

S E Y F A R T H S H A W
M E M O R A N D U M

TO:	David Nevins, President, CALIFORNIA AMBULANCE ASSOCIATION
FROM:	Robert W. Tollen
DATE:	December 13, 2000
RE:	Collective Bargaining Agreement Exception to Statutory Daily Overtime

On January 1, 2001, the California minimum wage will increase from \$ 5.75 to \$ 6.25 per hour. Under California law, this will impact the exception from statutory daily overtime for collective bargaining agreements. In order to qualify for the exception, collective bargaining agreements will have to provide regular wage rates of not less than \$8.125 per hour.

Statutory Daily Overtime Requirements. For most employers, California requires payment of time-and-a-half for time worked in excess of 8 hours per day and double-time for time worked in excess of 12 hours per day.

Exception for Qualifying Collective Bargaining Agreements; Conditions. Labor Code § 514 allows an exception for employees covered by a qualifying collective bargaining agreement. In order to qualify, a collective bargaining agreement must:

- provide a regular hourly rate of pay of not less than 30 percent more than the state minimum wage, and
- provide “premium” wage rates for all “overtime hours” worked.

The Required Hourly Regular Rate of Pay. Presently, the state minimum wage is \$ 5.75. Therefore, presently, a qualifying collective bargaining agreement must provide regular rates of pay of not less than \$ 7.475 per hour. Effective January 1, 2001, when the state minimum wage increases to \$ 6.25 per hour, a qualifying collective bargaining agreement must provide regular rates of pay of not less than \$ 8.125 per hour.

The “Premium” Rate and “Overtime Hours.” The rules for setting “premium” rates for overtime and for identifying “overtime hours” remain the same.

First, the “premium” rate does not have to be time-and-a-half or double-time. It may be any premium to which the parties agree, say, for example, 10 cents over the regular straight-time rate.

Second, the collective bargaining agreement may identify “overtime hours.” They do not have to be the same as statutory overtime hours. For example, the collective bargaining could identify overtime hours solely as time worked over 40 hours per week or time worked over ten hours per day.

Note: While Labor Code § 514 allows great flexibility with regard to identification of *overtime hours* and with regard to the *premium rate* applicable to them, it allows no flexibility with regard to the *regular rate* of pay. At present, the regular hourly rate of pay must be at least \$ 7.475 per hour. As of January 1, 2001, it must be at least \$ 8.125 per hour.

Ground Rules for Collective Bargaining. If the collective bargaining agreement currently provides a regular rate of pay under \$ 8.125 per hour, then, effective January 1, 2001, either (a) the rate must be increased to that level, or (b) the employer must pay *statutory* overtime rates. In either case, the employer must be aware of its rights and obligations with regard to the union under federal labor-management law.

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1. The regular hourly rate of pay may not be changed unless the employer and the union discuss it first and mutually agree to the change or bargain to a valid impasse.
2. If the contract is in mid-term *neither* side can require the other side to talk or to agree to changes, and a valid impasse is not possible. Talks and changes are possible only if *both* sides are willing.
3. If the expiration date of the agreement is at hand, each side is required to talk. Changes in the regular rate of pay, however, remain subject to bargaining and to mutual agreement or to valid impasse in bargaining.
4. If the employer and the union do not each agree to increase the wage rate to at least \$ 8.125 per hour, or reach a valid impasse in bargaining, then, effective January 1, 2001, the employer *must* pay statutory overtime rates, and the provisions in the collective bargaining agreement to the contrary are *overridden* by California law.
5. If the employer decides to keep regular rates under \$ 8.125 per hour, and to begin paying statutory daily overtime, the employer must notify the union before January 1 and must give the union time to discuss the situation with the employer. If the regular rate remains less than \$ 8.125 per hour, however, the union may not prevent the employer from paying statutory daily overtime, even if that means a unilateral change from the terms of the collective bargaining agreement.

As the above illustrates, there is a difference under the labor-management law between (a) changing the regular rate of pay and (b) changing daily overtime practices. The regular rate of pay may *not* be changed without mutual agreement of the employer and the union or a valid impasse in bargaining. Daily overtime practices, on the other hand, *must* be changed as of January 1, 2001, if the regular rate of pay is less than \$ 8.125, even though the union might not agree. If daily overtime practices are changed without the union's consent, because the regular rate is less than \$ 8.125, the union must still be notified in advance and must be given an opportunity to be heard. The employer may not rule out, in advance, any possibility that the union might be able to propose a solution that is acceptable to the employer and lawful.

Weekly Overtime Requirements: No Collective Bargaining Exception. California law and the federal Fair Labor Standards Act require time-and-a-half for time worked in excess of 40 hours per week. There is no exception for collective bargaining agreements. All employers must pay time-and-a-half for time worked in excess of 40 hours per week, regardless whether the employer is or is not party to a collective bargaining agreement.

Twenty-Four Hour Shifts for Employees Covered by a Collective Bargaining Agreement. Nothing has changed the law with regard to 24-hour shifts.

If a qualifying collective bargaining agreement allows 24-hour shifts at straight-time, separate 24-hour agreements with individual employees are not absolutely necessary, but they are a good extra-precaution.

An employer signatory to a collective bargaining agreement is not free to enter into a 24-hour agreement (or any agreement) with individual employees, without first discussing it with the union and obtaining the union's consent. The consent should be in writing to protect the employer.

There are several ways to agree upon 24-hour shifts for employees covered by a collective bargaining agreement. (1) The collective bargaining agreement could spell out all terms applicable to 24-hour shifts, and

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there could be no separate agreement with individual employees.(2) A 24-hour shift agreement could be attached as an exhibit to the collective bargaining agreement, and the collective bargaining agreement could recite that the employer may enter into such agreements with individual employees(3) The collective bargaining agreement could spell out all terms of a 24-hour shift and a sample 24-hour agreement could be attached. (4) The union and the employer could sign a separate agreement authorizing 24-hour agreements between the employer and individual employees. The second method is probably the most workable for most companies.

Whatever the method, there must be some *written* agreement between the union and the employer authorizing 24-hour shifts.. It is an unfair labor practice to negotiate individual agreements with employees represented by a union, without the union's consent. Further, unless the terms of the 24-hour agreement are in some manner incorporated into the collective bargaining agreement, the 24-hour agreement will contradict and breach the terms of the collective bargaining agreement. In that case, the collective bargaining agreement will prevail, and the employer will incur liability for its breach. Finally, an *oral* agreement with the union is ineffective against a *written* collective bargaining agreement.