2932 Will Result in Reduced Hours for Hourly Workers

In all likelihood, the unintended consequence of A.B. 2932 will be a net reduction in hours for the vast majority of hourly workers. In fact, many businesses have already scaled back their hours as a result of increased costs and ongoing shortages in the labor market.

This will force employers to scale back hours even more so and will make many employers — facing a significant increase in labor costs — very reluctant to offer any hourly workers 40 hours of work per week.

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The Unclear Future of A.B. 2932

As of now, it is still unclear whether A.B. 2932 has a realistic chance of being enacted into law. The bill has proven to be controversial among assembly members during an election year and its progress has stalled. Recently, on April 29, A.B. 2932 was put on hold after the bill failed to meet legislative policy committee deadlines for consideration.

Thus, the bill has essentially been shelved for the remainder of this election year, while also keeping it open for a return next session. Neither Low nor Garcia have yet to announce a commitment to bring the bill back up next year for a committee vote.

All in all, A.B. 2932's proposed changes — which are unprecedented and a radical departure from understood norms — would result in significant increases in costs for employers, reduced hours for hourly employees and may not result in the hoped-for improvements to the quality of life for California workers.

Given the historic labor shortage that is ongoing, the exodus of employers and workers from California due to high costs, and raising inflation threatening a potential recession, the Legislature would be far better off reforming the state's unnecessary rigid wage and hours laws to allow employers and employees greater flexibility to set their own work schedules.

Notes

1. See, e.g., <https://www.sacbee.com/news/politics-government/capitol-alert/article260999362.html>; <https://californiaglobe.com/articles/32-hour-workweek-bill-is-punitive-attempt-to-force-ca-employers-to-increase-wages-and-pay-extra-overtime/>; <https://www.hcamag.com/us/specialization/employment-law/california-considers-four-day-workweek/402327>.
2. <https://www.sacbee.com/news/politics-government/capitol-alert/article260999362.html>.

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