

JOB KILLER

April 6, 2022

The Honorable Evan Low
California State Assembly
1021 O St., Ste. 6110
Sacramento, CA 95814

**SUBJECT: AB 2932 (LOW) WORKWEEK: HOURS AND OVERTIME
OPPOSE/JOB KILLER- AS AMENDED MARCH 24, 2022**

Dear Assembly Member Low:

The California Chamber of Commerce respectfully **OPPOSES AB 2932 (Low)**, which has been labeled as a **JOB KILLER**. **AB 2932** imposes a tremendous cost on employers and includes provisions that are impossible to comply with, exposing businesses to litigation under PAGA. **AB 2932**'s impact on labor costs in California will discourage job growth in the state and likely reduce opportunities for workers.

AB 2932 Imposes Significant Costs on Employers by Reducing the Weekly Overtime Threshold to 32 Hours and Mandating that Employees' Base Rate of Pay Be Increased:

The additional labor costs imposed by **AB 2932** will be untenable for many businesses. 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 1.5 times the employee's regular rate of pay. Significantly, that is not the base rate of pay. The regular rate of pay is a complex calculation that takes into account bonuses, commission, and other forms of compensation.

California is one of the only states with the eight hours per day requirement. The remaining states all comply with the federal Fair Labor Standards Act (FLSA), which only requires overtime after 40 hours in a week. Now, California is proposing to be the only state to differ from the FLSA in two ways: both the daily eight hour requirement and lowering the 40 hour weekly overtime threshold to 32 hours. That is a minimum 10% increase in wages per employee per week.

But- **AB 2932** does not stop there. The language provides that "[t]he compensation rate of pay at 32 hours shall reflect the previous compensation rate of pay at 40 hours". This language may be interpreted as requiring the employer to pay the employee the same total compensation that they are presently earning at 40 hours for 32 hours of work. By way of example, an employee making \$20 per hour presently makes \$800 after 40 hours of work. Now, they would be required to make \$800 after just 32 hours of work, meaning their hourly rate would become \$25 per hour, a 25% increase. If the employer needs the employee to work overtime, the regular rate of pay¹, becomes \$37.50 per hour. A business would be paying \$37.50 for every hour worked on the fifth day, an 87.5% increase from \$20 per hour.

This significant rise in labor costs will not be sustainable for many businesses. Labor costs are often one of the highest costs a business faces. Such a large increase in labor costs will reduce businesses' ability to hire or create new positions and will therefore limit job growth in California. This is especially true now as businesses are still recovering from the impacts of COVID-19 and resulting rises in supply chain costs. The repeated assumption by the Legislature that businesses with more than 500 employees can absorb

¹ This assumes there is no other form of compensation for this employee that needs to be factored into the regular rate of pay calculation.

these costs is deeply flawed. It does not take into account that businesses often operate on thin profit margins and that the number of employees you have does not dictate financial success.

It is also likely that an unintended consequence of **AB 2932** will be a reduction in hours for workers. Many businesses have already scaled back their hours as a result of increased costs and labor shortages. This will force them to do so even more and will make them reluctant to offer workers 40 hours' worth of work.

AB 2932's Requirement that Employers Not Adjust an Employee's Regular Rate of Pay is Impossible to Comply With:

AB 2932 provides that "an employer shall not reduce an employee's regular rate of pay as a result of this reduced hourly workweek requirement." This is impossible to comply with. The regular rate of pay is not the base rate of pay set by the employer. It is a complex calculation that, for many employees, fluctuates from pay period to pay period. To calculate the regular rate of pay, you must include a number of different kinds of compensation, such as hourly earnings, commissions, and non-discretionary bonuses. If an employee earns a bonus for work performed in the prior month or quarter, the employer has to retroactively adjust the employee's regular rate of pay for those prior pay periods. The regular rate therefore fluctuates significantly depending on how much overtime an employee works and the performance or attendance bonuses or commissions they receive, much of which is dependent on the employee or general performance of the business in any given week, not factors solely under the employer's control. That rate will inevitably be reduced in some pay periods compared to others. Employers would face steep penalties under the Private Attorneys General Act (PAGA) for a violation that they have no ability to correct.

Instead of Burdening Employers with More Costs, the Legislature Should Provide More Flexible Work Options that Benefit Employers and Employees:

Like many of the bills and regulations that have been introduced over the past year, **AB 2932** again proposes that California's employers subsidize costs in the name of workplace flexibility instead of considering alternative solutions that could benefit both employers and employees. Instead of imposing new costs on employers, the Legislature should reform California's unnecessarily rigid wage and hour laws to allow employees flexibility in their weekly schedules that would better align with the modern workplace. Presently, California's inflexible Labor Code, steep penalty system, and convoluted alternative workweek schedule process dissuade employers from allowing employees to have more flexibility during their workday. Added costs such as split shift premiums, daily overtime, meal and rest break premiums, and a broad expense reimbursement requirement make workplace flexibility too expensive for employers to consider. Many employers are hesitant to continue to offer telecommuting after the pandemic because these wage and hour laws were not designed with telecommuting employees in mind. Any failure to adhere to certain rules immediately triggers penalties and attorney's fees under various Labor Code provisions, including PAGA.

Employees want flexibility, whether it be through a more flexible daily schedule, alternative workweek schedule, or the ability to continue to telecommute after the conclusion of the pandemic. Yet, bills that propose increased flexibility are often not even set for a hearing. Updating these laws to provide more opportunities for flexibility is an important issue that benefits both employees while not significantly raising costs on employers as proposed by **AB 2932**. This concept is very popular among California voters. In a recent survey conducted by the California Chamber of Commerce, **91%** of polled voters agree (56% strongly) that the state's labor laws should be changed to allow for more flexibility. As to specific changes:

- 88% support changing overtime requirements to allow individualized alternative workweek schedules.
- 82% support allowing employees to take rest periods at any time of their choosing.
- 80% support allowing employees to forgo their 30-minute meal period to go home earlier.
- 79% support allowing employees to split their shifts to accommodate personal needs.

The Legislature should thoughtfully consider these alternative solutions to provide workers with flexibility instead of simply continuing to raise costs on employers.

For these and other reasons, we respectfully **OPPOSE** your **AB 2932** as a **Job Killer**.

Sincerely,



Ashley Hoffman
Policy Advocate
California Chamber of Commerce

cc: Legislative Affairs, Office of the Governor

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