

Calif. Employers Note: Industrial Welfare Commission Is Back

By **Denisha McKenzie and John Keeney** (August 4, 2023)

On July 10, California Gov. Gavin Newsom signed A.B. 102 into law, which took effect immediately.

Appropriation bills such as A.B. 102 provide authorization to spend state and federal funds on specific government departments, agencies and programs.

While these appropriations bills are typically of little interest to private employers, A.B. 102 is a notable bill for private employers as it allocates a full \$3 million to the state's Industrial Welfare Commission to regulate wages, hours and working conditions of California employees.

Armed with millions in funding, the IWC will reconvene for the first time since 2004.

A Brief History of the IWC

The IWC, originally established in 1913 to regulate the working conditions of women and children in California, is now one of the state administrative agencies responsible for regulating wages, hours and working conditions of all employees in California workplaces.[1]

Shortly after its formation, the IWC began implementing wage orders, creating various minimum wage and hour requirements. In 1916, the IWC adopted its first two wage orders to regulate the fruit and vegetable canning industry, detailing requirements for on-site restrooms and "at least one hour for noon day meal." [2]

In the 1970s, the IWC wage orders faced several challenges on the grounds that they violated the prohibition on gender discrimination under Title VII of the Civil Rights Act.[3] As a result, in 1972 and 1973, the California Legislature amended the relevant California Labor Code provisions to authorize the IWC to establish minimum wages, maximum hours, and working conditions for men and women.[4]

In 1976, the IWC's authority to regulate the working conditions of most private employers in the Golden State became rooted in the California Constitution. Article 14, Section 1 of the California Constitution states: "The Legislature may provide for minimum wages and for the general welfare of employees and for those purposes may confer on a commission legislative, executive, and judicial powers." [5]

California Labor Code, Section 1173, enacted in 1998, also provides:

It is the continuing duty of the Industrial Welfare Commission ... to ascertain the wages paid to all employees in this state, to ascertain the hours and conditions of labor and employment in the various occupations, trades, and industries in which employees are employed in this state, and to investigate the health, safety, and welfare of those employees.[6]



Denisha McKenzie



John Keeney

In 1999, Gov. Gray Davis signed A.B. 60 into law, which, among other things, restored daily overtime requirements that had previously been repealed under Gov. Pete Wilson.[7]

A.B. 60 provided that the IWC "shall, at a public hearing to be concluded by July 1, 2000, adopt wage, hours, and working conditions orders consistent with this chapter without convening wage boards, which orders shall be final and conclusive for all purposes." In accordance with A.B. 60, the IWC issued a series of industry-specific wage orders in 2000 and 2001.

The IWC established 17 industry-specific wage orders, setting forth many important requirements that California employers must follow today. The IWC wage orders provide additional restrictions and exemptions to California wage and hour laws for industries such as manufacturing,[8] mercantile[9] and agriculture,[10] among others.

While the wage orders the IWC created remain in effect today, the IWC itself was defunded in July 2004 and has not convened as regulatory body since that time, making the passage of A.B. 102 a significant development for California employers as it effectively revives the agency.

The IWC's Importance to California Employers Moving Forward

With the revival of the IWC under A.B. 102, many of the wage orders that have been in place for decades, and are arguably outdated in many respects, will likely be changed by the regulatory body in ways that can have significant effects on how California employers operate.

These changes could affect laws such as meal and rest break requirements, alternative workweek schedules, employee record-keeping, and penalties for violations, among other things.

In addition to updating the current wage orders, the IWC is authorized to create new wage orders expanding beyond the industries currently covered. California Labor Code, Section 1173, states:

The commission may, upon its own motion or upon petition, amend or rescind any order or portion of any order or adopt an order covering any occupation, trade, or industry not covered by an existing order pursuant to this chapter.[11]

Moreover, A.B. 102 specifies that the funding shall be available for the IWC to convene industry-specific wage boards and adopt new and revised orders. Under A.B. 102, the IWC shall convene by Jan. 1, 2024, with any final recommendations for wages, hours and working conditions in new wage orders adopted by Oct. 31, 2024.

Notably, before the IWC adopts any new rules, regulations or policies, California Labor Code, Section 1173, notes that the agency must

consult with the [California] Occupational Safety and Health Standards Board to determine those areas and subject matters where the respective jurisdictions of the commission and the Occupational Safety and Health Standards Board overlap.[12]

In the case of overlapping jurisdictions, "the Occupational Safety and Health Standards Board shall have exclusive jurisdiction, and rules, regulations, or policies of [the IWC] have

no force or effect."^[13]

Employers should expect material pro-employee changes in 2024, given that A.B. 102 specifies that any future IWC orders "shall not include any standards that are less protective than existing state law."

Based on the legislative language and California's historical employee-friendly legal landscape, these changes will likely provide more restrictions for California employers and more protections for California employees.

In addition, it is possible that the IWC will be used to increase the state minimum wage, either statewide or in certain industries. The minimum wage in California is currently \$15.50 per hour, which is more than double the current federal rate.

Similarly, the IWC wage orders currently regulate minimum standards regarding meal periods, rest breaks and overtime requirements, which also may be subject to further pro-employee changes by the IWC.

Conclusion

A.B. 102 revives a layer to the ever-evolving and challenging legal landscape for California employers.

The appropriation language under A.B. 102 brings the IWC back from oblivion. However, it limits the administrative entity's authority to make pro-employer revisions and updates to the outdated wage orders because the bill states that newly adopted orders "shall not include any standards that are less protective than existing state law."

The limitation adds to the already difficult wage and hour requirements faced by private sector California employers.

Denisha P. McKenzie is a partner and John S. Keeney is an associate at CDF Labor Law LLP.

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[1] Industrial Welfare Com. v. Sup. Ct., 27 Cal.3d 690 (1980).

[2] IWC former wage order No. 1, "Fruit and Vegetable Canning Industry" (Feb. 29, 1916).

[3] See, e.g., Rosenfeld v. Southern Pacific Co. (9th Cir. 1971) 444 F.2d 1219, 1225-1227 (9th Cir. 1971); Homemakers, Inc. of L.A. v. Division of Indust. Welf., 356 F.Supp.1111 (N.D. Cal. 1973), affd. 509 F.2d 20 (9th Cir. 1974), cert. den. 423 U.S. 1063, 96 S.Ct. 803 (1976).

[4] Indus. Welfare Com. v. Superior Ct., 27 Cal. 3d 690, 701 (1980).

[5] Cal. Const. Art. XIV, § 1.

[6] Cal. Lab. Code § 1173.

[7] *Small v. Sup. Ct.*, 148 Cal. App. 4th 222, 230 (2007).

[8] Wage Order No. 1.

[9] Wage Order No. 7.

[10] Wage Order No. 14.

[11] Cal. Lab. C., §1173.

[12] *Id.*

[13] *Id.*