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AB-1066 Agricultural workers: wages, hours, and working conditions. (2015-2016)

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Assembly Bill No. 1066

CHAPTER 313

An act to amend Section 554 of, and to add Chapter 6 (commencing with Section 857) to Part 2 of Division 2 of, the Labor Code, relating to employment.

[Approved by Governor September 12, 2016. Filed with Secretary of State September 12, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1066, Gonzalez. Agricultural workers: wages, hours, and working conditions.

Existing law sets wage, hour, meal break requirements, and other working conditions for employees and requires an employer to pay overtime wages as specified to an employee who works in excess of a workday or workweek, as defined, and imposes criminal penalties for the violation of these requirements. Existing law exempts agricultural employees from these requirements. Under existing law, the function of the Department of Industrial Relations is to, among other things, foster, promote, and develop the welfare of the wage earners of California, to improve their working conditions, and to advance their opportunities for profitable employment.

This bill would remove the exemption for agricultural employees regarding hours, meal breaks, and other working conditions, including specified wage requirements, and would create a schedule that would phase in overtime requirements for agricultural workers, as defined, over the course of 4 years, from 2019 to 2022, inclusive. Beginning January 1, 2022, the bill would require any work performed by a person, employed in an agricultural occupation, in excess of 12 hours in one day to be compensated at the rate of no less than twice the employee's regular rate of pay. The bill would provide employers who employ 25 or fewer employees an additional 3 years to comply with the phasing in of these overtime requirements. The bill would authorize the Governor to delay the implementation of these overtime pay provisions if the Governor also suspends the implementation of a scheduled state minimum wage increase, as specified. The bill would require the Department of Industrial Relations to update a specified wage order for consistency with these provisions, as specified.

The bill would create a state-mandated local program by including agricultural employees as a class of employees protected by criminal penalties under existing law.

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.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 554 of the Labor Code is amended to read:

554. (a) Sections 551 and 552 do not apply to cases of emergency or to work performed in the protection of life or property from loss or destruction, or to any common carrier engaged in or connected with the movement of trains. 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, if in each calendar month the employee receives 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.

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

SEC. 2. Chapter 6 (commencing with Section 857) is added to Part 2 of Division 2 of the Labor Code, to read:

CHAPTER 6. Agriculture

857. This chapter shall be known and may be cited as the Phase-In Overtime for Agricultural Workers Act of 2016.

858. The Legislature finds and declares all of the following:

(a) Agricultural employees engage in back-breaking work every day.

(b) Few occupations in today's America are as physically demanding and exhausting as agricultural work.

(c) In 1938, the United States Congress enacted the federal Fair Labor Standards Act of 1938 (29 U.S.C. Sec. 201 et seq.), which excluded agricultural workers from wage protections and overtime compensation requirements.

(d) It is the intent of the Legislature to enact the Phase-In Overtime for Agricultural Workers Act of 2016 to provide any person employed in an agricultural occupation in California, as defined in Order No. 14-2001 of the Industrial Welfare Commission (revised 07-2014) with an opportunity to earn overtime compensation under the same standards as millions of other Californians.

859. For purposes of this chapter, "employed in an agricultural occupation" has the same meaning as in Order No.14-2001 of the Industrial Welfare Commission (revised 07-2014).

860. Notwithstanding any other provision of law, including Chapter 1 (commencing with Section 500):

(a) (1) Commencing January 1, 2019, except as provided in paragraph (2), any person employed in an agricultural occupation shall not be employed more than nine and one-half hours in any one workday or work in excess of 55 hours in any one workweek, unless the employee receives one and one-half times that employee's regular rate of pay for all hours worked over nine and one-half hours in any workday or over 55 hours in any workweek.

(2) This subdivision shall apply to an employer who employs 25 or fewer employees commencing January 1, 2022.

(b) (1) Commencing January 1, 2020, except as provided in paragraph (2), any person employed in an agricultural occupation shall not be employed more than nine hours in any one workday or work in excess of 50 hours in any one workweek, unless the employee receives one and one-half times that employee's regular rate of pay for all hours worked over nine hours in any workday or over 50 hours in any workweek.

(2) This subdivision shall apply to an employer who employs 25 or fewer employees commencing January 1, 2023.

(c) (1) Commencing January 1, 2021, except as provided in paragraph (2), any person employed in an agricultural occupation shall not be employed more than eight and one-half hours in any one workday or work in excess of 45 hours in any one workweek, unless the employee receives one and one-half times that employee's regular rate of pay for all hours worked over eight and one-half hours in any workday or over 45 hours in any workweek.

(2) This subdivision shall apply to an employer who employs 25 or fewer employees commencing January 1, 2024.

(d) (1) Commencing January 1, 2022, except as provided in paragraph (2), any person employed in an agricultural occupation shall not be employed more than eight hours in any one workday or work in excess of 40 hours in any one workweek, unless the employee receives one and one-half times that employee's regular rate of pay for all hours worked over eight hours in any workday or over 40 hours in any workweek.

(2) This subdivision shall apply to an employer who employs 25 or fewer employees commencing January 1, 2025.

861. Except as set forth in Section 860 and subdivision (a) of Section 862, all other provisions of Chapter 1 (commencing with Section 500) regarding compensation for overtime work shall apply to workers in an agricultural occupation commencing January 1, 2017.

862. (a) Beginning January 1, 2022, except as provided in subdivision (c), and consistent with Section 510, any work performed by a person, employed in an agricultural occupation, in excess of 12 hours in one day shall be compensated at the rate of no less than twice the employee's regular rate of pay.

(b) Consistent with Section 861, notwithstanding subdivision (a) or Section 863, the other provisions of Section 510 shall be applicable to workers in an agricultural occupation commencing January 1, 2019.

(c) Subdivision (a) shall apply to an employer who employs 25 or fewer employees commencing January 1, 2025.

863. (a) Notwithstanding Section 860 or 862, the Governor may temporarily suspend scheduled phase in of the overtime requirements set forth in Section 860, or subdivision (a) of Section 862 only if the Governor suspends scheduled minimum wage increases pursuant to clause (i) of subparagraph (A) of, and subparagraph (B) of, paragraph (3) of subdivision (d) of Section 1182.12.

(b) If the Governor makes a final determination to temporarily suspend scheduled phase in of the overtime requirements set forth in Section 860 or subdivision (a) of Section 862 for the following year, all implementation dates applicable to Section 860 and subdivision (a) of Section 862 that are suspended subsequent to the September 1 final determination date, consistent with clause (i) of subparagraph (A) of, and subparagraph (B) of, paragraph (3) of subdivision (d) of Section 1182.12, shall be postponed by an additional year, but the full implementation of the overtime requirements set forth in Section 860 or subdivision (a) of Section 862 shall in no event be later than January 1, 2022. The Governor's temporary suspension under this section shall be by proclamation.

(c) The Governor's authority to suspend the scheduled overtime requirements under this section shall end upon the phase in of the overtime requirements contained in subdivision (d) of Section 860, the phase in of the overtime requirements contained in subdivision (c) of Section 862, or January 1, 2025, whichever occurs first.

864. The Department of Industrial Relations shall update Wage Order No. 14-2001 to be consistent with this chapter, except that any existing provision in Wage Order 14-2001 providing greater protections or benefits to agricultural employees shall continue in full force and effect, notwithstanding any provision of this chapter.

SEC. 3. 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.