



IWC Order 9-90

OFFICIAL NOTICE

INDUSTRIAL WELFARE COMMISSION ORDER NO. 9-90 REGULATING WAGES, HOURS, AND WORKING CONDITIONS IN THE TRANSPORTATION INDUSTRY

This Order Must Be Posted Where Employees Can Read It Easily

Employers should post this notice as they would a calendar, opening it to display the title and official text and allowing other pages to hang loose for reference and ease of reading.

TAKE NOTICE: The Industrial Welfare Commission (IWC) of the State of California, having proceeded in accord with the authority vested in it by Labor Code Sections 1171 through 1204 and Article 14, Section 1 of the Constitution of the State of California, reviewed certain sections of Order 9-80 for the Transportation Industry for the purpose of amending Section 1, Applicability, and Section 3, Hours and Days of Work. The IWC held investigative hearings, called a wage board, held public hearings on proposed language to amend these sections, and considered all written materials and information submitted prior to adopting its amendments to Sections 1 and 3 of Order 9-80. In printing this order, the IWC incorporated the amendments made by IWC Order No. MW-88 to Section 4, Minimum Wages, and Section 10, Meals and Lodging.

This order also incorporates the nonsubstantive revisions previously made in accord with the statewide review mandated by Government Code Section 1 1349 and reflected in the provisions of Title 8 of the California Code of Regulations, Section 11090. Because of the amendments and changes to Order 9-80 described above and for purposes of clarity in this printing, the IWC renumbered Order 9-80 to Order 9-90.

1. APPLICABILITY OF ORDER

This Order shall apply to all persons employed in the transportation industry whether paid on a time, piece rate, commission, or other basis, except that:

(A) Provisions of Sections 3 through 12 shall not apply to persons employed in administrative, executive, or professional capacities. No person shall be considered to be employed in an administrative, executive, or professional capacity unless one of the following conditions prevails:

(1) The employee is engaged in work which is primarily intellectual, managerial, or creative, and which requires exercise of discretion and independent judgment, and for which the remuneration is not less than \$1150.00 per month; or

(2) The employee is licensed or certified by the State of California and is engaged in the practice of one of the following recognized professions: law, medicine, dentistry, pharmacy, optometry, architecture, engineering, teaching, or accounting, or is engaged in an occupation commonly recognized as a reamed or artistic profession; provided, however, that registered nurses shall not be considered to be exempt professional employees for the of this subsection (2) of this order, unless they individually meet the administrative, executive, or professional criteria described in subsection (A)(1) above.

(B) The provisions of this Order shall not apply to employees directly employed by the State or any county, incorporated city or town or other municipal corporation, or to outside salespersons.

(C) Provisions of this Order shall not apply to any individual who is the parent, spouse, child, or legally adopted child of the employer.

(D) Except as provided in Sections 4, 10, 11, 12, and 20 through 22, this Order shall not be deemed to cover those employees who have entered into a collective bargaining agreement under and in accordance with the provisions of the Railway Labor Act, 42 U.S.C. sections 1-51 etseq.

2. DEFINITIONS

(A) "Commission" means the Industrial Welfare Commission of the State of California.

(B) "Division" means the Division of Labor Standards Enforcement of the State of California.

(C) "Transportation Industry" means any industry, business, or establishment operated for the purpose of conveying persons or property from one place to another whether by rail, highway, air, or water, and all operations and services in connection therewith; and also includes storing or warehousing of goods or property, and the repairing, parking, rental, maintenance, or cleaning of vehicles.

(D) "Employ" means to engage, suffer, or permit to work.

(E) "Employee" means any person employed by an employer.

(F) "Employer" means any person as defined in Section 18 of the Labor Code, who directly or indirectly, or through an agent or any other person, employs or exercises control over wages, hours, or working conditions of any person.

(G) "Hours worked" means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

(H) "Minor" means, for the purpose of this Order, any person under the age of eighteen (18) years.

(I) "Outside Salesperson" means any person, 18 years of age or over, who customarily and regularly works more than half the working time away from the employer's place of business selling

tangible or intangible items or obtaining orders or contracts for products, services or use of facilities.

(J) "Primarily" as used in Section 1, Applicability, means more than one-half the employee's work time.

(K) "Spilt shift" means a work schedule which is interrupted by nonpaid non-working periods established by the employer, other than bona fide rest or meal periods.

(L) "Teaching" means, for the purpose of Section 1 of the Order, the profession of teaching under a certificate from the Commission for Teacher Preparation and Licensing.

(M) "Wages" (See California Labor Code, Section 200)

(N) "Workday" means any consecutive 24 hours beginning at the same time each calendar day.

(O) "Workweek" means any seven (7) consecutive days, starting with the same calendar day each week. "Workweek" is a fixed and regularly recurring period of 168 hours. seven (7) consecutive 24-hour periods.

3. HOURS AND DAYS OF WORK

(A) The following overtime provisions are applicable to employees eighteen (18) years of age or over and to employees sixteen (16) or seventeen (17) years of age who are not required by law to attend school: such employees shall not be employed more than eight (8) hours in any workday or more than forty (40) hours in any workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over forty (40) hours in the workweek Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(1) One and one-half (1 1/2) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) day of work; and

(2) Double the employee's regular rate of pay for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) day of work in any workweek.

(B) No employer shall be deemed to have violated the provisions of this Section 3, Hours and Days of Work, by instituting, pursuant to a written agreement voluntarily executed by the employer and by at least two-thirds (2/3) of the employees in the affected work unit following a secret ballot and before the performance of the work, a regularly scheduled week of work consisting of such hours and days as shall be agreed upon consistent with both of the following provisions: the premium wage rate provisions of one and one-half (1 1/2) times the employee's regular rate of pay shall apply to all hours worked in any workday in excess of the regularly scheduled hours established by the agreement for that workday up to twelve (12) hours a workday, or to all hours worked in excess of 40 hours per week; and the premium wage rate provisions of double the employee's regular rate of pay shall apply to all hours worked in excess of twelve (12) hours per day and to all hours worked in excess of eight (8) hours on those days worked beyond the regularly scheduled number of workdays in the written agreement.

(1) Prior to the secret ballot vote, any employer who proposes to institute an alternative schedule shall make a disclosure in writing to the affected employees, including the effects of the proposed schedule on the employees' wages, hours, and benefits. Such a disclosure shall include meetings duly noticed, for the specific purpose of discussing the effects of alternative scheduling. Failure to comply with this section shall make the election null and void.

(2) Any employer who institutes a regularly scheduled week of work pursuant to this subsection shall make a reasonable effort to find an alternative work assignment for any employee who participated in the vote which authorized the schedule and is unable or unwilling to work it. An employer shall not be required to offer an alternative work assignment to an employee if an alternative work assignment is not available or if the employee was hired after the adoption of the alternative schedule.

(3) After a lapse of twelve (12) months and upon petition of one third (1/3) of the affected employees, a new vote by secret ballot shall be held and a two thirds (2/3) vote of the affected employees will be required to reverse the agreement above. If such agreement is revoked the employer shall comply within 60 days. Upon a proper showing by the employer of undue hardship, the Division may grant an extension of time for compliance.

(4) For purposes of Section 3(B), affected employees may include all employees in a readily identifiable work unit, such as a division, a department, a job classification, a shift, a separate physical location, or a recognized subdivision of any such work unit. A work unit may consist of an individual employee as long as the criteria for an identifiable work unit in this subsection are met.

(C) One and one-half (1 1/2) times a minor's regular rate of pay shall be paid for all work over forty (40) hours in any workweek except that minors sixteen (16) and seventeen (17) years old who are not required by law to attend school and may therefore be employed for the same hours as an adult are subject to subsection (A) or (B) above.

(VIOLATIONS OF CHILD LABOR LAWS are subject to civil penalties of from \$100 to \$5,000 as well as to criminal penalties provided herein. Refer to California Labor Code Sections 1285 to 1311 and 1390 to 1398 for additional restrictions on the employment of minors.)

(D) An employee may be employed on seven (7) workdays in one workweek with no overtime pay required when the total hours of employment during such workweek do not exceed thirty (30) and the total hours of employment in any one workday thereof do not exceed six (6).

(E) If a meal period occurs on a shift beginning vending at or between the hours of 10 p.m. and 6 a.m., facilities shall be available for securing hot food or drink or for heating food or drink, and a suitable sheltered place shall be provided in which to consume such food or drink.

(F) Except as provided in subsections (C) and (E), this section shall not apply to any employee covered by a collective bargaining agreement if said agreement provides premium wage rates for overtime work and a cash wage rate for such employee of not less than one dollar (\$1.00) per hour more than the minimum wage.

(G) The daily overtime provision of subsection (A) above shall not apply to ambulance drivers and attendants scheduled for twenty-four (24) hour shifts of duty who have agreed in writing to exclude

from daily time worked not more than three (3) meal periods of not more than one hour each and a regularly scheduled uninterrupted sleeping period of not more than eight (8) hours. The employer shall provide adequate dormitory and kitchen facilities for employees on such a schedule.

(H) The provisions of this section are not applicable to employees whose hours of service are regulated by (1) the United States Department of Transportation Code of Federal Regulations, Title 49, Sections 395.1 to 395.13, Hours of Service of Drivers, or (2) Title 13 of the California Code of Regulations, Subchapter 6.5, Section 1200 and following sections, regulating hours of drivers.

(I) The provisions of this section shall not apply to taxicab drivers.

(J) The provisions of this section shall not apply where any employee of an airline certificated by the federal or state government works over forty (40) hours but not more than sixty (60) hours in a workweek due to a temporary modification in the employee's normal work schedule not required by the employer but arranged at the request of the employee, including but not limited to situations where the employee requests a change in days off or trades days off with another employee.

4. MINIMUM WAGES

(A) Every employer shall pay to each employee wages not less than four dollars and twenty-five cents (\$4.25) per hour for all hours worked, effective July 1, 1988, except.

(1) **LEARNERS.** Employees 18 years of age or over, during their first one hundred and sixty (160) hours of employment in occupations in which they have no previous similar or related experience, may be paid not less than eighty-five percent (85%) of the minimum wage rounded to the nearest nickel.

(2) **MINORS** may be paid not less than eighty-five percent (85%) of the minimum wage rounded to the nearest nickel provided that the number of minors employed at said lesser rate shall not exceed twenty-five percent (25%) of the persons regularly employed in the establishment. An employer of less than ten (10) persons may employ three (3) minors at said lesser rate. The twenty-five percent (25%) limitation on the employment of minors shall not apply during school vacations.

NOTE: Under certain conditions, the full minimum wage may be required for minors. See Labor Code Section 1391.2(b).

(B) Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.

(C) When an employee works a split shift, one hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment.

(D) The provisions of this section shall not apply to apprentices regularly indentured under the State Division of Apprenticeship Standards.

5. REPORTING TIME PAY

(A) Each workday an employee is required to report for work and does report, but is not put to work

or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.

(B) If an employee is required to report for work a second time in any workday and is furnished less than two hours of work on the second reporting, said employee shall be paid for two hours at the employee's regular rate of pay, which shall not be less than the minimum wage.

(C) The foregoing reporting time pay provisions are not applicable when:

(1) Operations cannot commence or continue due to threats to employees or property; or when recommended by civil authorities; or

(2) Public utilities fail to supply electricity, water, or gas, or there is a failure in the public utilities, or sewer system; or

(3) The interruption of work is caused by an Act of God or other cause not within the employer's control.

(D) This section shall not apply to an employee on paid standby status who is called to perform assigned work at a time other than the employee's scheduled reporting time.

6. LICENSES FOR HANDICAPPED WORKERS

A license may be issued by the Division authorizing employment of a person whose earning capacity is impaired by physical disability or mental deficiency at less than the minimum wage. Such licenses shall be granted only upon joint application of employer and employee and employee's representative if any.

A special license may be issued to a nonprofit organization such as a sheltered workshop or rehabilitation facility fixing special minimum rates to enable the employment of such persons without requiring individual licenses of such employees.

All such licenses and special licenses shall be renewed on a yearly basis or more frequently at the discretion of the Division.

(See California Labor Code, Sections 1 191 and 1191.5)

7. RECORDS

(A) Every employer shall keep accurate information with respect to each employee including the following:

(1) Full name, home address, occupation and social security number

(2) Birthdate, if under 18 years, and designation as a minor.

(3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.

(4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee

(5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.

(6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

(B) Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee's social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.

(C) All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. An employee's records shall be available for inspection by the employee upon reasonable request.

(D) Clocks shall be provided in all major work areas or within reasonable distance thereto insofar as practicable.

8.CASH SHORTAGE AND BREAKAGE

No employer shall make any deduction from the wage or require any reimbursement from an employee for any cash shortage, breakage, or loss of equipment, unless it can be shown that the shortage, breakage, or loss is caused by a dishonest or willful act, or by the gross negligence of the employee.

[The former second sentence which was part of this section, effective January 1, 1980, was removed, effective April 24, 1989, based on a judicial determination that it was inconsistent with California law and, therefore, invalid and unenforceable. People v. Industrial Welfare Commission et. al.. Santa Cruz Superior Court No. 85071.]

9.UNIFORMS AND EQUIPMENT

(A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer. The term "uniform" includes wearing apparel and accessories of distinctive design or color.

NOTE: This section shall not apply to protective apparel regulated by the Occupational Safety and Health Standards Board.

(B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage may be required to provide and maintain hand tools and equipment customarily required by the trade or craft. This subsection

(B) shall not apply to apprentices regularly indentured under the State Division of Apprenticeship Standards.

NOTE: This section shall not apply to protective equipment and safety devices on tools regulated by the Occupational Safety and Health Standards Board.

(C) A reasonable deposit may be required as security for the return of the items furnished by the employer under provisions of subsections (A) and (B) of this section upon issuance of a receipt to the employee for such deposit. Such deposits shall be made pursuant to Section 400 and following of the Labor Code, or an employer with the prior written authorization of the employee may deduct from the employee's last check the cost of an item furnished pursuant to (A) and (B) above in the event said item is not returned. No deduction shall be made at any time for normal wear and tear. All items furnished by the employer shall be returned by the employee upon completion of the job.

10. MEALS AND LODGING

(A) "Meal" means an adequate, well-balanced serving of a variety of wholesome, nutritious foods. "Lodging" means living accommodations available to the employee for full-time occupancy which are adequate, decent, and sanitary according to usual and customary standards. Employees shall not be required to share a bed.

(B) Meals or lodging may not be credited against the minimum wage without a voluntary written agreement between the employer and the employee. When credit for meals or lodging is used to meet part of the employer's minimum wage obligation, the amounts so credited may not be more than the following:

	Effective July 1, 1988
Lodging:	
Room occupied alone	\$ 20.00 per week
Room shared	\$ 16.50 per week
Apartment--two-thirds (2/3) of the ordinary rental value, and in no event more than	\$240.00 per month
Where a couple are both employed by the employer, two-thirds (2/3) of the ordinary rental value, and in no event more than	\$355.00 per month
Meals:	
Breakfast	\$1.50
Lunch	\$2.10
Dinner	\$2.80

(C) Meals evaluated as part of the minimum wage must be bona fide meals consistent with the employee's work shift. Deductions shall not be made for meals not received nor lodging not used.

(D) If, as a condition of employment, the employee must live at the place of employment or occupy quarters owned or under the control of the employer, then the employer may not charge rent in excess of the values listed herein.

11. MEAL PERIODS

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than thirty (30) minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of employer and employee. Unless the employee is relieved of all duty during a thirty (30) minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to.

(B) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

12. REST PERIODS

Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.

However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3-1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

13. CHANGE ROOMS AND RESTING FACILITIES

(A) Employers shall provide suitable lockers, closets, or equivalent for the safekeeping of employees' outer clothing during working hours, and when required, for their work clothing during nonworking hours. When the occupation requires a change of clothing, change rooms or equivalent space shall be provided in order that employees may change their clothing in reasonable privacy and comfort. These rooms or spaces may be adjacent to but shall be separate from toilet rooms and shall be kept clean and sanitary.

NOTE: This section shall not apply to change rooms and storage facilities regulated by the Occupational Safety and Health Standards Board.

(B) Suitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours.

14. SEATS

(A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.

(B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not

interfere with the performance of their duties.

15. TEMPERATURE

(A) The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed.

(B) If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort. Where the nature of the employment requires a temperature of less than 60°F., a treated room shall be provided to which employees may retire for warmth and such room shall be maintained at not less than 68°.

(C) A temperature of not less than 68° shall be maintained in the toilet rooms, resting rooms, and change rooms during hours of use.

(D) Federal and State energy guidelines shall prevail over any conflicting provision of this Section.

16. ELEVATORS

Adequate elevator, escalator or similar service Consistent with industry-wide standards for the nature of the process and the work performed shall be provided when employees are employed four floors or more above or below ground level.

17. EXEMPTIONS

If, in the opinion of the Division after due investigation, it is found that the enforcement of any provision contained in Section 7, Records; Section 11, Meal Periods, Section 12, Rest Periods; Section 13, Change Rooms and Resting Facilities Section 14, Seats; Section 15, Temperature; or Section 16, Elevators, would not materially affect the welfare or comfort of employees and would work an undue hardship on the employer, exemption may be made at the discretion of the Division. Such exemptions shall be in writing to be effective and may be revoked after reasonable notice is given in writing. Application for exemption shall be made by the employer or by the employee and/or the employee's representative to the Division in writing. A copy of the application shall be posted at the place of employment at the time the application is filed with the Division.

18. FILING REPORTS (See California Labor Code, Section 1174(a))

19. INSPECTION (See California Labor Code, Section 1174)

20. PENALTIES (See California Labor Code, Section 1199)

21. SEPARABILITY

If the application of any provision of this Order, or any section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Order should be held invalid or unconstitutional or unauthorized or prohibited by statute, the remaining provisions thereof shall not be affected thereby, but shall continue to be given full force and effect as if the part so held invalid or unconstitutional had not been included herein.

22. POSTING OF ORDER

Every employer shall keep a copy of this Order posted in an area frequented by employees where it may be easily read during the work day. Where the location of work or other conditions make this

impractical, every employer shall keep a copy of this Order and make it available to every employee upon request.

Order 9-90 becomes effective on July 1, 1990. The provisions of Order 9-80 remain in full force and effect until the date this order becomes effective. IWC Order MW-88 remains in full force and effect and its amendments to Order 9-80 will be incorporated in this Order 9-90 on July 1, 1990. The provisions of Order 9-80 which were not amended are carried forward as part of Order 9-90.

Dated: December 15, 1989, at San Francisco, California

INDUSTRIAL WELFARE COMMISSION, STATE OF CALIFORNIA

Lynnel Pollock, Chairperson
Muriel Morse
Robert Clark
Michael Callahan
James Rude

Statement as to the Basis Upon Which Industrial Welfare Commission Order No. 9-90 Regulating Wages, Hours, and Working Conditions in the Transportation Industry is Predicated

The Industrial Welfare Commission's (IWC) legal authority for promulgating and amending this order is set forth under the heading Take Notice. The IWC offers the following statement as to the basis for the various sections of this order:

1. APPLICABILITY

This section provides, in part, that employees employed in executive and administrative capacities are exempt from Sections 3 through 12 of this order if they meet two tests: (1) duties appropriate to such capacity and (2) a specified remuneration. These are appropriate and well-established criteria for determining whether a person designated as an executive or administrator should be protected by the minimum standards in the order, most significantly by the requirement for premium pay for overtime work. For this reason, when the IWC began its investigation of overtime issues, it included Section 1, Applicability, in that review.

The IWC rejected the California Hospital Association's (CHA) petition to amend all of the IWC Orders by adopting new standards that more closely resemble the federal rule for the executive and administrative exemption, including a standard for 'primary' duties. The IWC reasserted its historical position that it preferred the term "primarily" to "primary" because the former afforded employees greater protections. Additionally, "primarily" was defined in a way to assist enforcement, and changing to the federal standard would create more problems for enforcement staff. The IWC also rejected CHA's request to adopt a "high salary proviso which would exempt certain employees paid very high salaries regardless of duties or responsibilities. The salary levels suggested by CHA would automatically exempt from overtime certain employees, such as nurses,

and the IWC wanted to continue protecting such employees unless duties or responsibilities clearly indicated that an exemption was in order.

While employer representatives on most wage boards were unsuccessful in their attempts to convince their colleagues to recommend adoption of language similar to that requested by CHA, the majority of one wage board recommended that the IWC adopt a proposal to increase the specified remuneration amount by the same percentage as any minimum wage increase. The IWC recognized that this recommendation was reasonable and proposed language which could apply to employees covered by all the orders, when under review, including this one. The IWC received testimony during the public hearing process which led it to conclude that the arithmetical relationship between the amount of minimum wage and the amount of the remuneration contained in Section 1, which existed upon the promulgation of the 1980 Orders, was proper and should be maintained. On December 15, 1989, the IWC adopted a proposal to increase the remuneration on amount for persons employed in executive and administrative capacities to \$1150 per month, proportionate to the most recent increase in the minimum wage, as well as proportionate to other recent increases made by the IWC with respect to the meals and lodging credits.

During its general overtime and review, the IWC learned that the professional exemption, as distinct from the administrative or executive exemption contained in the IWC Orders, was too restrictive insofar as it did not recognize the societal and technological changes that have occurred and will occur in years to come. Emerging occupations, such as those in the fields of science and high technology, and other occupations requiring advanced knowledge, the exercise of discretion and independent judgment and/or invention, imagination or talent in a recognized field of artistic endeavor, while exempt under federal law, rarely, if ever, qualified for a professional exemption under the IWC Orders. Testimony indicated that this differentiation generated confusion and resulted in disadvantages both to employees and employers. The IWC also received information about enforcement problems due to the fact that there was very little flexibility to interpret and/or enforce individual professional exemptions based on actual duties and responsibilities. In response to these concerns, and based upon evidence received in the CHA petition, written materials, and oral and written public testimony, the IWC decided that the professional exemption relied too much on credentialism. Consequently, the IWC proposed language which would add persons engaged in an occupation commonly recognized as a "learned or artistic" profession to the licensed professions already listed in the order. This broad language would eliminate the need for the IWC to modify the list (as it did to add pharmacists in 1979) each time it wished to recognize a new group as professionals, because it would allow enforcement staff to consider individual situations and actual duties when applying the exemption. The language also would permit, but would not be limited to, use of the federal guidelines for purposes of interpretation. Finally, the IWC adopted language identical to that previously adopted for Section 1 of Orders 1, 4, 5, and 10 because it determined that consistency would better serve the public, in terms of understanding, and DLSE personnel, in terms of ease of enforcement.

With respect to an exception for nurses as professionals: during its general overtime review, the IWC had previously received testimony from the California Association of Hospitals and Health Systems (formerly the California Hospital Association) and individual nurses who urged the IWC to recognize nurses as professionals because they are considered professionals under the FLSA and professional status is consistent with the true nature of nurses, duties and responsibilities. On the other hand, the California Nurses Association (CNA) strongly opposed any modification of the applicability section which would exempt nurses "as a class" of professionals or which would preclude nurses from an exemption based on the other factors in subsection (1). Instead, CNA

argued, each professional exemption should be examined individually, and decisions regarding professional status for registered nurses should depend on actual duties and responsibilities. The IWC heard and read testimony which indicated that professional recognition and a professional exemption under the IWC Orders were not synonymous. CNA testified that as long as employers fail to provide registered nurses with the rights and privileges generally conferred on a professional, i.e., consistent exercise of discretion and independent judgment, control over one's practice, and full integration in the decision making process, professional recognition and a professional exemption will remain mutually exclusive. Based on all the evidence presented, the IWC concluded that registered nurses still needed its protections and adopted language which clearly did not include nurses in a categorical professional exemption under Subsection (2), but allowed nurses to be exempt as administrators, executives, or professionals if they individually met the criteria for an exemption under subsection (1). Again, the IWC deemed that some uniformity and consistency is desirable among the orders, especially for purposes of enforcement, and the IWC adopted the same language amending Section 1, Applicability, as had previously adopted for Orders 1, 4, 5, and 10.

This section of the statement as to the basis addresses those revisions or changes adopted on December 15, 1989. The statements as to the basis for the remaining parts of this section are contained in prior printings of this order. These parts have not changed, and there is no need for an explanation because the IWC is continuing in effect regulations that have previously become a part of the standard working conditions for employees in this state. The IWC received no compelling evidence and concluded that there was no rationale to warrant making any other changes in this section.

2. DEFINITIONS

The wage board for this industry generally accepted definitions as they stood in the 1976 order. Several wage boards asked the IWC to insert the definition for "primarily." The IWC found that the substance of the definition proposed was in accord with the Division's established administrative policy that an employee who spends as much as half his or her work time performing the tasks of non-exempt employees is covered by this order.

The IWC received no compelling evidence, and concluded there was no rationale, to warrant making any other change in the provisions of this section.

3. HOURS AND DAYS OF WORK

During its general investigation of overtime, the IWC heard and read testimony which suggested that some employees and employers wanted the opportunity to implement work schedules which could be used as alternatives to the 8-hour day within a 40 hour week. This testimony indicated that the IWC regulations requiring premium pay after eight hours a day did not provide enough flexibility, and that the "four-ten" work schedule, permitted since 1976, while offering some relief did not allow other desirable options such as longer but fewer workdays within workweeks. Additionally, the IWC received a petition from the California Trucking Association (CTA) requesting modification of Order 9-80 so that "operating personnel (excluding clericals) in the highway transportation or passenger carrier industry would be able to work flexible daily schedules within a 40 -hour workweek. This petition also requested Order 9-80 be modified to exempt from overtime regulations employees who are subject to the jurisdiction of the Secretary of Transportation (drivers, driver's helpers, loaders, and mechanics). The California Teamsters Public Affairs Council (Teamsters) submitted a petition requesting amendment of all the IWC Orders by providing certain additional protective conditions whenever an alternative workweek arrangement is allowed.

The wage board for Order 9-80 discussed various amendments to Section 3. Employer representatives advocated a total exemption from overtime for certain employees and an exemption from daily overtime, but not weekly overtime, for others. Employee representative fives, on the other hand, would not support any overtime exemptions but rather proposed regular work schedules of not more than 10 hours per day within a 40-hour workweek, under certain protective live conditions. Although the wage board was unable to recommend any specific amendments, the IWC noted the wage board's discussions suggested a common denominator in the transportation industry was the need for greater flexibility, and both employers and employees could benefit from alternative scheduling.

After considering all of the evidence and testimony received during its investigation, and after deliberating on the wage board report, the IWC concluded that employees should have more choices with respect to their hours and days of work and proposed an amendment to Section 3 which offered employees the option of entering into a "regularly scheduled week of work consisting of such hours and days as shall be agreed upon, up to 12 hours a day within a 40-hour week. According to the provisions contained in the proposal, the employer and two thirds of the employees in the affected work unit must voluntarily execute a written agreement before implementing the new schedule. The proposal provided premium pay for hours worked in excess of the regular schedule, as well as for all hours in excess of 12 per day or 40 per week. The proposal also included some of the protective conditions suggested in the Teamsters' petition, such as a secret ballot, as well as additional protections including a written disclosure by the employer of the effects of the proposed schedule on the employee's wages, hours, and benefits, a reasonable accommodation clause, and a mechanism for reversing the agreement after one year. In addition the proposal listed some appropriate examples of work units.

The IWC did not propose or adopt the language suggested in the Teamsters' petition which would require employers to file alternative work schedules with the Division of Labor Standards enforcement. The IWC determined that the burden of a filing requirement would outweigh any significant benefit for employees, and create unnecessary paperwork for employers as well as enforcement staff. The IWC also declined to propose or adopt the Teamsters' language which stipulated that alternative schedules be valid for no longer than three years. The IWC concluded that the reversal provision which permitted employees to petition for a new secret ballot vote after one year provided adequate protection for employees.

During the public comment period on the proposals to amend the overtime provisions contained in IWC Order 9-80, some employer representatives endorsed the IWC's efforts for greater flexibility, while others requested an exception for carriers when engaged in the transportation of agricultural products so they could operate under the same regulations as agricultural growers (e.g., 10 hours a day, 6 days a week). Some employers also stated the proposed language was too complicated for "small employers and suggested the protective conditions, in particular the requirement for a secret ballot vote, only to employers of a certain size. Other employers urged the IWC to eliminate daily but not weekly overtime, thereby enabling California to become more competitive with other states, encourage economic growth and develop job opportunities in the transportation industry, as well as provide uniformity with federal law. Employee representatives opposed the IWC's proposals: some advocated the 8-hour day standard, while others suggested adoption of the language recommended by the manufacturing wage board, which permits employees to work up to 10 hours in a workday within a man-hour workweek. A representative of the California Teamsters Public Affairs Council expressed concern "that no last-minute exceptions or changes be made to benefit any particular industry.

The testimony presented during the public comment period did not persuade the IWC to amend its proposals. It rejected the request to partially exempt carriers when engaged in the transportation of agricultural products because insufficient evidence was presented and because many trucking companies transport both farm and non-farm goods and it would be difficult for enforcement staff to distinguish between the two, particularly during an audit. Also, the IWC recognized that the request was inconsistent with its orders which require applying coverage based upon the employer's industry, whenever possible, rather than on the employee's occupation. The IWC also rejected the request for modified language for small employers since increased flexibility should be balanced by increased protection, and a secret ballot vote provides a necessary protection, even when employers have only a few employees. With respect to adopting language parallel to that already in place for the manufacturing industry, the IWC concluded that the regulations permit alternative workweeks for that industry were not only too restrictive, but also inconsistent with the more flexible regulations contained in Section 3 of Orders 4, 5, and 10. Finally, the IWC rejected a request from charter and per capita tour bus drivers/guides to rescind the total exemption from overtime currently extended them. The IWC decided their request was inappropriate because it had never been addressed by the transportation wage board, and because of insufficient evidence presented which would justify rescission.

The IWC considered all of the information it received during the entire course of its overtime review and indicated that although it was not yet ready to embrace the straight 40-hour workweek contained in the Fair Labor Standards Act, it did recognize that societal changes demanded greater scheduling flexibility than currently permitted under the IWC orders so that employers and employees could work together for the benefit of both. The IWC acknowledged that the 8-hour day was no longer the only acceptable standard in California as shown by the acceptance of the "four-ten" workweek the language recommended by the wage board for Order 1-80, the provision contained in Orders 4, 5, and 10 to allow persons to work up to 12 hours a day at straight-time pay, the "nine-eighty" plan in place for Los Angeles city employees, and various other alternative workweeks available to employees in the public sector.

On December 15, 1989, the adopted the language contained in its original proposal. This language contained built-in protections, including but not limited to a regularly scheduled week of work, a two thirds vote by affected employees, a secret ballot election, a written disclosure requirement, and a reasonable accommodation clause to protect employees unwilling or unable to work alternative schedules. In an effort to promote clarity, consistency, continuity, and ease of enforcement, the IWC adopted the same language it had already adopted for Section 3 of Orders 4, 5, and 10.

The IWC retained the language which provided that weeks of work be 'regularly scheduled. The IWC agreed that if employees wanted to take advantage of an alternative schedule, they should have the built-in protection of limiting that schedule to a certain number of hours and number of days in a week This would allow employees to plan for their transportation and child care needs, educational pursuits, family and recreation time, and other personal activities.

The IWC also retained the language requiring a "secret ballot" in order to assure freedom of choice for the employee. The IWC reasoned that only a secret ballot would remove the threat of employer coercion and/or retribution by allowing employees to anonymously vote on an alternative schedule without regard to the outcome of the vote or the time delay between the vote and the signing of the written agreement. Anonymity is particularly important to the employee during this period because

it allows the employee the freedom to reflect on the effects of the alternative schedule without undue influence or pressure from the employer.

The IWC also retained the language which cited examples of a "readily identifiable work unit, including language which said a work unit may consist of an individual employee "as long as the criteria for an identifiable work unit in this subsection are met. because a recognized that one person could constitute a work unit and a single employee should have the option of working longer than eight hours a day without overtime pay. The IWC also retained the language which allowed reasonable accommodation for employees who were unwilling or unable to work the new schedule. The IWC concluded that employees should have a choice with regard to their hours of work, and that employers shall make a reasonable effort to find an alternative work assignment for persons who are unable or unwilling to work the new schedule.

In adopting Section 3(B), the SAC did not intend to invalidate any "four-ten" workweek agreement entered into prior to the effective date of this order, nor did the IWC intend for employees to vote frequently on a new alternative schedule. "A regularly scheduled week of work" should exist over a period of time, and the language permitting a new secret ballot vote to be held only after one year confirmed this. The IWC also intended that alternative schedules could include different predetermined alternating schedules during designated periods, for example, peak periods of work due to seasonal or holiday day schedules or regular alternating schedules, as long as these schedules were included as part of the original agreement executed by two-thirds of the employees in the affected work unit following a ballot and before the performance of work. With regard to the computation of premium pay, the IWC intended to reassert its long-historical position that DLSE's interpretation that all the IWC Orders, including Order 9, do not require the pyramiding of overtime. Finally, the IWC intended for alternative schedules to be defined in terms of a certain number of hours and days in a week of work, but persons on alternative schedules did not necessarily have to work on the same specific day during each week of work.

This section of the statement as to the basis addresses those revisions or changes adopted on December 15, 1989. The statements as to the basis for the remaining parts of this Section are contained in prior printings of this order. These parts have not changed, and there is no need for an explanation because the IWC is continuing in affect regulations that have previously become a part of the standard working conditions for employees in this state. The IWC received no compelling evidence and concluded that there was no rationale to warrant making any other changes in this section.

4. MINIMUM WAGES

The IWC examined the minimum wage in the context of a wage adequate to supply the necessary cost of proper living to, and maintain the health and welfare of, an employee in California, while considering the legislative intent expressed in the Cal. Stats. 1973, Ch. 1007, sec. 11, which provides: "It is the intent of the Legislature in enacting this act that the industrial Welfare Commission interpret these provisions [amendments to the Labor Code, including but not limited to sees 1173, 1178, and 1178.5] in a manner which does not cause undue hardship and loss of employment opportunities in any segment of industry in California."

During the early stages of its minimum wage review, the IWC studied historic, demographic, statistical, and economic data, and testimony and reports presented prior to and in connection with four investigative hearings. Testimony and data from employee representatives, including the California Labor Federation, advocated that an increase was necessary to adjust for the decline in

purchasing power since the last increase in 1981 and to adjust for overall increased inflation. These advocates stated that an increase in the minimum wage of over \$5.00 per hour was needed to reflect increases in the Consumer Price Index or increases in an average hourly manufacturing wage (a standard advocated by some economists), or to maintain the same relationship to the poverty level that the minimum wage had in 1968 when "a single worker could hold his (or her) head considerably above the official poverty level." Advocates also pointed out that the Governor and the Legislature had recognized the inadequacy of the minimum wage by establishing \$5.14 as the base hourly wage in the "GAIN" or "Workfare" program. The California Retailers Association and other employer groups opposed any minimum wage increase until such an increase occurred at the federal level. These groups testified to the adverse consequences of an increase, including but not limited to unemployment, disemployment, and reduced hours of employment, and said that an increase would have a detrimental impact on employees particularly youth and minorities, whom they identified as most vulnerable to these adverse effects. In addition, employers pointed out that jobs would be lost to California employees because employers would tend to establish new businesses or relocate present businesses in other states with more favorable minimum wage rates.

With respect to the Report of the 1987 Minimum Wage Board, the IWC noted that although the report contained no recommendation on a minimum wage adequate to supply the cost of proper living, it did include a motion that the minimum wage remain at \$3.35 per hour until the federal minimum wage changed. Other motions made by members of the wage board were to increase the minimum wage to \$4.50 or \$5.52 per hour, tied to certain indices. The IWC decided not to tie the minimum wage to the Consumer Price Index, the California Necessities Index, the Employment Cost Index, or any other index, including the average hourly manufacturing wage, because of complex interacting economic forces such as inflation, deflation, recession, unemployment, and uncertain fiscal/monetary policies which affect those indices, and because of the imperfect relationship between such indices and the factors underlying the adequacy of the minimum wage. The IWC also decided that tying the minimum wage to "Minnie's Budget," a budget last reformulated in 1961 for a self-supporting woman, was no longer appropriate because such a budget could not meet the needs of every person within the standard and would not accurately reflect the current needs of working people, including men.

With respect to the \$5.14 base hourly wage used in the GAIN program, the IWC concluded that \$5.14 is not a wage but rather the figure used to calculate the number of hours of service owed to receive an AFDC check and related to jobs requiring skilled training, rather than entry-level jobs requiring little or no skills, such as minimum wage jobs.

The IWC also considered state and federal actions with respect to the minimum wage. It studied the Senate Office Research Issue Brief" which explored the consequences of increasing California's minimum wage, and it made note of the fact that members of the Legislature voted to increase the minimum wage to \$4.25 per hour. The IWC also considered federal legislation proposing a nationwide increase in the minimum wage to between \$3.85 to \$4.25 per hour. Finally, the IWC studied minimum wage rates in other states and noted that at the time of its deliberations, only seven states had rates over \$3.35 per hour, and the rates ranged from \$3.37 to \$3.85. Only one state, Connecticut, planned to exceed \$4.00 per hour.

In considering all of the rates advocated during its minimum wage review -- rates ranging from \$3.35 per hour to over \$5.00 per hour -- the IWC balanced those factors which suggested that some increase in the minimum wage was certainly in order with the belief that too significant an

increase could harm employees by contributing to a decrease in their employment opportunities. On September 11, 1987, the IWC proposed to increase the minimum wage to \$4.00 per hour -- which falls well within the upper and lower limits of the range of suggested rates, as well as an amount considered reasonable, relative to all of the evidence before the IWC. The IWC cited its authority to re-examine the minimum wage after enough time passed to measure the economic effects of any increase and then evaluate the need for any further change at that time.

The IWC held three public hearings on its minimum wage proposals. Advocates representing unions, neighborhood organizations, and other groups of mainly urban workers urged a "moral minimum wage" of at least \$5.00 an hour. These groups also expressed concern for families of minimum wage earners and pointed out that \$4.00 per hour, or \$8,000 per year, was still below the poverty level for a family of three. Employers contended that the minimum wage was established to support an individual, not an entire household. The IWC also studied additional information which indicated that some econometric models may have overstated the negative effects attributed to an increase in the minimum wage and that previous projections of job losses resulting from an increase may have been too high. The IWC also received an analysis from the Industrial Areas Foundation Network of Southern California which showed that while some businesses opposed an increase in the minimum wage, others now supported a "substantial" increase.

The IWC reconsidered all of the information it received during the entire course of its minimum wage review. It reevaluated the reasons for its original \$4.00 proposal and concluded that those reasons were still valid, but decided that an increase to \$4.25 per hour was warranted. This modification took into consideration new evidence which suggested that an increase would not have as great an impact on unemployment as previously assumed by employers, and that some employers now supported an increase above \$4.00 per hour. In arriving at its final decision, the IWC reaffirmed the fact that, historically, it had always focused on a single individual, as opposed to a family unit, to determine the adequacy of the minimum wage and concluded that the minimum wage is the wage necessary to support the cost of proper living for a single worker, and is not intended to support a family nor supplant public assistance programs. The IWC discounted arguments in favor of a "moral minimum wage" of over \$5.00 per hour because they appeared to be based in part on a subjective philosophical standard and relied in part upon certain cost indices and comparisons to public assistance programs. Additionally, the IWC recognized the diverse economic conditions under which minimum wage earners work in California. Employees living in urban areas, for example, were subject to a different cost of living than those residing in remote or rural parts of the state. The IWC weighed these and other factors, including the fact that the Legislature had independently proposed a minimum wage of \$4.25. On December 18, 1987, the IWC concluded that a new minimum wage of \$4.25 per hour was appropriate to maintain the health and welfare of a single individual and not cause undue hardship and loss of employment opportunities.

[On October 31, 1986, the California Supreme Court in *Henning v. Industrial Welfare Com.* (1988) 46 Cal.3d 1262 held that portion of the minimum wage order providing for an alternative minimum wage for tipped employees to be invalid. Therefore, all references to an alternative minimum wage for tipped employees have been deleted from IWC Order No. MW-88, including references contained in Section 5 of that order which referred to minimum wage sections contained in other IWC orders. Additionally, all references to the IWC's considerations and adoption of an alternative minimum wage for tipped employees were deleted from this statement as to the basis.]

With respect to establishing alternative minimum wages for certain employees: After its initial

investigation, the IWC found that the minimum wage may be inadequate to supply the proper cost of living and called a wage board. The IWC agreed it would consider input from the public regarding the minimum wage board charge, and upon the suggestion of the California Hotel & Motel Association, decided that in addition to making a general recommendation on the adequacy of the minimum wage, that wage board should also consider an alternative minimum wage for full-time students under 21. The California Hotel & Motel Association argued that by establishing this alternative, the IWC would remove the economic disincentive that currently exists to the employment of students." The IWC requested the wage board to consider and make recommendations on whether or not full-time students under the age of 21 should receive an alternative minimum wage.

The official report of the minimum wage board was inconclusive with respect to any recommendations on alternative minimum wage rates. With respect to an alternative wage for students, employer representatives noted that an alternative wage would mitigate the adverse employment effects associated with a minimum wage that disproportionately impacts teenagers and young adults who are generally not self-supporting. Employee representatives stated that this alternative would encourage the displacement of other workers and exploit students who worked for a living.

On September 11, 1987, the IWC voted to submit to public hearings a proposal establishing an alternative minimum wage rate for fulltime students under 21. Students throughout California protested against an alternative wage rate for full-time students under 21. Many students testified that they were self-supporting, and a lower student wage rate would force them to drop out of school. Others stated the proposal was discriminatory, conflicted in part with Labor Code Section 1391, and would result in less jobs for adult and full-time workers. After evaluating all of the written and oral testimony, including reports from staff and testimony from the Division of Labor Standards Enforcement that the language in the proposal was both unclear and probably inherently difficult to enforce, the IWC decided to withdraw its proposed alternative minimum wage for full-time students under 21.

[This section of the statement as to the basis addresses those revisions or changes adopted on December 18, 1987. The statements as to the basis for the remaining parts of this section are contained in prior printings of this order. These parts have not changed, and there is no need for an explanation because the IWC is continuing in effect regulations that have previously become a part of the standard working conditions for employees in this state.]

5. REPORTING TIME PAY

The requirement for reporting time pay historically has been included in the IWC's orders on the basis that it is necessary to employees' welfare that they be noticed in advance when changes in their starting time must be made. It has deemed a maximum of four hours' pay adequate to encourage proper notice and scheduling. The IWC received no compelling evidence, and concluded there was no rationale, to warrant making any change in the provisions of this section, which date back to 1942. Exceptions to the requirement date to 1974.

6. LICENSES FOR HANDICAPPED WORKERS

This section, long a part of the order, is intended to allow a lesser rate only for those so seriously incapacitated that they cannot approach normal productivity. It is a restatement of Labor Code Sections 1191 and 1191.5. The word "permit" was changed to "license" to conform more closely to the statute.

The IWC received no compelling evidence, and concluded there was no rationale, to warrant making any other change in the provisions of this section.

7. RECORDS

Employee welfare requires that data on wages and hours of work be furnished to employees, in order to assist in the resolution of disputes and in the employee's dealings with taxing agencies.

In response to employee demands for more information on check stubs, the IWC concluded that it is not feasible at this time to require employers to provide such written information. It did find it appropriate and reasonable to require that employers keep information on applicable rates of pay and hours worked and make it available to the employee on reasonable request, as specified in (A) (5).

The IWC received no compelling evidence, and ' , concluded there was no rationale, to warrant making any other change in the provisions of this section.

8. CASH SHORTAGE AND BREAKAGE

Some prohibition against deductions from pay for shortage or breakage has existed in IWC Orders since 1920. It is apparent that the employee's welfare financially would be involved and his or her employment possibly would be at stake if the employee could be charged for shortages without the protection of this section.

It is the IWC's intent that the employer can only deduct for cash shortages or breakages if they are caused by the dishonest or willful act or gross negligence of the employee. No compelling reason was demonstrated for changing the word "shown to proven" because the IWC intends that the burden of proof rests with the employer in all cases.

The IWC felt it was not necessary to refer to Labor Code Sections 400-410 and deleted that reference.

The IWC received no compelling evidence, and concluded there was no rationale. to warrant making any other change in the provisions of this section.

9. UNIFORMS AND EQUIPMENT

The IWC historically has required employers to pay for uniforms, tools and equipment as basically provided in the section, because such standard conditions of labor are necessary to the welfare of employees. There was no compelling evidence before the IWC to warrant a change in the basic provisions of Subsection (A), but clarification of the IWC's intent is appropriate here. The definition and enforcement policy is sufficiently flexible to allow the employer to specify basic wardrobe items which are usual and generally usable in the occupation, such as white shirts, dark pants and black shoes and belts, all of unspecified design, without requiring the employer to furnish such items. If a required black or white uniform or accessory does not meet the test of being generally usable in the occupation, the employee may not be required to pay for it. The IWC also concluded that present provisions in the order adequately protect the employee against bearing the cost of maintenance.

The IWC did have evidence to justify amending (B) to allow employers to require regularly indentured apprentices to provide their own tools; such apprentices customarily have a career

investment in their tools and usually are assured of an ultimate wage exceeding two times the minimum wage; and in addition their working conditions are monitored by the Division of Apprenticeship Standards.

Notes were inserted to clarify the boundaries of the respective jurisdictions of the IWC and the Occupational Safety and Health Standards Board in the course of consultation with the OSH Standards board.

In some cases, the procedures for establishing funds in which to hold deposits in accord with Labor Code Sections 400410, as provided in this section, are too cumbersome to be practical and an alternative is needed. There was considerable sentiment in wage boards for deleting the provision for a deposit, which could be a substantial burden on a starting employee. The IWC found that employers were reasonable in their insistence that employees have an obligation to either return items belonging to the employer or pay for the cost of them. The IWC's intent is that only the actual cost of the item may be withheld from the final check, pending return of the item within a reasonable time after the employment terminates. The balance of the check must be paid promptly as required by the Labor Code.

The IWC received no compelling evidence, and concluded there was no rationale, to warrant making any other change in the provisions of this section.

10. MEALS AND LODGING

Historically, the IWC has limited the amount of credit for meals and lodging that could be used as an offset against the employer's minimum wage obligations. The IWC asked the 1987 Minimum Wage Board to make recommendations on this provision consistent with the health and welfare of employees. Although that board was unable to agree on any recommendation, it did discuss a motion calling for credit increases which would proportionately equal any increase in the minimum wage. Employer representatives argued that such "increases would potentially benefit employees by increasing the probability of being offered meals and lodging associated with a job, and pointed out that employees could "choose to reject such offers as part of their employment package. They also noted that "the meals and lodging received are substantially below fair market value." Employee representatives disputed whether "employees have the unrestricted option of a full minimum wage or a reduced wage with meals and/ or lodging."

The IWC proposed that the level of the amounts credited for meals or lodging be proportionate with the proposed increase in the minimum wage, and although no one testified in support of this specific proposal, several persons indicated support of all the proposals. Others suggested, however, that an increase in the meals and lodging credits would merely offset any increase in the minimum wage. The IWC decided that the relationship between the minimum wage and meals and lodging credits which existed upon the promulgation of the 1980 orders was proper and concluded that the same relationship should be maintained. On December 18, 1987, the IWC adopted a proposal to increase the meals and lodging credits 26.9 percent, proportionate to the increase in the minimum wage.

[This section of the statement as to the basis addresses those revisions or changes adopted on December 18, 1987. The statements as to the basis for the remaining parts of this section are contained in prior printings of this order. These parts have not changed, and there is no need for an explanation because the IWC is continuing in effect regulations that have previously become a part of the standard working conditions for employees in this state.]

11. MEAL PERIODS

A "duty free" meal period is necessary for the welfare of employees. The section is sufficiently flexible to allow for situations where that is not possible.

The IWC received no compelling evidence and concluded that there was no rationale to warrant any change in this section, the basic provisions of which date back more than 30 years. Administrative exemptions are available if warranted under provisions of Section 17 of this order.

12. REST PERIODS

The IWC received no compelling evidence and concluded that there was no rationale to warrant any change in this section, the basic provisions of which date back more than 30 years. It also noted that administrative exemptions are available if warranted under provisions of Section 17 of this order.

13. CHANGE ROOMS AND RESTING FACILITIES

The IWC's intent historically has been that employers take ordinary care to provide for the safekeeping of employees' outer clothing and street clothes. This does not always mean that lockable closets or lockers are required. It has sometimes meant, for example, the provision of coat racks open to the view of the employees, drawers or bins in some employee's custody, or supervised check rooms. Over the years the number of problems in this area has been minimal. (See also Labor Code Section 2800.)

The word "sanitary," previously used in connection with change rooms, was dropped to reinforce the IWC's intent that there be no overlap with the jurisdiction of the Occupational Safety and Health Standards Board. The IWC inserted a note to clarify the boundaries of the respective jurisdictions of the IWC and the Occupational Safety and Health Standards Board in the course of consultation with the OSH Standards Board.

No compelling evidence was received, and the IWC concluded there was no rationale, to warrant any other change in the provisions of this section.

14. SEATS

The basic requirement for seats has been in IWC orders since the earliest "Sanitary Regulations," and in 1913 the Legislature made a similar provision in statute. The IWC added the words "when it does not interfere with the performance of their duties" because of evidence that such clarification of this section was necessary.

The IWC received no compelling evidence and concluded that there was no rationale to warrant any other change in this section.

5. TEMPERATURE

In view of the promulgation of Federal and State energy guidelines the IWC has conformed its order to those guidelines.

The IWC received no compelling evidence and conceded there was no rationale to warrant any other change in this section, the basic provisions of which date back more than 30 years.

16. ELEVATORS

To require employees to walk three flights of stairs up and down each workday is detrimental to their comfort and welfare. This section is not intended to apply to the area of safety of elevators, which is regulated by the Occupation Safety and Health Standards Board.

The IWC received no compelling evidence, and concluded there was no rationale, to warrant making any change in the provisions of this section, which date back more than 30 years.

LIFTING

The former section regulating lifting was deleted inasmuch as the State Occupational Safety and Health Standards Board asserted exclusive jurisdiction in this area during joint consultation held by the two agencies pursuant to Section 1173 of the Labor Code.

17. EXEMPTIONS

Although the IWC has attempted to foresee as many circumstances as it could in drafting its regulations, unforeseen circumstances occasionally justify exemptions after careful investigation and in the exercise of the best judgment of the Division.

The IWC received no compelling evidence, and concluded there was no rationale, to warrant making any change in this section, the basic provisions of which date back more than 30 years.

18. FILING REPORTS

The IWC does not regularly require employers to file reports but is authorized by statute to gather information to carry out the purpose of the order.

The IWC received no compelling evidence, and concluded there was no rationale, to warrant making any change in the provisions of this section.

19. INSPECTION

Labor Code Section 1173 charges the IWC with the "continuing duty ... to ascertain the wages paid to all employees in this state, and to ascertain the hours and conditions of labor in and employment in the various occupations, trades and industries. Section 19 makes it possible for the IWC to fulfill this duty and to carry out the purpose of the order.

The IWC received no compelling evidence, and concluded there was no rationale, to warrant making any change in the provisions of this section.

20. PENALTIES

This section refers on the face of the order to Labor Code Sections which specify penalties for violation.

The IWC received no compelling evidence, and concluded there was no rationale, to warrant making any change in the provisions of this section.

21. SEPARABILITY

This section is intended to preserve the integrity of the orders in the face of any legal challenge.

The IWC received no compelling evidence, and concluded there was no rationale, to warrant making any change in the provisions of this section.

22. POSTING

The basic requirement for posting a copy of the order in the building in which employees are employed is stated in Labor Code Section 1183, and the IWC received no compelling evidence to warrant a change in the provisions of this section. Considerable concern was expressed in wage boards over the need for posting information without the basic standards contained in the order in the language understood by workers who do not speak English. The IWC has requested the Department of Industrial Relations to make such summaries available, to the extent feasible, in Spanish and Chinese and other languages as found useful in enforcing the orders.

Sections 1 and 3 of the Statement as to the Basis were adopted on January 19, 1990. Sections 4 and 10 were adopted on January 22, 1988, and amended on December 16, 1988. The remaining sections of the Statement as to the Basis were adopted on September 7, 1979.