

## *Do you know the law regarding OVERTIME PAY?*

### **What constitutes a regular work day<sup>1</sup>?**

A regular workday is eight hours of labor in a 24-hour period.

### **If I work more than my regular 40-hour workweek<sup>2</sup>, to what overtime pay am I entitled?**

- Work in excess of **8 hours** in a workday, and any work in excess of **40 hours** in a workweek is compensated at a minimum rate of 1½ times the regular rate of pay.
- Work in excess of **12 hours** in a workday is compensated at a minimum rate of 2 times the regular rate of pay.
- If you work 7 days straight in one workweek, regardless of how many hours you worked during the first 6 days, you are entitled to overtime compensation for hours worked on the 7<sup>th</sup> day at the following rates:
  - 1 ½ times the regular rate of pay for the first 8 hours of work, and
  - 2 times the regular rate of pay for anything over 8 hours.
- However, if you work 7 days straight but the days overlap 2 workweeks, overtime for working 7 consecutive days does not apply.

### **Can my employer propose an alternative work schedule<sup>3</sup>?**

When proposed by the employer, employees may adopt a regularly scheduled alternative workweek that allows up to 10 hours of work per day within a 40-hour workweek without the payment of overtime. However, the proposal is only considered adopted when it receives approval from at least 2/3 of the affected employees, in a secret ballot election. Before the election, the employer must inform the employees of the overtime rights they will be waiving by the election of the new alternative work schedule.

### **Can the employees propose an alternative work schedule?**

Employees can propose an alternative work schedule but the employer must still comply with the requirements above and hold a secret ballot election.

### **What if I can't work the new work schedule?**

- Your employer is required to make a reasonable effort to find a work schedule, not to exceed 8 hours a day, for any employees eligible to vote in such an election and unable to work the schedule established by that election.
- The employer can, but is not required to, provide a work schedule of no less than 8 hours a day to accommodate an employee hired AFTER the date of the election and who is unable to work the adopted schedule.

[Over...]

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<sup>1</sup> Workday – Any consecutive 24-hour period commencing at the same time each day.

<sup>2</sup> Workweek – Any 7 consecutive days, starting with the same day each week. It is a fixed and regularly recurring period of 168 hours; 7 consecutive 24-hour periods.

<sup>3</sup> Alternative Work Schedule – Any regularly scheduled workweek requiring an employee to work more than eight hours in a 24-hour period.

### **Am I entitled to overtime pay while working an alternative work schedule?**

If you work a regularly scheduled alternative workweek of no more than 10 hours per day within a 40-hour workweek, then the following overtime pay entitlements apply:

- If you work more than 8 hours but less than 12 hours in a day, you are entitled to overtime compensation of a minimum of 1½ times the regular rate of pay **for any work in excess of the regularly scheduled hours established by the alternative work schedule** and for any work in excess of 40 hours a week.

*For example, if your regular workweek is four 10-hour days, and during one week you work 11 hours on one of those 4 days, you are entitled to overtime pay of 1 hour at 1½ times your regular rate of pay.*

- If you work in excess of 12 hours in a day, you are entitled to overtime compensation of no less than 2 times your regular rate of pay. You are also entitled to 2 times your regular rate of pay for any work in excess of eight hours on those days worked beyond your regular alternative schedule.

### **EXCEPTIONS TO THE LAW**

The following types of employees are generally not protected by the overtime laws described in this FACT SHEET\*:

- Union members covered by a collective bargaining agreement that provides for a wage more than 30% above minimum wage
- Exempt employees
- Some employees in the computer industry
- Some medical staff

**\*Note:** The exemptions listed above should only be used as a guide. If you fall into one of these categories, overtime laws **may** still apply because the legal definition of an exempt employee is very complex and beyond the scope of this FACT SHEET. If you are unsure of your status, please contact the Legal Aid Society – Employment Law Center. (*see below*)

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**For more information about your rights under the law, contact:**

Legal Aid Society – Employment Law Center: [www.las-elc.org](http://www.las-elc.org)

*Unemployment & Wage Claims Helpline: (415) 864-8070; (415) 864-8848 (main number)*

This FACT SHEET is a publication of the Labor Project for Working Families and is intended to provide accurate information regarding the legal rights of California employees. However, do not rely on this information without consulting the Legal Aid Society – Employment Law Center, or another attorney, about your legal rights under the law. Reprints permitted with acknowledgment. © March 2008.

This FACT SHEET is also available in Chinese and Spanish. Please call (510) 643-7088 or email [info@working-families.org](mailto:info@working-families.org).