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COPY

SUPREME COURT
FILED

June 29, 2011

VIA U.S. MAIL

The Honorable Chief Justice and Associate Justices of the
California Supreme Court
350 McAllister Street
San Francisco, CA 94102-4797

JUN 30 2011

Frederick K. Ohlrich Clerk

Deputy

Re: Request for Depublication: *Lamps Plus Overtime Cases*, 195 Cal.App.4th 389 (2011), Case Nos. S194064, B220954

Dear Honorable Justices:

Pursuant to Rule of Court 8.1125, I write on behalf of Adam Hohnbaum, Illya Haase, Romeo Osorio, Amanda June Rader, and Santana Alvarado to urge the Court to depublish *Lamps Plus Overtime Cases*, which appears in the official reports at 195 Cal.App.4th 389, 2011 WL 1759625 (Case Nos. S194064, B220954).

Statement of Interest

Adam Hohnbaum, Illya Haase, Romeo Osorio, Amanda June Rader, and Santana Alvarado are the named plaintiffs in *Brinker Restaurant Corp. v. Superior Court (Hohnbaum)*, No. S166350, a meal period and rest break class action now pending before this Court. The trial court in *Brinker* granted class certification of plaintiffs' meal period, rest break, and off-the-clock claims, and defendant employer filed a writ petition. The Court of Appeal (Fourth Appellate District, Division One) reversed the class certification order, and this Court granted review on October 22, 2008. The case is now fully briefed, and awaits oral argument.

Mr. Hohnbaum and his co-workers in *Brinker* have an ongoing interest in any case raising issues that overlap with those raised in their pending action, as they also have an interest in the sound development of the law governing meal period, rest breaks, and other employment law issues in California generally.

***Lamps Plus* Should Be Depublished**

Lamps Plus raises the same core meal period compliance question raised in *Brinker*—that is, whether an employer must relieve workers of all duty so they can take their statutorily-mandated meal periods.¹ *Lamps Plus* incorrectly decided this question in a manner likely to lead to confusion among litigants and lower courts alike. After misreading the Wage Orders' language, *Lamps Plus* then wholly ignored *Martinez v. Combs*, 49 Cal.4th 35 (2010), this Court's most recent word on the Wage Orders' correct interpretation.

For either or both of these reasons, *Lamps Plus* should be depublished.

1. *Lamps Plus* Misread the Wage Orders' Language

The Court of Appeal opinion in *Lamps Plus* grossly misread the Wage Orders' language governing both meal periods and rest breaks.² The opinion compared the remedies language of the meal period provision to the compliance language of the rest break provision—an apples-to-oranges comparison that reveals nothing about the Wage Orders' meaning and can only lead to confusion.

According to the *Lamps Plus* court:

Wage Order 7-2001, which governs mercantile workers like the *Lamps Plus* employees, echoes the language of Labor Code section 512. It requires employers to *provide* employees with a meal period of not less than 30 minutes for a work period of more than five hours. Similarly, Wage Order 7-2001 states that employers are to *authorize and permit* employees to take a 10-minute rest break for every four hours worked.

Lamps Plus, 2011 WL 1759265 at *6 (emphasis in original) (citing 8 Cal. Code Regs. §11070, ¶11(E), ¶12(A)).

In fact, the Wage Orders' meal period compliance language does not contain the word “provide,” nor is that language at all “similar” to the rest break compliance language.

¹ See *Lamps Plus*, 2011 WL 1759625 at *6-*8; *Brinker*, Opening Brief on the Merits (filed 01/22/09) at 33-78; *Brinker*, Answer Brief on the Merits (filed 05/01/09) at 24-64; *Brinker*, Reply Brief on the Merits (filed 07/20/09) at 3-19.

² The relevant language of Wage Order 5, governing the restaurant workers in *Brinker*, is identical to Wage Order 7, governing the mercantile workers in *Lamps Plus*. Compare 8 Cal. Code Regs. §11050, ¶¶11, 12 with 8 Cal. Code Regs., §11070, ¶¶11, 12.

The meal period compliance language appears in paragraph 11(A) of the Wage Orders. It reads, and has read for almost 60 years: “No employer shall *employ* any person for a work period of more than five (5) hours without a meal period” 8 Cal. Code Regs. §11070, ¶11(A) (emphasis added). The rest break compliance language appears in paragraph 12(A) of the Wage Orders, and has read as follows since the 1950s: “Every employer shall *authorize and permit* all employees to take rest periods” *Id.*, ¶12(A) (emphasis added).

As explained in more detail below, “no employer shall *employ*” is a qualitatively different compliance standard than “every employer shall *authorize and permit*.” They are not “similar.”

While the two compliance standards differ markedly, it would be correct to say that the remedies language of the meal period provision and the rest break provision are “similar.” The former reads:

If an employer fails to provide an employee *a meal period in accordance with the applicable provisions of this order*, the employer shall pay the employee one (1) hour of pay

8 Cal. Code Regs. §11070, ¶11(D) (emphasis added). The rest break remedies language reads:

If an employer fails to provide an employee *a rest period in accordance with the applicable provisions of this order*, the employer shall pay the employee one (1) hour of pay

Id., §11070, ¶12(B) (emphasis added).

Both explicitly refer back to the immediately preceding compliance language, which for meal periods is “no employer shall *employ*,” and for rest breaks is “every employer shall *authorize and permit*.” Both use the word “provide” as a shorthand term to simultaneously reference *both* of the two *differing* compliance standards. *Cf. Murphy v. Kenneth Cole Productions, Inc.*, 40 Cal.4th 1094, 1105 (2007) (“Concerned with the health and welfare of employees, the IWC issued wage orders mandating the provision of meal and rest periods in 1916 and 1932, respectively.”).

The same is true of Labor Code section 226.7, on which the *Lamps Plus* opinion relies. Section 226.7, subdivision (b), states: “If an employer fails to *provide* an employee *a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission*, the employer shall pay the employee one additional hour of pay” (Emphasis added.) By its plain language, section 226.7(b) refers the reader back to the Wage Orders’ compliance language for meal periods or the compliance language for rest breaks, depending on which one the reader is interested in. The compliance language for each is qualitatively different

(“no employer shall *employ*” vs. “every employer shall *authorize and permit*”). The use of the word “provide” does not change this.

Put another way, the statement in *Lamps Plus* that Wage Order 7-2001 “requires employers to *provide* employees with a meal period ... [and] to *authorize and permit* employees to take a ... rest break” is both incorrect and highly misleading—the result of the court’s conflation of the meal period remedies language with the rest break compliance language. It is the meal period compliance language that is relevant, and that language states: “No employer shall *employ*”

2. *Lamps Plus Ignored Martinez v. Combs*

Lamps Plus compounded its misreading of Wage Order 7-2001 by ignoring this Court’s most recent word on the meaning of the word “employ” as used in both the Labor Code and the Wage Orders.

As this Court explained in *Martinez*, the term “employ” is defined in the Wage Orders as “engage, suffer or permit to work.” 49 Cal.4th at 57, 59 (quoting 8 Cal. Code Regs. §11140, ¶2(C)).³ “The verbs ‘to suffer’ and ‘to permit’ ... are terms of art in employment law.” *Id.* at 64. An employer “suffers or permits” an employee to work “*by failing to prevent*” work from occurring “while having the power to do so.” *Id.* at 69 (emphasis added); *see also id.* at 58 (employers “shall not *employ* by contract, nor ... *permit* by acquiescence, nor *suffer* by a failure to hinder” (italics in original; underscore added)).

Hence, under *Martinez*, the Wage Order prohibition stating that “no employer shall *employ* any person ... without a meal period” (8 Cal. Code Regs. §11070, ¶11(A)) means that “no employer shall *fail to prevent*” or “*fail to hinder*” work from occurring during the meal period.

Put another way, as a more straightforward affirmative proposition, this requirement states that employers must ensure that employees do not perform work during the required meal periods. It is a far cry from the rest period requirement (described by the *Lamps Plus* court as “similar”), which is merely that employees be “authorized and permitted” to take rest breaks.

This is precisely what the Wage Orders for the mercantile industry have required for more than 90 years. *See* Wage Order 13 (Mercantile Establishments) (Dec. 19, 1919, eff. Feb. 17, 1920), ¶21 (“TIME FOR MEALS. Every woman and minor shall be entitled to at least forty-five (45) minutes for noon day meal; *provided, however*, that **no woman or minor shall be permitted to return to work in less than one-half hour.**” (italics in original; bold added));

³ An identical definition appears in Wage Order 5, governing *Brinker*, and Wage Order 7, governing *Lamps Plus*. *See* 8 Cal. Code Regs. §11050, ¶2(E), 11070, ¶2(D).

Wage Order 1-52 (Manufacturing and Mercantile Industries) (May 16, 1952, eff. Aug. 1, 1952), ¶¶2(d), 11, 12 (“**‘Employ’ means to engage, suffer or permit to work.**” “**No employer shall employ any woman or minor** for a work period of more than five (5) hours **without a meal period** of not less than thirty (30) minutes” “**Every employer shall authorize and permit** all employees to take **rest periods**” (bold added)); Wage Order 7-57 (May 30, 1957, eff. Nov. 15, 1957), ¶¶2(d), 11, 12 (same); Wage Order 7-63 (Apr. 18, 1963, eff. Aug. 30, 1963), ¶¶2(d), 11(a), 12 (same); Wage Order 7-68 (Sept. 26, 1967, eff. Feb. 1, 1968), ¶¶2(d), 11(a), 12 (same); Wage Order 7-76 (Jul. 27, 1976, eff. Oct. 18, 1976), ¶¶2(D), 11(A), 12 (“**‘Employ’ means to engage, suffer or permit to work.**” “**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” “**Every employer shall authorize and permit** all employees to take **rest periods**” (bold added)); Wage Order 7-80 (Sept. 7, 1979, eff. Jan. 1, 1980), ¶¶2(D), 11(A), 12 (same); Wage Order 7-98 (eff. Jan. 1, 1998), ¶¶2(D), 11(A), 12 (same).⁴

Lamps Plus failed to so much as cite *Martinez*, let alone attempt to analyze the impact of *Martinez* on the proper interpretation of employers’ meal period obligations in California. Nor did the *Lamps Plus* court make any effort to consider the 90-year history of Wage Order 7-2001.

And, while the *Lamps Plus* court relied on Labor Code section 512 in support of its conclusions (2011 WL 1759625 at *7), it made no attempt to consider whether the Legislature, by enacting section 512, intended to dramatically weaken a 90-year-old compliance standard. In fact, the purpose of AB 60 (of which section 512 was a part) was to *enhance* worker protections, not diminish them. See *Collins v. Overnite Transp. Co.*, 105 Cal.App.4th 171, 176 (2003) (AB 60 enacted in reaction to attempt to introduce less protective provisions into California overtime rules).

Nor did the *Lamps Plus* court make any effort to reconcile its holding with the Legislature’s decision, in an uncodified section of AB 60,⁵ to explicitly *reinstate* Wage Order 7-80 for the mercantile industry—a Wage Order that contained the very 90-year-old compliance standard the *Lamps Plus* court rejected. See Assem. Bill No. 60 (1999-2000 Reg. Sess.), Stats. 1999, ch. 134 (July 21, 1999), § 21 (“Wage Orders 1-89, 4-89 as amended in 1993,

⁴ Copies of these Wage Orders are attached hereto as Exhibits A through H. They are true and correct copies of originals personally reviewed by the undersigned at the California Department of Industrial Relations archive in San Francisco, California. The Court is respectfully asked to take judicial notice of these official records of the Industrial Welfare Commission pursuant to Evidence Code section 452(c).

⁵ “An uncodified section is part of the statutory law.” *Carter v. California Dep’t of Veterans Affairs*, 38 Cal.4th 914, 925 (2006).

Honorable Chief Justice and Associate Justices of the
California Supreme Court
June 29, 2011
Page 6

5-89 as amended in 1993, **7-80**, and 9-90 are reinstated.” (emphasis added));⁶ Wage Order 7-80, *supra*, ¶11(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”).


The *Lamps Plus* opinion considered no regulatory or legislative history at all. Instead, it relied on a dictionary definition of the word “provide.” *Lamps Plus*, 2011 WL 1759625 at *7 (citing Webster’s Tenth Collegiate Dictionary).

The lack of considered analysis in *Lamps Plus* of each of these points “could lead to unanticipated misuse [of the opinion] as precedent.” See Eisenberg, Horvitz & Weiner, *California Practice Guide: Civil Appeals & Writs* §11:180.1 (The Rutter Group 2010); see also *California Civil Appellate Practice*, §21.17 (Cal. Cont. Ed. Bar 3d ed. 1996) (depublishation warranted where opinion “contains misleading or incorrect language that might cause confusion” among litigants and lower courts). Accordingly, it should be depublished.

Conclusion

For the reasons discussed above, the Court is respectfully asked to depublish the *Lamps Plus* opinion.

Respectfully submitted,



Kimberly A. Kralowec
(State Bar No. 163158)

cc: See attached proof of service

⁶ Available at:
http://leginfo.ca.gov/pub/99-00/bill/asm/ab_0051-0100/ab_60_bill_19990721_chaptered.pdf (as of June 29, 2011).

EXHIBIT A

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF INDUSTRIAL WELFARE
620 STATE BUILDING, CIVIC CENTER
SAN FRANCISCO

111

SOUTHERN CALIFORNIA OFFICE:
1019 SUN FINANCE BUILDING, LOS ANGELES

To Whom It May Concern:

TAKE NOTICE: That pursuant to and by virtue of the authority vested in it by the Statutes of California, 1913, Chapter 324, and amendments thereto, and after public hearings duly had in the City and County of San Francisco on June 17, 1917, and December 6, 1918,

THE INDUSTRIAL WELFARE COMMISSION OF THE STATE OF CALIFORNIA does hereby order that:

No person, firm or corporation shall employ or suffer or permit any woman or minor to work in any mercantile establishment in which the conditions of employment are below the standards set forth hereinafter; *provided, however*, that in cases where, in the opinion of the Industrial Welfare Commission, after due investigation, the enforcement of any rule would not materially increase the comfort, health or safety of employees and would work undue hardship on the employer, exemptions may be made at the discretion of said Commission, but such exemptions must be in writing to be effective, and can be revoked after reasonable notice is given in writing. All applications for such exemptions shall be made by the employer to the Commission in writing. Every person, firm or corporation employing women or minors in any mercantile establishment shall post a copy of this order in a conspicuous place in each dressing room used by such employees.

(1) LIGHTING. Every room in which women and minors are employed shall be supplied with adequate natural or artificial light, in accordance with the General Lighting Safety Orders of the Industrial Accident Commission of the State of California.

(2) VENTILATION AND TEMPERATURE.

(a) The ventilation of each room in which women and minors are employed shall be adequate, and a minimum temperature of fifty-eight (58) degrees Fahrenheit shall be maintained at all times during working hours.

In any room where manufacturing, altering, repairing, finishing, cleaning or laundering is carried on, the following provisions shall also apply:

(b) If dust, gases, fumes, vapors, fibers or other impurities are generated or released in the course of the process carried on in the workroom, in quantities tending to injure the health of those employed therein, such suction or other special devices as may be necessary to remove at the point of origin, or render harmless, such impurities, shall be installed and operated.

(c) The nature of the process permitting, there shall be maintained in each workroom during the months from October to April inclusive, a minimum temperature of fifty-eight (58) degrees Fahrenheit and, the weather permitting, a maximum temperature of seventy-two (72) degrees Fahrenheit. If, owing to the nature of the process, excessive heat be created in the workroom, such special devices as may be required to reduce such excessive heat shall be installed and operated.

(3) FLOORS.

(a) Each room in which women and minors are employed shall be provided with a smooth, tight floor, which can be kept in a clean and sanitary condition.

(b) All sweepings, waste and refuse shall be removed in such manner as to avoid raising of dust or odors as often as is necessary to maintain the workroom in a clean and sanitary condition.

(c) Unless floors are of wood, cork or rubber composition, or other approved, non-heat conducting and resilient material, mats or gratings of such approved material shall be supplied at all points where women are required by their work to stand.

In any room where manufacturing, altering, repairing, finishing, cleaning or laundering is carried on, the following provisions shall also apply:

(d) Where wet processes are employed, the floors must be pitched to provide for drainage so that there will be no unreasonable depth of liquid at any point.

(e) Where floors are wet, and women are required by their work to walk over or stand upon them, wooden racks or gratings of an adequate height shall be provided at such points.

(4) TOILET ROOMS. Toilet rooms shall be completely partitioned off from workrooms and the doors must be so located or protected by fixed solid screen that no water-closet compartment shall be visible from the adjoining room from which it is separated by such screen or partition.

(5) LIGHTING OF TOILET ROOMS. Toilet rooms shall have adequate natural or artificial light, so that every part of the room and of the interior of each compartment shall be plainly visible.

(6) VENTILATION AND HEATING OF TOILET ROOMS.

(a) Toilet rooms shall be adequately ventilated and the ventilation shall be only to the outside of the building.

(b) Every toilet room and water-closet compartment shall be kept heated during working hours to not less than fifty (50) degrees Fahrenheit at all times.

(7) FLOORS OF TOILET ROOMS. In each toilet room hereafter installed, the floors and the side walls to a height of not less than six (6) inches shall be constructed with sanitary base and of material, other than wood, which is impervious to moisture and which has a smooth surface. This material shall be asphalt, Portland cement, with carefully floated surface or with admixture of approved water-proofing material, tile, glazed brick or other approved waterproof material. The angle formed by the floor and the base shall be coved. Wooden floors will be permitted, in existing installations, if kept well painted with a non-absorbent paint.

(8) WALLS OF TOILET ROOMS. All walls of toilet rooms and water-closet compartments, unless constructed of marble, cement, plaster, tile, glazed brick or other glazed material, shall be kept covered with a light colored, non-absorbent paint or other impervious compound.

(9) WATER-CLOSET COMPARTMENTS. Each water-closet shall be in a separate compartment, which shall be provided with a door. The door shall be of such width and so hung, and the compartment shall be of such dimensions as to permit of easy entrance and exit. Such compartments shall have a minimum width of twenty-seven (27) inches and there shall be a minimum clearance of eighteen (18) inches between the front edge of toilet seat and the compartment wall or closed door directly in front of the seat.

(10) PARTITIONS OF WATER-CLOSET COMPARTMENTS. Partitions of water-closet compartments shall be not less than six (6) feet high and shall extend not nearer the ceiling and floor than one (1) foot.

(11) NUMBER OF WATER-CLOSETS. The number of closets to be provided shall be based upon the maximum number of women regularly employed and shall be as follows:

NO. OF PERSONS	CLOSETS	RATIO
1 - 15	1	1 for 15
16 - 35	2	1 for 17½
36 - 55	3	1 for 18⅓
56 - 80	4	1 for 20
81 - 110	5	1 for 22
111 - 150	6	1 for 25
151 - 190	7	1 for 27¼

and thereafter at the rate of one (1) closet for every thirty (30) persons. No water-closet shall be located more than one floor above or below the regular place of work of the persons using same except where passenger elevators are provided in sufficient numbers and their use permitted in taking employees to the toilet room floors.

(12) TYPES OF WATER-CLOSETS. Every water-closet shall have a bowl of vitreous china or of other approved material. Every such bowl shall be provided with adequate facilities for flushing and shall be set entirely free from enclosing woodwork and so installed that the space around it can be easily cleaned.

(13) WATER-CLOSET SEATS. The bowls of water-closets shall be provided with seats of wood or other non-heat absorbing material and shall be coated with varnish or some other waterproof substance, and shall not be provided with a cover.

(14) TOILET PAPER. An adequate supply of toilet paper shall be provided in every water-closet compartment.

(15) SANITARY NAPKINS. Sanitary napkins shall be readily obtainable at a reasonable price, and a metal receptacle with a hinged cover, in which napkins may be deposited, shall be provided in each toilet room.

(16) CLEANING OF TOILETS AND WASH ROOMS. All toilet rooms and lavatories shall be kept clean and the floors shall be washed daily and thoroughly scrubbed at least once a week. The bowls and seats of water-closets and all wash basins, bowls and sinks shall be thoroughly washed at least once each day.

(17) WATER SUPPLY. Each place of employment shall be supplied with pure drinking water so placed as to be convenient to the employees. Common drinking cups are prohibited. Individual cups must be used, or sanitary drinking fountains of an approved design must be installed. Drinking fountains shall be kept in a sanitary condition and shall be of such design that it is impossible to place the lips in contact with the orifice from which the jet of water issues, or for the supply orifice to become submerged by the waste water. The water supply of drinking fountains shall be so regulated and maintained that a jet of at least two (2) inches in height shall be constantly available.

(18) LOCATION OF WASH ROOMS. There shall be adequate washing facilities provided as hereinafter specified. A sufficient number of wash bowls or sink space shall be located, either within the toilet room or adjacent to the toilet room, and in the direct route between the toilet rooms and the work place. Any wash bowls or sinks not so located shall be installed in an approved location.

(19) NUMBER OF WASH BOWLS. The number of wash bowls to be provided shall be based upon the maximum number of women regularly employed and shall be as follows:

NO. OF PERSONS	WASH BOWLS	RATIO
1 - 15	1	1 for 15
16 - 35	2	1 for 17½
36 - 55	3	1 for 18⅓
56 - 80	4	1 for 20
81 - 110	5	1 for 22
111 - 150	6	1 for 25
151 - 190	7	1 for 27¼

and thereafter at the rate of one bowl for every thirty (30) persons, except that twenty (20) lineal inches of sink space with one water supplied faucet shall be considered the equivalent of one wash bowl and shall be provided in the above ratio. Every wash bowl or sink shall be of vitreous china, enameled iron or other approved material, impervious to water, and if used on one side only, shall be not less than twelve (12) inches wide inside measurement, or if used on both sides, not less than 22 inches inside measurement. Self-closing faucets shall not be used, except where wash basins or bowls are provided. Sufficient soap and either individual or paper towels shall be provided. Roller or other towels to be used in common will not be permitted.

(20) REST ROOMS AND CLOAK ROOMS.

(a) In establishments where twenty (20) or more women are regularly employed, a suitable room adequately ventilated and kept heated to a minimum temperature of fifty-eight (58) degrees Fahrenheit at all times during working hours shall be provided where women may change their clothing in privacy and comfort; where less than twenty (20) women are regularly employed, a separate room need not be provided for this purpose if an adequate space is screened or curtained off, or other arrangement satisfactory to the Commission made for privacy and comfort in dressing.

(b) In or adjacent to the above mentioned room or space, sufficient and adequate provision shall be made for the proper and safe-keeping of the outer clothing of the women workers during the working hours, and of their working clothes during the non-working hours.

(c) Where more than nineteen (19) or less than fifty (50) women are regularly employed, there shall be provided at least one couch, bed or cot. Where more than fifty (50) and less than one hundred (100) women are regularly employed, two shall be provided, and thereafter at least one for every one hundred (100), or fraction thereof, women regularly employed. Where these couches, beds or cots are not placed in a separate room, they shall be placed in the locker or dressing room and protected from direct observation by a suitable screen, and the first aid kit shall be kept adjacent to them.

(d) FIRST AID. Except where a separate hospital room is maintained for the use of employees who are injured or sick, an adequate first aid kit shall be provided. The first aid material shall be kept in a case or cabinet of enameled metal or enameled wood and metal with glass shelves, and so constructed as to exclude dust. At least one person shall be instructed by a physician or trained nurse in the administration of first aid to injured persons, and shall have charge of the first aid kit and its maintenance in a properly supplied and cleanly condition. In all establishments where work is carried on in more than one building or on several floors, additional kits may be required by the Commission.

(e) Where twenty (20) or more women are regularly employed, there shall also be one stretcher for use in case of accident or illness, except that, where one of the above required couches, beds or cots is a cot of a type suitable for use as a stretcher, a separate stretcher need not be provided.

POST IN A CONSPICUOUS PLACE

(21) TIME FOR MEALS. Every woman and minor shall be entitled to at least forty-five (45) minutes for noon day meal; *provided, however*, that no woman or minor shall be permitted to return to work in less than one-half hour. If work is to be continued through the evening, every woman and minor shall be entitled to at least one hour for the evening meal.

(22) LUNCH ROOMS. In every establishment where twenty (20) or more women are regularly employed and where there is not any cafeteria or restaurant conducted by the management on the premises, an adequately lighted and ventilated lunch room shall be provided and shall be kept heated at a minimum temperature of fifty-eight (58) degrees Fahrenheit during the meal periods. Such lunch room shall be furnished with a sufficient number of tables and seats and shall have running water and proper facilities for the heating of lunches or for the making of tea or coffee. The lunch room shall be kept in a clean and sanitary condition and covered receptacles for the disposal of waste shall be provided.

(23) SEATS.

(a) Seats of the proper height shall be provided in all rooms to the number of at least one seat for every two women employed and evenly distributed in that proportion. Women shall be permitted to use the seats at all times when not engaged in the active duties of their occupation. No order or instructions shall be issued by any employer or his representative which shall conflict with this provision.

In any room where manufacturing, altering, repairing, finishing, cleaning or laundering is carried on, the following provision shall also apply:

(b) As far as, and to whatever extent, in the judgment of the Commission, the nature of the work permits, the following provisions shall be effective:

Seats shall be provided at work tables or machines for each and every woman or minor employed, and such seats shall be capable of such adjustment and shall be kept so adjusted to the work tables or machines that the position of the worker relative to the work shall be substantially the same, whether seated or standing. Work tables, including sorting belts, shall be of such dimensions and design that there are no physical impediments to efficient work in either a sitting or a standing position, and individually adjustable foot rests shall be provided. New installations to be approved by the Commission.

(24) CARRYING. No woman shall be required or permitted to lift or carry any excessive burden.

(25) ELEVATOR SERVICE. In every building in which a total of ten (10) or more women is regularly employed on the fourth or higher floors, there shall be provided adequate elevator service to such floors, and such workers shall be freely permitted to use such elevator service.

(26) FIRE EXITS.

(a) From each floor above the ground floor of any building, in which women are employed above the ground floor, there shall be at least two (2) adequate exits remote from each other. One of these exits shall be a horizontal exit, an inside enclosed stairway or an outside stairway.

(b) All exits shall be plainly marked and shall be kept clear of obstruction and in a safe condition; no combustible material shall be kept or stored in close proximity to any exit. All exit doors shall open outward. They shall at all times be kept clear of obstructions, and during working hours, be kept unlocked.

(c) In any building in which a total of twenty (20) or more women is regularly employed on the third or higher floors, there shall be provided an adequate system for giving alarm in case of fire, and fire drills shall be held at least once each month.

This order shall become effective sixty (60) days from the date hereof, or February 17, 1920.

Dated at San Francisco, California, this 19th day of December, 1919.

INDUSTRIAL WELFARE COMMISSION, STATE OF CALIFORNIA

A. B. C. DOHRMANN, *Chairman*

KATHERINE PHILIPS EDSON, *Executive Officer*

ALEXANDER GOLDSTEIN

WALTER G. MATHEWSON

ATTEST: KATHERINE PHILIPS EDSON, *Executive Officer*.

STATUTES OF CALIFORNIA, 1913, CHAPTER 324. SEC. 11 AND SEC. 3 (c)

"Every employer or other person who, either individually or as an officer, agent or employee of a corporation, or other persons, violates or refuses or neglects to comply with the provisions of this act, or any orders or rulings of the Commission, shall be guilty of a misdemeanor, and upon conviction thereof, be punished by a fine of not less than fifty dollars, or by imprisonment for not less than thirty days, or by both such fine and imprisonment."

EXHIBIT B

WAGES, HOURS, AND WORKING CONDITIONS IN THE MANUFACTURING AND MERCANTILE INDUSTRIES

(REPLACING FORMER ORDERS 1R AND 7R)

STATE OF CALIFORNIA—DEPARTMENT OF INDUSTRIAL RELATIONS

DIVISION OF INDUSTRIAL WELFARE

965 Mission Street, San Francisco 3
907 State Building, Los Angeles 12
1531 Webster Street, Oakland 12

57 North Fulton Street, Fresno 1
210 Jergins Trust Building, Long Beach 2
1521 Fourth Avenue, San Diego 1

419 Forum Building, Sacramento

To Whom It May Concern:

TAKE NOTICE: That pursuant to and by virtue of authority vested in it by Sections 1171 to 1204, inclusive, of the Labor Code of the State of California, and after public hearing duly had, notice of said hearing having been duly given in the manner provided by law, the Industrial Welfare Commission, upon its own motion having found and concluded that the Manufacturing Industry Order, Number 1R, and the Mercantile Industry Order, Number 7R, enacted by the Industrial Welfare Commission on February 8, 1947, should be altered and amended:

NOW, THEREFORE, The Industrial Welfare Commission of the State of California does hereby alter and amend said Manufacturing Industry Order, Number 1R, and said Mercantile Industry Order, Number 7R, and does hereby enact its amended Order as follows:

No person, as defined in Section 18 of the Labor Code, shall employ any woman or minor in any establishment or industry in which the wages, hours, or working conditions are not in conformance with the standards hereinafter set forth:

1. APPLICABILITY OF ORDER

This Order shall apply to all women and minors employed in the manufacturing industry or in the mercantile industry whether paid on a time, piece rate, commission, or other basis, except women employed in administrative, executive, or professional capacities.

No woman shall be considered to be employed in an administrative, executive, or professional capacity unless one of the following conditions prevails:

- The employee is engaged in work which is predominantly intellectual, managerial, or creative; and which requires exercise of discretion and independent judgment; and for which the remuneration is not less than \$350 per month; or
- 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, architecture, engineering, teaching, or accounting.

2. DEFINITIONS

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

(b) "Division" means the Division of Industrial Welfare of the State of California.

(c) "Manufacturing Industry" means any industry, business, or establishment operated for the purpose of preparing, producing, making, altering, repairing, finishing, processing, inspecting, handling, assembling, wrapping, bottling, or packaging goods, articles, or commodities, in whole or in part; EXCEPT when such activities are covered by Orders in the:

Canning, Preserving and Freezing Industry;
Industries Handling Farm Products After Harvest; or
Motion Picture Producing Industry.

"Mercantile Industry" means any industry, business, or establishment operated for the purpose of purchasing, selling, or distributing goods or commodities at wholesale or retail.

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

(e) "Employee" means any woman or minor 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 the wages, hours, or working conditions of a woman or minor.

(g) "Minor" means, for the purpose of this Order, a male or female person under the age of eighteen (18) years.

(h) "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.

(i) "Emergency" means an unpredictable or unavoidable occurrence at unscheduled intervals requiring immediate action.

3. HOURS

(a) No woman or minor shall be employed more than eight (8) hours during any one day of twenty-four (24) hours nor more than six (6) days in any one week, except under the following conditions:

- When overtime employment is not prohibited by Sections 1350-1354* of the Labor Code of the State of California, women eighteen (18) years of age or over may, in case of emergency, be employed in excess of eight (8) hours in one day or in excess of six (6) days in one week provided the employee is compensated for all hours worked in excess of eight (8) hours in one day and for all hours worked on the seventh (7th) day [except such seventh day employment as is authorized in subsection (a) (2) hereof] at not less than one and one-half (1½) times the employee's regular rate of pay.
- An employee may be employed seven (7) days in one week when the total hours of employment during said week do not exceed thirty (30) and the total hours of employment in any one day thereof do not exceed six (6).

* See last column for "Excerpts from Labor Code," Sections 1350-1354.

(b) The eight (8) hours of employment shall be performed within a period of not more than thirteen (13) hours and, except when there is a bona fide change of shift, eleven (11) hours shall elapse between the end of one work day of the employee and the beginning of the next.

(c) No woman employee shall be required to report for work or be dismissed from work between the hours of 10 P.M. and 6 A.M. unless suitable transportation is available. If a meal period occurs during these hours, facilities shall be available for securing hot food or drink, or for heating food and drink; and a suitable, sheltered place shall be provided in which to consume such food and drink.

NOTE: REFER TO STATE LABOR CODE FOR ADDITIONAL RESTRICTIONS ON WORKING HOURS OF MINORS.

4. MINIMUM WAGES

(a) Every employer shall pay to each woman and minor employee wages not less than seventy-five cents (75¢) per hour for all hours worked; except that a lesser rate, but not less than sixty cents (60¢) per hour, may be paid to:

- Women, eighteen (18) years of age or over, during their first two hundred (200) hours of employment in skilled or semi-skilled occupations in which they have had no previous similar or related experience, provided that the number of women employed at such rate shall not exceed ten percent (10%) of the persons regularly employed in the establishment. An employer of less than ten (10) persons may employ one learner at said lesser rate.
- Minors, provided that the number of minors employed at said lesser rate shall not exceed ten percent (10%) of the persons regularly employed in the establishment. An employer of less than ten (10) persons may employ one minor at said lesser rate.

(b) Every employer shall pay to each employee, on the established pay day 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) In no case shall gratuities or tips from patrons or others be counted as part of the minimum wage. No employee shall be required to report tips for this purpose.

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

(e) On any day in which an employee works a split shift, seventy-five cents (75¢) per day shall be paid in addition to the minimum wage except when the employee resides at the place of employment.

("Split Shift" means a work schedule which is interrupted by non-working periods other than bona fide rest or meal periods.)

5. REPORTING TIME PAY

Each day 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 day's work, the employee shall be paid for half the usual day's work, but in no event for less than two hours, at the employee's regular rate of pay, which shall be not less than the minimum wage herein provided.

6. PERMIT FOR HANDICAPPED WORKERS

A permit may be issued by the Commission authorizing employment of a woman or minor whose earning capacity is impaired by advanced age, physical disability, or mental deficiency, at less than the minimum wage herein provided. Such permits shall be granted only upon joint application of employer and employee.

7. RECORDS

(a) Every employer shall keep at the place of employment, in a manner approved by the Division, accurate information with respect to each employee as follows:

- Full name, home address, and occupation.
- Birth date, if under eighteen (18) years, and designation as a minor on the payroll record.
- Time records showing all in-and-out time which shall be recorded when it occurs, and also total hours worked each day. Meal periods during which operations cease and authorized rest periods need not be recorded.
- Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee. The total hours worked in the payroll period shall appear on the same record as wages paid for that period.

(b) All required records shall be properly dated, showing month, day, and year, and shall be kept on file by the employer for at least one year.

(c) When a piece rate or incentive plan is in operation, a schedule of rates must be available in the workroom. An accurate production record shall be furnished to each employee unless the employer's system of recording is acceptable to the Division.

(d) Clocks shall be provided in all major work areas.

8. CASH SHORTAGE AND BREAKAGE

No employer shall make any deduction from the minimum wage of an employee for any cash shortage, breakage, or loss of equipment, notwithstanding any contract or arrangement to the contrary, unless it can be shown that the shortage, breakage, or loss is caused by a dishonest or wilful act, or by the culpable negligence of the employee.

9. UNIFORMS AND EQUIPMENT

(a) No employee shall be required to contribute directly or indirectly from the minimum wage for the purchase or maintenance of tools, equipment, or uniforms; nor for the laundering and cleaning of uniforms. The term "uniform" includes wearing apparel and accessories of distinctive design or color required by the employer to be worn by the employee as a condition of employment.

(b) When protective garments are required by the employer, or are necessary to safeguard the health, or prevent injury to an employee, such garments shall be provided and paid for by the employer.

10. MEALS AND LODGING

"Meal" means an adequate well-balanced serving of a variety of wholesome, nutritious foods.

"Lodging" means living accommodations which are adequate, decent, and sanitary according to usual and customary standards. Employees shall not be required to share a bed.

When meals or lodging are furnished by the employer as part of the minimum wage, they may not be evaluated in excess of the following:

Room Occupied Alone—\$4 per week.

Room Shared—\$3 per week.

Apartment—Two-thirds (⅔) of the ordinary rental value, and in no event more than \$86 per month.

Meals: { Breakfast, 35 cents
Lunch, 45 cents
Dinner, 70 cents

Deductions may not be made for meals not eaten and shall be made only for bona fide meals consistent with employee's work shift.

11. MEAL PERIODS

No employer shall employ any woman or minor 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. An "on duty" meal period will be permitted only when the nature of the work prevents an employee from being relieved of all duty, and time spent for such "on duty" meal period shall be counted as time worked.

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 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 (3½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

13. DRESSING AND REST ROOMS

(a) Employers shall provide for adequate safekeeping of employees' outer clothing during working hours, and for their work clothes during non-working hours. When the occupation requires a change of clothing, a suitable space shall be provided where female employees may make such change in privacy and comfort.

(b) When the number of females employed at one time is more than twenty (20) and less than fifty (50) there shall be provided one couch, and thereafter at least one additional couch shall be provided for every one hundred (100) female employees or fraction thereof; except that, when the nature of the work requires standing, one couch must be provided where there are more than ten (10) female employees. Beds in hospital rooms may not be counted in the number of required couches.

THIS ORDER MUST BE POSTED

CONDITIONS FOR WOMEN AND MINORS IN THE MERCANTILE INDUSTRIES

(c) Couches shall be placed in suitable rooms, conveniently located, exclusively used by women, and open to them during all working hours. Such rooms shall be properly lighted, ventilated, and heated.

14. DRINKING WATER AND WASHING FACILITIES

(a) Each place of employment shall be supplied with pure drinking water, convenient to employees. Individual paper cups shall be provided or sanitary drinking fountains shall be installed and so regulated that a jet of at least two (2) inches shall be constantly available.

(b) For every twenty-five (25) female employees or fraction thereof, there shall be one wash basin or equivalent group washing facilities. Surfaces of this equipment shall be smooth and resistant to stain and shall be kept clean and sanitary.

(c) Sufficient soap and either individual cloth or paper towels shall be supplied. Towels used in common are prohibited.

15. TOILET ROOMS

(a) NUMBER. Women's toilet rooms must be so marked and the number of toilets required is as follows:

Where the number of females employed at one time is between:	The number of toilets shall be not less than:
1-15*	1
16-30	2
31-45	3
46-60	4
61-80	5
81-100	6

and thereafter one toilet for every twenty-five (25) female employees or majority fraction thereof.

* If the entire staff of an establishment numbers less than five (5) and only one toilet is available, it may be used by both sexes.

(b) GENERAL CONSTRUCTION

(1) Toilets shall be of the water pressure type, installed in accordance with approved and customary standards.

(2) The entrances to toilet rooms shall be effectively screened so that no toilet compartment is visible from any workroom. Each toilet shall be in a separate compartment of adequate size, so constructed as to provide privacy, and with a door of such dimensions as to permit easy entrance and exit. Each toilet compartment door shall be provided with a latch or bolt.

(3) The walls of toilet rooms shall extend to a ceiling and the room shall be thoroughly ventilated to the outside air and shall be adequately lighted.

(4) Floors shall be of cement, terrazzo, tile, glazed brick or other composition which is impervious to moisture and the angle formed by the floor and wall shall be sealed or coved.

(5) Surfaces of walls, partitions, doors, fixtures, toilet seats, bowls, and other equipment shall be smooth and non-absorbent, and all painted surfaces shall be a light color.

(c) SUPPLIES. Toilet paper, in a proper holder, shall be supplied in each compartment. Sanitary napkins shall be readily obtainable at a reasonable price and a suitable means for their disposal shall be provided.

(d) LOCATION. Toilet rooms must be conveniently located on the immediate premises and not more than one floor immediately above or below the employee's work place unless adequate elevator service is available. In existing establishments when, in the judgment of the Division, a toilet cannot be located on the premises, relief periods other than required rest periods shall be authorized for women and minors.

(e) MAINTENANCE. Toilet rooms shall be kept clean and sanitary, and shall contain only such equipment, fixtures, and supplies as properly belong therein.

16. FIRST AID

Adequate first aid supplies must be provided and kept clean and sanitary in a dust-proof container.

17. LIFTING

No female employee shall be required to lift or carry any object weighing in excess of twenty-five (25) pounds, except upon permit from the Division.

(See last column for "Excerpts from Labor Code," Section 1252.)

18. SEATS

Suitable seats shall be provided for all female employees. When the nature of the work requires standing, an adequate number of said seats shall be placed adjacent to the work area and employees shall be permitted to use such seats when not engaged in the active duties of their employment.

19. FLOORS

(a) Unless the surface of the floor is of wood, cork, rubber composition, linoleum, asphalt tile, or other material of comparable resilience, the floor surface in the work area where women or minors stand in the performance of their duties shall be supplied with a covering material of suitable resilience.

(b) The floors and stairs of every establishment shall be safe, smooth and tight.

(c) Where wet processes are employed, the floor must be properly drained. When floors are wet or slippery, racks or gratings of sufficient height and free from hazard shall be provided. If the nature of the employment will not permit the use of racks or gratings, protection for the feet shall be provided by the employer.

20. CLEANLINESS AND UPKEEP

Premises, equipment, and fixtures shall be kept safe, clean, sanitary, and in good repair.

21. LIGHTING

All establishments in which women or minors are employed shall be properly lighted during working hours. Sources of illumination shall be of such nature and so placed that the light furnished will be adequate for efficient work and prevent unnecessary strain on the vision or glare in the eyes of the workers.

22. VENTILATION

Each room in which women or minors are employed shall be thoroughly ventilated.

23. TEMPERATURE

The nature of the employment permitting, there shall be maintained in each workroom a minimum temperature of 65° F., and, weather permitting, a maximum of 75° F. If, owing to the nature of the process, excessive heat is created in the workroom, special devices shall be installed to reduce such excessive heat. Where the nature of the employment will not permit a temperature of 65° F., a heated room shall be provided to which employees may retire for warmth.

24. EXITS

Except as otherwise herein provided, every floor, mezzanine, or balcony on which women or minors are employed shall have at least two exits, remotely located from each other, access to which is unobstructed. Such exits shall be other than elevators. From the third or higher floors at least one means of egress must be an accepted fire exit, and additional fire exits may be ordered where necessary. Exits shall be plainly marked and kept unlocked during working hours.

In facilities constructed prior to the effective date of this Order, the above requirement of two exits shall not apply to a first floor, second floor, mezzanine, or balcony when all the following conditions are met: The premises cannot be altered to provide a second exit; an adequate number of properly maintained fire extinguishers are readily available; and the activities carried on in the establishment do not create a fire hazard.

(For other regulations regarding exits, see General Safety Orders, Title 8, Section 3244, California Administrative Code.)

25. ELEVATORS

When females are employed on the fourth or higher floors, adequate elevator service must be provided.

26. EXEMPTIONS

If, in the opinion of the Commission after due investigation, it is found that the enforcement of any provision contained in Sections 11 to 25 of this Order would not materially increase the comfort, health, or safety of employees and would work undue hardship on the employer, exemptions may be made at the discretion of said Commission. Such exemptions must be in writing to be effective and can be revoked after reasonable notice is given in writing. Applications for exemptions shall be made by the employer to the Commission in writing.

27. FILING REPORTS

Every employer shall furnish to the Commission and to the Division any and all reports or information which may be required to carry out the purpose of this Order, such reports and information to be verified if and when so requested.

28. INSPECTION

The Commission and duly authorized representatives of the Division shall be allowed free access to any office or establishment covered by this Order to investigate and gather data regarding wages, hours, working conditions, and employment practices, and shall be permitted to inspect and make excerpts from any and all records and to question all employees for such purposes.

29. PENALTIES

Failure, refusal or neglect to comply with any of the provisions of this Order is a violation of the Labor Code of the State of California, and is punishable by fine or imprisonment, or both.

30. SEPARABILITY

If the application of any provision of this Order, or any section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Order shall be held invalid or unconstitutional, 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.

31. POSTING OF ORDER

Every employer shall keep posted, in a conspicuous place, a copy of this Order where it can be read by the women and minor employees.

Dated at Los Angeles, California, this sixteenth day of May, 1952.

Orders 1R and 7R, enacted February 8, 1947, are hereby rescinded as and of the date when this Order becomes effective.

INDUSTRIAL WELFARE COMMISSION STATE OF CALIFORNIA

LEROY E. GOODBODY, *Chairman*

MAE CARVELL

ELEANOR C. HEWLETT

DANIEL E. KOSHLAND

MAE STONEMAN

MARGARET KAY ANDERSON, *Chief*

Division of Industrial Welfare

EXCERPTS FROM STATE LABOR CODE

Section 18. "Person" means any person, association, organization, partnership, business trust, or corporation.

Section 1199. Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than fifty dollars (\$50) or by imprisonment for not less than 30 days, or by both, who does any of the following:

(a) Requires or causes any woman or minor to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission.

(b) Pays or causes to be paid to any woman or minor a wage less than the minimum fixed by an order of the commission.

(c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission.

Section 1252. No female employee shall be requested or permitted to carry any object weighing 10 pounds or more up or down any stairway or series of stairways that rise for more than five feet from the base thereof.

Eight Hour Law:

Section 1350. No female shall be employed in any manufacturing, mechanical, or mercantile establishment or industry, laundry, cleaning, dyeing, or cleaning and dyeing establishment, hotel, public lodging house, apartment house, hospital, beauty shop, barber shop, place of amusement, restaurant, cafeteria, telegraph or telephone establishment or office, in the operation of elevators in office buildings, or by any express or transportation company in this State, more than eight hours during any one day of 24 hours or more than 48 hours in one week.

Section 1351. No employer shall employ, cause to be employed or permit any female to work any number of hours whatever, with knowledge that such female has theretofore been employed within the same day of 24 hours in any establishment or industry and by any previous employer for a period of time which will, combined with the period of time of employment by a previous employer, exceed eight hours in one day or 48 hours in one week. This provision shall not prevent the employment of any female in more than one establishment where the total number of hours worked by her does not exceed eight hours in any one day of 24 hours or 48 hours in one week.

Section 1352. The provisions of this article in relation to hours of employment shall not apply to or affect graduate nurses in hospitals, or clinical laboratory technologists or clinical laboratory technicians in hospitals during an emergency; provided, that any such technologist or technician who, by reason of an emergency, is permitted or required by her employer to work in excess of the maximum hours prescribed by other provisions of this article, shall be paid, for time worked in excess of such hours, at a rate of not less than one and a half times her straight time rate of pay, nor the harvesting, curing, canning, or drying of any variety of perishable fruit, fish, or vegetable during the periods when it is necessary to harvest, cure, can, or dry fruit, fish, or vegetables to prevent spoiling, nor to employees actually engaged in the processing of biologicals, human blood products and other such products of laboratories operating under license from either or both the United States Department of the Treasury and the United States Department of Agriculture during such periods when it is necessary to continue the processing of such products to prevent spoilage or deterioration. Emergency within the meaning of this section means an unpredictable or unavoidable occurrence at unscheduled intervals, requiring immediate action. The exception provided herein shall be effective only in cases where the employer, upon learning of the emergency, exercises reasonable diligence to provide immediately relief for the employee required to work over the prescribed number of hours.

(Amended by Stats. 1945, Ch. 640, and by Stats. 1953, Ch. 1254.)

Section 1352.1. The provisions of this article shall not apply to or affect executives, administrators, or professional women. No woman shall be considered to be employed in an administrative, executive or professional capacity unless one of the following conditions prevail:

(a) The employee is engaged in work which is predominantly intellectual, managerial, or creative; which requires exercise of discretion and independent judgment; and for which the remuneration is not less than three hundred fifty dollars (\$350) per month, or

(b) 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, architecture, engineering or accounting.

Section 1354. Every person, or the agent or officer thereof, employing any female who violates any provision of this article, or who employs, or permits any female to work in violation thereof, is guilty of a misdemeanor, punishable, for a first offense, by a fine or [of] not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100); and for a second or subsequent offense, by a fine of not less than one hundred dollars (\$100) nor more than two hundred fifty dollars (\$250), or imprisonment for not more than 60 days, or both.

Section 2658. No employer shall deliver any materials or articles for manufacture by industrial homework to any person in this State unless the employer so delivering them or his agent, if the employer is not a resident of this State, has obtained a valid employer's permit from the division. A permit shall be issued upon payment to the division of a fee of fifty dollars (\$50) and shall be valid for the remainder of the calendar year for which it is issued, unless sooner revoked or suspended. Application for a permit shall be made in such form as the division may by regulation prescribe. The division may revoke or suspend an employer's permit upon a finding that the employer has violated this part or has failed to comply with any provision of the permit.

Working Hours of Minors: See Labor Code Sections 1391 to 1398, inclusive.

D IN A CONSPICUOUS PLACE

EXHIBIT C

WAGES, HOURS, AND WORKING CON IN THE MERCAN

(REPLACING FORMER ORDER 1-52)

STATE OF CALIFORNIA—DEPARTMENT OF INDUSTRIAL RELATIONS DIVISION OF INDUSTRIAL WELFARE



2030-19th St., Bakersfield
795 Main St., El Centro
619 Second St., Eureka
2550 Mariposa St., Fresno 21
236 E. Third St., Long Beach
107 S. Broadway, Los Angeles

Administrative Office: 455 Golden Gate Avenue, San Francisco 2

1111 Jackson St., Oakland 7
1304 East St., Redding
427 Forum Bldg., Sacramento 14
478 W. Base Line St., San Bernardino
1521 Fourth Ave., San Diego 1
82 N. Almaden Ave., San Jose 10

1619 W. 17th St., Santa Ana
411 E. Canon Perdido, Santa Barbara
306 Mendocino Ave., Santa Rosa
807 N. San Joaquin St., Stockton
6931 Van Nuys Blvd., Van Nuys

TO WHOM IT MAY CONCERN:

TAKE NOTICE: That pursuant to and by virtue of authority vested in it by Sections 1171 through 1204 of the Labor Code of the State of California, and after public hearing duly had, notice of said hearing having been duly given in the manner provided by law, the Industrial Welfare Commission, upon its own motion, having found and concluded that the Manufacturing and Mercantile Industries Order, Number 1-52, enacted by the Industrial Welfare Commission on May 16, 1952, should be altered and amended:

NOW, THEREFORE, The Industrial Welfare Commission of the State of California does hereby alter and amend said Manufacturing and Mercantile Industries Order, Number 1-52, and does hereby enact its amended order for the Mercantile Industry as follows:

No person, as defined in Section 18 of the Labor Code, shall employ any woman or minor in any establishment, industry, or occupation in which the wages, hours, or working conditions are not in conformance with the standards hereinafter set forth:

1. APPLICABILITY OF ORDER

This Order shall apply to all women and minors employed in the mercantile industry whether paid on a time, piece rate, commission, or other basis, except that the provisions of Sections 3 through 12 shall not apply to women employed in administrative, executive, or professional capacities.

No woman shall be considered to be employed in an administrative, executive, or professional capacity unless one of the following conditions prevails:

- The employee is engaged in work which is predominantly intellectual, managerial, or creative; and which requires exercise of discretion and independent judgment; and for which the remuneration is not less than \$350 per month; or
- 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, architecture, engineering, teaching, or accounting.

2. DEFINITIONS

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

(b) "Division" means the Division of Industrial Welfare of the State of California.

(c) "Mercantile Industry" means any industry, business, or establishment operated for the purpose of purchasing, selling, or distributing goods or commodities at wholesale or retail; or for the purpose of renting goods or commodities.

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

(e) "Employee" means any woman or minor 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 the wages, hours, or working conditions of a woman or minor.

(g) "Minor" means, for the purpose of this Order, a male or female person under the age of eighteen (18) years.

(h) "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.

(i) "Teaching" means, for the purpose of this Order, the profession of teaching under a certificate from the California State Board of Education or teaching in an accredited college or university.

(j) "Emergency" means an unpredictable or unavoidable occurrence at unscheduled intervals requiring immediate action.

3. HOURS

(a) No woman eighteen (18) years of age or over shall be employed more than eight (8) hours in any one day nor more than six (6) days in any one week except under the following conditions:

- In an emergency as defined in Section 2(j) above, if such employment is not prohibited by the Eight Hour Law (Sections 1350-1354 of the Labor Code);

NOTE: In most industries, employment in excess of eight (8) hours per day or forty-eight (48) hours per week is prohibited. See excerpts from the Labor Code in lower right corner.

or

- During periods when it is necessary to process perishable products to prevent such products from spoiling; and

- All hours in excess of eight (8) hours per day and all hours on the seventh (7th) day are compensated at not less than one and one-half (1½) times the employee's regular rate of pay.

(b) No minor shall be employed more than eight (8) hours in any one day nor more than six (6) days in any one week.

(c) An employee may be employed seven (7) days in one week when the total hours of employment during said week do not exceed thirty (30) and the total hours of employment in any one day thereof do not exceed six (6).

(d) The eight (8) hours of employment shall be performed within a period of not more than thirteen (13) hours. Eleven (11) hours shall elapse between the end of one work day of the employee and the beginning of the next, except when there is a bona fide change of shift, but in no event shall the elapsed time be less than eight (8) hours.

(e) No woman employee shall be required to report for work or be dismissed from work between the hours of 10 p.m. and 6 a.m. unless suitable transportation is available. If a meal period occurs during these hours, facilities shall be available for securing hot food or drink, or for heating food and drink; and a suitable, sheltered place shall be provided in which to consume such food and drink.

NOTE: Refer to State Labor Code for additional restrictions on working hours of minors.

4. MINIMUM WAGES

(a) Every employer shall pay to each woman and minor employee wages not less than one dollar (\$1) per hour for all hours worked; except that a lesser rate, but not less than eighty-five cents (85¢) per hour, may be paid to:

- Women, eighteen (18) years of age or over, during their first two hundred (200) hours of employment in skilled or semi-skilled occupations in which they have had no previous similar or related experience, provided that the number of women employed at such rate shall not exceed ten percent (10%) of the persons regularly employed in the establishment. An employer of less than ten (10) persons may employ one learner at said lesser rate.

- Minors, provided that the number of minors employed at said lesser rate shall not exceed ten percent (10%) of the persons regularly employed in the establishment. An employer of less than ten (10) persons may employ one minor at said lesser rate.

(b) Every employer shall pay to each employee, on the established pay day 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) In no case shall gratuities, tips, or service charges in the nature of gratuities from patrons or others be counted as part of the minimum wage. No employee shall be required to report tips or gratuities for this purpose.

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

(e) On any day in which an employee works a split shift, one dollar (\$1) per day shall be paid in addition to the minimum wage except when the employee resides at the place of employment.

("Split Shift" means a work schedule which is interrupted by non-working periods other than bona fide rest or meal periods.)

5. REPORTING TIME PAY

Each day 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 day's work, the employee shall be paid for half the usual day's work, but in no event for less than two (2) hours, at the employee's regular rate of pay, which shall be not less than the minimum wage herein provided.

6. PERMIT FOR HANDICAPPED WORKERS

A permit may be issued by the Commission authorizing employment of a woman or minor whose earning capacity is impaired by advanced age, physical disability, or mental deficiency, at less than the minimum wage herein provided. Such permits shall be granted only upon joint application of employer and employee.

7. RECORDS

(a) Every employer shall keep accurate information with respect to each employee as follows:

- Full name, home address, and occupation.
- Birth date, if under eighteen (18) years, and designation as a minor.
- Time records showing all in-and-out time which shall be recorded when it occurs, and also total hours worked each day. Meal periods during which operations cease and authorized rest periods need not be recorded.
- Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
- Total hours worked in the payroll period.
- When a piece rate or incentive plan is in operation, a schedule of rates shall be available in the work area. An accurate production record shall be maintained by the employer. A copy of the production record shall be furnished to each employee, unless the employer's system of recording is acceptable to the Division.

(b) Every employer shall furnish to each employee at the time of payment of wages an itemized statement in writing showing gross wages paid and all deductions from such wages.

(c) All required records shall be in the English language, properly dated, showing month, day, and year, and shall be kept on file by the employer for at least one year at the place of employment.

(d) Clocks shall be provided in all major work areas.

8. CASH SHORTAGE AND BREAKAGE

No employer shall make any deduction from the wage of an employee for any cash shortage, breakage, or loss of equipment, notwithstanding any contract or arrangement to the contrary, unless it can be shown that the shortage, breakage, or loss is caused by a dishonest or wilful act, or by the culpable negligence of the employee.

9. UNIFORMS AND EQUIPMENT

(a) No employee shall be required to contribute directly or indirectly from the wage for the purchase or maintenance of uniforms. The term "uniform" includes wearing apparel and accessories of distinctive design or color required by the employer to be worn by the employee as a condition of employment.

(b) No employee shall be required to contribute directly or indirectly from the wage for the purchase or maintenance of tools or equipment except that employees in beauty salons and barber shops may be required to furnish their own manicure implements, curling irons, hair-cutting scissors, combs, razors, and eyebrow tweezers. All other equipment and supplies of such employees shall be furnished by the employer.

(c) When protective garments are required by the employer, or are necessary to safeguard the health of, or prevent injury to, an employee, such garments shall be provided and paid for by the employer.

10. MEALS AND LODGING

"Meal" means an adequate, well-balanced serving of a variety of wholesome, nutritious foods.

"Lodging" means living accommodations which are adequate, decent, and sanitary according to usual and customary standards. Employees shall not be required to share a bed.

When meals or lodging are furnished by the employer as part of the minimum wage, they may not be evaluated in excess of the following:

Room Occupied Alone—\$5 per week

Room Shared—\$4 per week

Apartment—Two-thirds (⅔) of the ordinary rental value, and in no event more than \$86 per month.

Meals: { Breakfast—40 cents
Lunch—65 cents
Dinner—95 cents

Deductions may not be made for meals not eaten and shall be made only for bona fide meals consistent with employee's work shift.

11. MEAL PERIODS

No employer shall employ any woman or minor 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. 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 time spent for such "on duty" meal period shall be counted as time worked.

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 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 (3½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

ADDITIONS FOR WOMEN AND MINORS MERCANTILE INDUSTRY

13. DRESSING AND REST ROOMS

(a) Employers shall provide for adequate safekeeping of employees' outer clothing during working hours, and for their work clothes during nonworking hours. When the occupation requires a change of clothing, a suitable space shall be provided where female employees may make such change in privacy and comfort.

(b) When the number of females employed at one time is more than twenty (20) and less than fifty (50) there shall be provided one couch, and thereafter at least one additional couch shall be provided for every one hundred (100) female employees or fraction thereof; except that, when the nature of the work requires standing, one couch shall be provided where there are more than ten (10) female employees. Beds in hospital rooms may not be counted in the number of required couches.

(c) Couches shall be placed in suitable rooms, conveniently located, exclusively used by women, and open to them during all working hours. Such rooms shall be properly lighted, ventilated, heated, and maintained in a sanitary condition.

14. DRINKING WATER AND WASHING FACILITIES

(a) Each place of employment shall be supplied with pure drinking water, convenient to employees. Individual paper cups shall be provided, or sanitary drinking fountains shall be installed and so regulated that a jet of at least two (2) inches shall be constantly available.

(b) For every twenty-five (25) female employees or fraction thereof, there shall be one wash basin or equivalent group washing facilities. Surfaces of this equipment shall be smooth and resistant to stain and shall be kept clean and sanitary.

(c) Sufficient soap and either individual cloth or paper towels or hot air blowers shall be supplied. Towels used in common are prohibited.

15. TOILET ROOMS

(a) NUMBER. Women's toilet rooms shall be so marked and the number of toilets required is as follows:

Where the number of females employed at one time is between:	The number of toilets shall be not less than:
1-15*	1
16-30	2
31-45	3
46-60	4
61-80	5
81-100	6

and thereafter one toilet for every twenty-five (25) female employees or major fraction thereof.

* If the entire staff of an establishment numbers less than five (5) and only one toilet is available, it may be used by both sexes. (See Title 3, California Administrative Code, Section 956 (a), for requirements in meat processing plants.)

(b) GENERAL CONSTRUCTION

(1) Toilets shall be of the water pressure type, installed in accordance with approved and customary standards.

(2) The entrances to toilet rooms shall be effectively screened so that no toilet compartment is visible from any workroom. Each toilet shall be in a separate compartment of adequate size, so constructed as to provide privacy, and with a door of such dimensions as to permit easy entrance and exit. Each toilet compartment door shall be provided with a latch or bolt.

(3) The walls of toilet rooms shall extend to a ceiling and the rooms shall be thoroughly ventilated to the outside air and shall be adequately lighted.

(4) Floors shall be of cement, terrazzo, tile, glazed brick, or other composition which is impervious to moisture and the angle formed by the floor and wall shall be sealed or coved.

(5) Surfaces of walls, partitions, doors, fixtures, toilet seats, bowls, and other equipment shall be smooth and nonabsorbent, and all painted surfaces shall be a light color.

(c) SUPPLIES. Toilet paper, in a proper holder, shall be supplied in each compartment. Sanitary napkins shall be readily obtainable at a reasonable price and a suitable means for their disposal shall be provided.

(d) LOCATION. Toilet rooms shall be conveniently located on the immediate premises and not more than one floor immediately above or below the employee's work place unless adequate elevator service is available. In existing establishments when, in the judgment of the Division, a toilet cannot be located on the premises, relief periods other than required rest periods shall be authorized for women and minors.

(e) MAINTENANCE. Toilet rooms shall be kept clean and sanitary, and shall contain only such equipment, fixtures, and supplies as properly belong therein.

16. FIRST AID

Adequate first aid supplies shall be provided and kept clean and sanitary in a dustproof container.

17. LIFTING

No female employee shall be required to lift or carry any object weighing in excess of twenty-five (25) pounds, except upon permit from the Division.

(See last column for "Excerpts from Labor Code," Section 1252.)

18. SEATS

Suitable seats shall be provided for all female employees. When the nature of the work requires standing, an adequate number of said seats shall be placed adjacent to the work area and employees shall be permitted to use such seats when not engaged in the active duties of their employment.

19. FLOORS

(a) Unless the surface of the floor is of wood, cork, rubber composition, linoleum, asphalt tile, or other material of comparable resilience, the floor surface in the work area where women or minors stand in the performance of their duties shall be supplied with a covering material of suitable resilience.

(b) The floors and stairs of every establishment shall be safe, smooth, and tight.

(c) Where wet processes are employed, the floor shall be properly drained. When floors are wet or slippery, racks or gratings of sufficient height and free from hazard shall be provided. If the nature of the employment will not permit the use of racks or gratings, protection for the feet shall be provided by the employer.

20. CLEANLINESS AND UPKEEP

Premises, equipment, and fixtures shall be kept safe, clean, sanitary, and in good repair.

21. LIGHTING

All establishments in which women or minors are employed shall be properly lighted during working hours. Sources of illumination shall be of such nature and so placed that the light furnished will be adequate for efficient work and prevent unnecessary strain on the vision or glare in the eyes of the workers.

22. VENTILATION

Each room in which women or minors are employed shall be thoroughly ventilated.

23. TEMPERATURE

The nature of the employment permitting, there shall be maintained in each workroom a minimum temperature of 65° F., and, weather permitting, a maximum of 75° F. If, owing to the nature of the process, excessive heat or humidity is created in the workroom, special devices shall be installed to reduce such excessive heat or humidity. Where the nature of the employment will not permit a

temperature of 65° F., a heated room shall be provided to which employees may retire for warmth.

24. EXITS

Except as otherwise herein provided, every floor, basement, mezzanine, or balcony on which women or minors are employed shall have at least two exits, remotely located from each other, access to which is unobstructed. Such exits shall be other than elevators. From the third or higher floors at least one means of egress shall be an accepted fire exit, and additional fire exits may be ordered where necessary. Exits shall be plainly marked and kept unlocked during working hours.

In facilities constructed prior to August 1, 1952, the above requirement of two exits shall not apply to a basement, first floor, second floor, mezzanine, or balcony when the premises cannot be altered to provide a second exit and the activities carried on in the establishment do not create an undue hazard.

(For other regulations regarding exits, see Title 8, Chapter 4, California Administrative Code.)

25. ELEVATORS

When females are employed on the fourth or higher floors, adequate elevator service shall be provided.

26. EXEMPTIONS

If, in the opinion of the Commission after due investigation, it is found that the enforcement of any provision contained in Section 7 pertaining to the location of records, or Sections 11 through 25 of this Order, would not materially affect the comfort, health, or safety of employees and would work an undue hardship on the employer, exemption may be made at the discretion of said Commission. 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 to the Commission in writing.

27. FILING REPORTS

Every employer shall furnish to the Commission and to the Division any and all reports or information which may be required to carry out the purpose of this Order, such reports and information to be verified if and when so requested.

28. INSPECTION

The Commission and duly authorized representatives of the Division shall be allowed free access to any office or establishment covered by this Order to investigate and gather data regarding wages, hours, working conditions, and employment practices, and shall be permitted to inspect and make excerpts from any and all records and to question all employees for such purposes.

29. PENALTIES

Failure, refusal, or neglect to comply with any of the provisions of this Order is a violation of the Labor Code of the State of California, and is punishable by fine or imprisonment, or both.

30. SEPARABILITY

If the application of any provision of this Order, or any section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Order shall be held invalid or unconstitutional, 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.

31. POSTING OF ORDER

Every employer shall keep a copy of this Order posted in an area frequented by women and minors where it may be easily read during the work day.

Dated at San Francisco, California, this thirtieth day of May, 1957.

INDUSTRIAL WELFARE COMMISSION STATE OF CALIFORNIA

JOHN W. QUMBY, *Chairman*

DANIEL E. KOSHLAND

FRANCES LARSEN

NORMAN S. LEZIN

MAE STONEMAN

NANCY C. SWADESH, *Chief*

Division of Industrial Welfare

EXCERPTS FROM STATE LABOR CODE

Section 18. "Person" means any person, association, organization, partnership, business trust, or corporation.

Section 1199. Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than fifty dollars (\$50) or by imprisonment for not less than 30 days, or by both, who does any of the following:

(a) Requires or causes any woman or minor to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission.

(b) Pays or causes to be paid to any woman or minor a wage less than the minimum fixed by an order of the commission.

(c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission.

Section 1252. No female employee shall be requested or permitted to carry any object weighing 10 pounds or more up or down any stairway or series of stairways that rise for more than five feet from the base thereof.

EIGHT HOUR LAW:

Section 1350. No female shall be employed in any manufacturing, mechanical, or mercantile establishment or industry, laundry, cleaning, dyeing, or cleaning and dyeing establishment, hotel, public lodging house, apartment house, hospital, beauty shop, barber shop, place of amusement, restaurant, cafeteria, telegraph or telephone establishment or office, in the operation of elevators in office buildings, or by any express or transportation company in this State, more than eight hours during any one day of 24 hours or more than 48 hours in one week.

Section 1351. No employer shall employ, cause to be employed, or permit any female to work any number of hours whatever, with knowledge that such female has theretofore been employed within the same day of 24 hours in any establishment or industry and by any previous employer for a period of time which will, combined with the period of time of employment by a previous employer, exceed eight hours in one day or 48 hours in one week. This provision shall not prevent the employment of any female in more than one establishment where the total number of hours worked by her does not exceed eight hours in any one day of 24 hours or 48 hours in one week.

Section 1352. The provisions of this article in relation to hours of employment shall not apply to or affect graduate nurses in hospitals, licensed vocational nurses in hospitals, or clinical laboratory technologists, clinical laboratory technicians, or X-ray laboratory technicians in hospitals during an emergency; provided, that any such licensed vocational nurse, technologist or technician who, by reason of an emergency, is permitted or required by her employer to work in excess of the maximum hours prescribed by other provisions of this article, shall be paid, for time worked in excess of such hours, at a rate of not less than one and a half times her straight time rate of pay, nor the harvesting, curing, canning, or drying of any variety of perishable fruit, fish, or vegetable during the periods when it is necessary to harvest, cure, can, or dry fruit, fish, or vegetables to prevent spoiling, nor to employees actually engaged in the processing of biologicals, human blood products and other such products of laboratories operating under license from either or both the United States Department of the Treasury and the United States Department of Agriculture during such periods when it is necessary to continue the processing of such products to prevent spoilage or deterioration. Emergency within the meaning of this section means an unpredictable or unavoidable occurrence at unscheduled intervals, requiring immediate action. The exception provided herein shall be effective only in cases where the employer, upon learning of the emergency, exercises reasonable diligence to provide immediately relief for the employee required to work over the prescribed number of hours. (Amended by Stats. 1946, Ch. 640, by Stats. 1953, Chap. 1254, and by Stats. 1959, Chap. 1104.)

Section 1352.1. The provisions of this article shall not apply to or affect executives, administrators, or professional women. No woman shall be considered to be employed in an administrative, executive or professional capacity unless one of the following conditions prevail:

(a) The employee is engaged in work which is predominantly intellectual, managerial, or creative; which requires exercise of discretion and independent judgment; and for which the remuneration is not less than three hundred fifty dollars (\$350) per month, or

(b) 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, architecture, engineering or accounting.

Section 1354. Every person, or the agent or officer thereof, employing any female who violates any provision of this article, or who employs, or permits any female to work in violation thereof, is guilty of a misdemeanor, punishable, for a first offense, by a fine of [of] not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100); and for a second or subsequent offense, by a fine of not less than one hundred dollars (\$100) nor more than two hundred fifty dollars (\$250), or imprisonment for not more than 60 days, or both.

INDUSTRIAL HOMEWORK:

Section 2558. No person shall employ an industrial homemaker unless the person employing an industrial homemaker has obtained a valid industrial homework license from the Division.

Application for a license to employ industrial homemakers shall be made to the Division in such form as the Division may by regulation prescribe. A license fee of fifty dollars (\$50) shall be paid to the Division and said license shall be valid for a period of one year from the date of issuance unless sooner revoked or suspended.

WORKING HOURS OF MINORS: See Labor Code Sections 1391 to 1396, inclusive.

D IN A CONSPICUOUS PLACE

EXHIBIT D

WAGES, HOURS, AND WORKING CONDITIONS
IN THE MERCANTILE INDUSTRY



(REPLACING FORMER ORDER 7-57)

STATE OF CALIFORNIA—DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF INDUSTRIAL WELFARE

ADMINISTRATIVE OFFICE: 455 GOLDEN GATE AVENUE, SAN FRANCISCO 2

225 Chester Ave., Bakersfield
588 Broadway, El Centro
619 Second St., Eureka
2550 Mariposa St., Fresno
520 N. LaBrea Ave., Inglewood
230 E. Fourth St., Long Beach

107 S. Broadway, Los Angeles
1111 Jackson St., Oakland
2115 Akard Ave., Redding
819 Forum Bldg., Sacramento
478 W. Base Line St., San Bernardino
1350 Front St., San Diego

888 N. First St., San Jose
1624 W. 19th St., Santa Ana
411 E. Canon Perdido, Santa Barbara
750 Mendocino Ave., Santa Rosa
31 E. Channel St., Stockton
6931 Van Nuys Blvd., Van Nuys

TO WHOM IT MAY CONCERN:

TAKE NOTICE: That pursuant to and by virtue of authority vested in it by Sections 1171 through 1204 of the Labor Code of the State of California, and after public hearing duly had, notice of said hearing having been duly given in the manner provided by law, the Industrial Welfare Commission, upon its own motion, having found and concluded that the Mercantile Industry Order, Number 7-57, enacted by the Industrial Welfare Commission on May 30, 1957, should be altered and amended:

NOW, THEREFORE, The Industrial Welfare Commission of the State of California does hereby alter and amend said Mercantile Industry Order, Number 7-57, and does hereby enact its amended Order as follows:

No person, as defined in Section 18 of the Labor Code, shall employ any woman or minor in any establishment, industry, or occupation in which the wages, hours, or working conditions are not in conformance with the standards hereinafter set forth:

NOTE: Rates and values for minimum wages, split shift, meals and lodging are increased in two steps. See Sections 4 and 10 below.

1. APPLICABILITY OF ORDER

This Order shall apply to all women and minors employed in the mercantile industry whether paid on a time, piece rate, commission, or other basis, except that the provisions of Sections 3 through 12 shall not apply to women employed in administrative, executive, or professional capacities.

No woman shall be considered to be employed in an administrative, executive, or professional capacity unless one of the following conditions prevails:

- The employee is engaged in work which is predominantly intellectual, managerial, or creative; and which requires exercise of discretion and independent judgment; and for which the remuneration is not less than \$400 per month; or
- 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, architecture, engineering, teaching, or accounting.

2. DEFINITIONS

- "Commission" means the Industrial Welfare Commission of the State of California.
- "Division" means the Division of Industrial Welfare of the State of California.
- "Mercantile Industry" means any industry, business, or establishment operated for the purpose of purchasing, selling, or distributing goods or commodities at wholesale or retail; or for the purpose of renting goods or commodities.
- "Employ" means to engage, suffer, or permit to work.
- "Employee" means any woman or minor employed by an employer.
- "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 the wages, hours, or working conditions of a woman or minor.
- "Minor" means, for the purpose of this Order, a male or female person under the age of eighteen (18) years.
- "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.
- "Teaching" means, for the purpose of Section 1 of this Order, the profession of teaching under a certificate from the California State Board of Education or teaching in an accredited college or university.
- "Emergency" means an unpredictable or unavoidable occurrence on unscheduled intervals requiring immediate action.
- "Wages" means all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.

3. HOURS

(a) No woman eighteen (18) years of age or over shall be employed more than eight (8) hours in any one day nor more than six (6) days in any one week except under the following conditions:

- In an emergency as defined in Section 2(j) above, if such employment is not prohibited by the EIGHT HOUR LAW (Sections 1350-1354 of the Labor Code);

NOTE: In most industries, employment in excess of eight (8) hours per day or forty-eight (48) hours per week is prohibited. (See excerpts from the Labor Code in lower right corner.)

- During periods when it is necessary to process perishable products to prevent such products from spoiling; provided that
- The employee is compensated for such overtime at not less than:
 - One and one-half (1½) 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 one day, and for the first eight (8) hours worked on the seventh (7th) day; and
 - Double the employee's regular rate of pay for all hours worked in excess of twelve (12) hours in any one day, and for all hours worked in excess of eight (8) hours on the seventh (7th) day.

(b) No minor shall be employed more than eight (8) hours in any one day nor more than six (6) days in any one week, or before 5 o'clock in the morning, or after 10 o'clock in the evening.

(c) An employee may be employed seven (7) days in one week when the total hours of employment during said week do not exceed thirty (30) and the total hours of employment in any one day thereof do not exceed six (6).

(d) The eight (8) hours of employment shall be performed within a period of not more than twelve (12) hours. Twelve (12) hours shall elapse between the end of one work day of the employee and the beginning of the next, except when there is a bona fide change of shift, but in no event shall the elapsed time be less than eight (8) hours.

(e) No woman employee shall be required to report for work or be dismissed from work between the hours of 10 p.m. and 6 a.m. unless suitable transportation is available. If a meal period occurs during these hours, facilities shall be available for securing hot food or drink, or for heating food and drink; and a suitable, sheltered place shall be provided in which to consume such food and drink.

NOTE: Refer to State Labor Code for additional restrictions on working hours of minors.

4. MINIMUM WAGES

(a) Every employer shall pay to each woman and minor employee wages not less than one dollar and twenty-five cents (\$1.25) per hour for all hours worked until August 30, 1964, and one dollar and thirty cents (\$1.30) per hour for all hours worked on August 30, 1964 and thereafter; except that a lesser rate, but not less than one dollar (\$1) per hour until August 30, 1964, and one dollar and five cents (\$1.05) per hour on August 30, 1964 and thereafter, may be paid to:

- Women, eighteen (18) years of age or over, during their first two hundred (200) hours of employment in skilled or semi-skilled occupations in which they have had no previous similar or related experience, provided that the number of women employed at such rate shall not exceed ten percent (10%) of the persons regularly employed in the establishment. An employer of less than ten (10) persons may employ one learner at said lesser rate.

(2) Minors, provided that the number of minors employed at said lesser rate shall not exceed ten percent (10%) of the persons regularly employed in the establishment. An employer of less than ten (10) persons may employ one minor at said lesser rate.

(b) Every employer shall pay to each employee, on the established pay day 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) In no case shall gratuities, tips, or service charges in the nature of gratuities from patrons or others be counted as part of the minimum wage. No employee shall be required to report tips or gratuities for this purpose.

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

(e) On any day in which an employee works a split shift, one dollar and twenty-five cents (\$1.25) per day until August 30, 1964, and one dollar and thirty cents (\$1.30) per day on August 30, 1964 and thereafter, shall be paid in addition to the minimum wage except when the employee resides at the place of employment.

("Split Shift" means a work schedule which is interrupted by nonworking periods other than bona fide rest or meal periods.)

5. REPORTING TIME PAY

Each day 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 day's work, the employee shall be paid for half the usual day's work, but in no event for less than two (2) hours, at the employee's regular rate of pay, which shall be not less than the minimum wage herein provided.

6. PERMIT FOR HANDICAPPED WORKERS

A permit may be issued by the Commission authorizing employment of a woman or minor whose earning capacity is impaired by advanced age, physical disability, or mental deficiency, at less than the minimum wage herein provided. Such permits shall be granted only upon joint application of employer and employee.

7. RECORDS

(a) Every employer shall keep accurate information with respect to each employee as follows:

- Full name, home address, occupation and social security number.
- Birth date, if under eighteen (18) years, and designation as a minor.
- Time records showing all in-and-out time which shall be recorded 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.
- Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
- Total hours worked in the payroll period.
- When a piece rate or incentive plan is in operation, a schedule of rates shall be available in the work area. An accurate production record shall be maintained by the employer. A copy of the production record shall be furnished to each employee, unless the employer's system of recording is acceptable to the Division.

(b) Every employer shall furnish to each employee at the time of payment of wages, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing the payroll period covered, gross wages paid and all deductions from such wages.

(c) All required records shall be in the English language, 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.

(d) Clocks shall be provided in all major work areas.

8. CASH SHORTAGE AND BREAKAGE

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

9. UNIFORMS AND EQUIPMENT

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

(b) Except as provided in subsection (d) of this section, 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 employees in beauty salons, schools of beauty culture offering beauty care to the public for a fee, and barber shops may be required to furnish their own manicure implements, curling irons, hair-cutting scissors, combs, razors, and eyebrow tweezers. All other equipment and supplies of such employees shall be furnished by the employer.

(c) Except as provided in subsection (d) of this section, when protective garments are required by the employer, or are necessary to safeguard the health of, or prevent injury to, an employee, such garments shall be provided and paid for by the employer.

(d) An employer may require a reasonable deposit as security for the return of the items furnished by him under the provisions of subsections (a), (b), and (c) of this section upon issuance of a receipt to the employee for such deposit. All items furnished by the employer shall be returned by the employee on completion of the job.

10. MEALS AND LODGING

"Meal" means an adequate, well-balanced serving of a variety of wholesome, nutritious foods.

"Lodging" means living accommodations which are adequate, decent, and sanitary according to usual and customary standards. Employees shall not be required to share a bed.

When meals or lodging are furnished by the employer as part of the minimum wage, they may not be evaluated in excess of the following:

	Effective August 30, 1963	Effective August 30, 1964
Room Occupied Alone	\$6.25 per week	\$6.50 per week
Room Shared	\$5.00 per week	\$5.20 per week
Apartment—Two-thirds (⅔) of the ordinary rental value, and in no event more than	\$107.50 per mo.	\$107.50 per mo.
Meals: { Breakfast	50 cents	50 cents
{ Lunch	80 cents	85 cents
{ Dinner	\$1.20	\$1.25

CONDITIONS FOR WOMEN AND MINORS IN MERCANTILE INDUSTRY

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.

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

11. MEAL PERIODS

(a) No employer shall employ any woman or minor 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.

(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 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 (3½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

13. DRESSING AND REST ROOMS

(a) Employers shall provide for adequate safekeeping of employees' outer clothing during working hours, and for their work clothes during nonworking hours. When the occupation requires a change of clothing, a suitable space shall be provided where female employees may make such change in privacy and comfort.

(b) When the number of females employed at one time is more than ten (10) and less than fifty (50) there shall be provided one couch, and thereafter at least one additional couch shall be provided for every one hundred (100) female employees or fraction thereof. Beds in hospital rooms may not be counted in the number of required couches.

(c) Couches shall be placed in suitable rooms, conveniently located, exclusively used by women, and open to them during all working hours. Such rooms shall be properly lighted, ventilated, heated, and maintained in a sanitary condition.

14. DRINKING WATER AND WASHING FACILITIES

(a) Each place of employment shall be supplied with pure, cool drinking water, convenient to employees. Individual paper cups shall be provided, or sanitary drinking fountains shall be installed and so regulated that a jet of at least two (2) inches shall be constantly available.

(b) For every twenty-five (25) female employees or fraction thereof, there shall be one wash basin or equivalent group washing facilities. Surfaces of this equipment shall be smooth and resistant to stain and shall be kept clean and sanitary.

(c) Sufficient soap and either individual cloth or paper towels or hot air blowers shall be supplied. Towels used in common are prohibited; mechanically controlled, properly serviced, continuous cloth towels are permissible.

15. TOILET ROOMS

(a) NUMBER. Women's toilet rooms shall be so marked and the number of toilets required is as follows:

Where the number of females employed at one time is between:	The number of toilets shall be not less than:
1- 15*	1
16- 30	2
31- 45	3
46- 60	4
61- 80	5
81-100	6

and thereafter one toilet for every twenty-five (25) female employees or major fraction thereof.

* If the entire staff of an establishment numbers less than five (5) and only one toilet is available, it may be used by both sexes. (See Title 3, California Administrative Code, Section 956(a), for requirements in meat processing plants.)

(b) GENERAL CONSTRUCTION.

(1) Toilets shall be of the water pressure type, installed in accordance with approved and customary standards.

(2) The entrances to toilet rooms shall be effectively screened so that no toilet compartment is visible from any workroom. Each toilet shall be in a separate compartment of adequate size, so constructed as to provide privacy, and with a door of such dimensions as to permit easy entrance and exit. Each toilet compartment door shall be provided with a latch or bolt.

(3) The walls of toilet rooms shall extend to a ceiling and the rooms shall be thoroughly ventilated to the outside air and shall be adequately lighted.

(4) Floors shall be of cement, terrazzo, tile, glazed brick, or other composition which is impervious to moisture, and the angle formed by the floor and wall shall be sealed or coved.

(5) Surfaces of walls, partitions, doors, fixtures, toilet seats, bowls, and other equipment shall be smooth and nonabsorbent, and all painted surfaces shall be a light color.

(c) SUPPLIES. Toilet paper, in a proper holder, shall be supplied in each compartment. Sanitary napkins shall be readily obtainable at a reasonable price and a suitable means for their disposal shall be provided.

(d) LOCATION. Toilet rooms shall be conveniently located on the immediate premises and not more than one floor immediately above or below the employee's work place unless adequate elevator service is available. In existing establishments when, in the judgment of the Division, a toilet cannot be located on the premises, relief periods other than required rest periods shall be authorized for women and minors.

(e) MAINTENANCE. Toilet rooms shall be kept clean and sanitary, and shall contain only such equipment, fixtures, and supplies as properly belong therein.

16. FIRST AID

Adequate first aid supplies shall be provided, and kept clean and sanitary in a dustproof container.

17. LIFTING

No female employee shall be required to lift or carry any object weighing in excess of twenty-five (25) pounds, except upon permit from the Division.

(See last column for "Excerpts from Labor Code," Section 1252.)

18. SEATS

Suitable seats shall be provided for all female employees. When the nature of the work requires standing, an adequate number of said seats shall be placed adjacent to the work area and employees shall be permitted to use such seats when not engaged in the active duties of their employment.

19. FLOORS

(a) Unless the surface of the floor is of wood, cork, rubber composition, linoleum, asphalt tile, or other material of comparable resilience, the floor surface in the work area where women or minors stand in the performance of their duties shall be supplied with a covering material of suitable resilience.

(b) The floors and stairs of every establishment shall be safe, smooth, and tight.

(c) Where wet processes are employed, the floor shall be properly drained. When floors are wet or slippery, racks or gratings of sufficient height and free from hazard shall be provided. If the nature of the employment will not permit the use of racks or gratings, protection for the feet shall be provided by the employer.

20. CLEANLINESS AND UPKEEP

Premises, equipment, and fixtures shall be kept safe, clean, sanitary, and in good repair.

21. LIGHTING

All establishments in which women or minors are employed shall be properly lighted during working hours. Sources of illumination shall be of such nature and so placed that the light furnished will be adequate for efficient work and prevent unnecessary strain on the vision, or glare in the eyes of the workers.

22. VENTILATION

Each room in which women or minors are employed shall be properly ventilated.

23. TEMPERATURE

The nature of the employment permitting, there shall be maintained in each workroom a minimum temperature of 65° F., and, weather permitting, a maximum of 75° F. If, owing to the nature of the process, excessive heat or humidity is created in the workroom, special devices shall be installed to reduce such excessive heat or humidity. Where the nature of the employment will not permit a temperature of 65° F., a heated room shall be provided to which employees may retire for warmth.

24. EXITS

Except as otherwise herein provided, every floor, basement, mezzanine, or balcony on which women or minors are employed shall have at least two (2) exits, remotely located from each other, access to which is unobstructed. Such exits shall be other than elevators. From the third or higher floors at least one means of egress shall be an accepted fire exit, and additional fire exits may be ordered where necessary. Exits shall be plainly marked and kept unlocked during working hours.

In facilities constructed prior to August 1, 1952, the above requirement of two exits shall not apply to a basement, first floor, second floor, mezzanine, or balcony when the premises cannot be altered to provide a second exit and the activities carried on in the establishment do not create an undue hazard.

(For other regulations regarding exits, see Title 8, Chapter 4, California Administrative Code.)

25. ELEVATORS

When females are employed on the fourth or higher floors, adequate elevator service shall be provided.

26. EXEMPTIONS

If, in the opinion of the Commission after due investigation, it is found that the enforcement of any provision contained in Section 7 pertaining to the location of records, or Sections 11 through 25 of this Order, would not materially affect the comfort, health, or safety of employees and would work an undue hardship on the employer, exemption may be made at the discretion of said Commission. 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 Commission in writing.

27. FILING REPORTS

Every employer shall furnish to the Commission and to the Division any and all reports or information which may be required to carry out the purpose of this Order, such reports and information to be verified if and when so requested.

28. INSPECTION

The Commission and duly authorized representatives of the Division shall be allowed free access to any office or establishment covered by this Order to investigate and gather data regarding wages, hours, working conditions, and employment practices, and shall be permitted to inspect and make excerpts from any and all records and to question all employees for such purposes.

29. PENALTIES

Failure, refusal, or neglect to comply with any of the provisions of this Order is a violation of the Labor Code of the State of California, and is punishable by fine or imprisonment, or both.

(See last column for "Excerpts from Labor Code," Section 1199.)

30. SEPARABILITY

If the application of any provision of this Order, or any section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Order shall be held invalid or unconstitutional, 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.

31. POSTING OF ORDER

Every employer shall keep a copy of this Order posted in an area frequented by women and minors where it may be easily read during the work day.

Dated at San Francisco, California, this 18th day of April, 1963.

Order 7-57, enacted May 30, 1957, is hereby rescinded as and of the date when this Order becomes effective.

INDUSTRIAL WELFARE COMMISSION STATE OF CALIFORNIA

FRANCES LARSEN, *Chairman*

RUTH E. COMPAGNON

NORMAN S. LEZIN

LEONARD P. LEBLANC

JAMES J. RODRIGUEZ

FLORENCE G. CLIFTON, *Chief, Division of Industrial Welfare*

EXCERPTS FROM STATE LABOR CODE

Section 18. "Person" means any person, association, organization, partnership, business trust, or corporation.

Section 1199. Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than fifty dollars (\$50) or by imprisonment for not less than 30 days, or by both, who does any of the following:

(a) Requires or causes any woman or minor to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission.

(b) Pays or causes to be paid to any woman or minor a wage less than the minimum fixed by an order of the commission.

(c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission.

Section 1252. No female employee shall be requested or permitted to carry any object weighing 10 pounds or more up or down any stairway or series of stairways that rise for more than five feet from the base thereof.

EIGHT HOUR LAW:

Section 1350. No female shall be employed in any manufacturing, mechanical, or mercantile establishment or industry, laundry, cleaning, dyeing, or cleaning and dyeing establishment, hotel, public lodging house, apartment house, hospital, beauty shop, barber shop, place of amusement, restaurant, cafeteria, telegraph or telephone establishment or office, in the operation of elevators in office buildings, or by any express or transportation company in this State, more than eight hours during any one day of 24 hours or more than 48 hours in one week.

Section 1351. No employer shall employ, cause to be employed or permit any female to work any number of hours whatever, with knowledge that such female has theretofore been employed within the same day of 24 hours in any establishment or industry and by any previous employer for a period of time which will, combined with the period of time of employment by a previous employer, exceed eight hours in one day or 48 hours in one week. This provision shall not prevent the employment of any female in more than one establishment where the total number of hours worked by her does not exceed eight hours in any one day of 24 hours or 48 hours in one week.

Section 1352. The provisions of this article in relation to hours of employment shall not apply to or affect graduate nurses in hospitals, licensed vocational nurses in hospitals, or clinical laboratory bioanalysts, clinical laboratory technologists, X-ray laboratory technicians, surgical technicians or inhalation therapists in hospitals during an emergency; provided, that any such licensed vocational nurse, technologist, technician or therapist who, by reason of an emergency, is permitted or required by her employer to work in excess of the maximum hours prescribed by other provisions of this article, shall be paid, for time worked in excess of such hours, at a rate of not less than one and a half times her straight time rate of pay, nor the harvesting, curing, canning, or drying of any variety of perishable fruit, fish, or vegetable during the periods when it is necessary to harvest, cure, can, or dry fruit, fish, or vegetables to prevent spoiling, nor to employees actually engaged in the processing of biologicals, human blood products and other such products of laboratories operating under license from either or both the United States Department of the Treasury and the United States Department of Agriculture during such periods when it is necessary to continue the processing of such products to prevent spoilage or deterioration. Emergency within the meaning of this section means an unpredictable or unavoidable occurrence at unscheduled intervals, requiring immediate action. The exception provided herein shall be effective only in cases where the employer, upon learning of the emergency, exercises reasonable diligence to provide immediately relief for the employee required to work over the prescribed number of hours.

Amended by Stats. 1945, Ch. 640, by Stats. 1953, Ch. 1254, by Stats. 1959, Ch. 1104 and by Stats. 1965, Ch. 450.

Section 1352.1. The provisions of this article shall not apply to or affect executives, administrators, or professional women. No women shall be considered to be employed in an administrative, executive or professional capacity unless one of the following conditions prevail:

(a) The employee is engaged in work which is predominantly intellectual, managerial, or creative; which requires exercise of discretion and independent judgment; and for which the remuneration is not less than four hundred dollars (\$400) per month, or

(b) 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, architecture, engineering or accounting. (Amended by Stats. 1963, Chap. 1734—effective Sept. 20, 1963.)

Section 1354. Every person, or the agent or officer thereof, employing any female who violates any provision of this article, or who employs, or permits any female to work in violation thereof, is guilty of a misdemeanor, punishable, for a first offense, by a fine or [of] not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100); and for a second or subsequent offense, by a fine of not less than one hundred dollars (\$100) nor more than two hundred fifty dollars (\$250), or imprisonment for not more than 60 days, or both.

INDUSTRIAL HOMEWORK:

Section 2658. No person shall employ an industrial homeworker unless the person employing an industrial homeworker has obtained a valid industrial homework license from the division.

Application for a license to employ industrial homeworkers shall be made to the division in such form as the division may by regulation prescribe. A license fee of fifty dollars (\$50) shall be paid to the division and said license shall be valid for a period of one year from the date of issuance unless sooner revoked or suspended. The fee for renewal of a license shall be fifty dollars (\$50) if five or less industrial homeworkers were employed during the preceding year. The renewal fee shall be seventy-five dollars (\$75) for 6 to 20 industrial homeworkers, one hundred dollars (\$100) for 20 to 100 industrial homeworkers and one hundred fifty dollars (\$150) for more than 100 homeworkers.

WORKING HOURS OF MINORS: See Labor Code Sections 1391 to 1398, inclusive.

D IN A CONSPICUOUS PLACE

EXHIBIT E

WAGES, HOURS, AND WORKING CONDITIONS IN THE MERCANTILE INDUSTRY

(REPLACING FORMER ORDER 7-63)

STATE OF CALIFORNIA—DEPARTMENT OF INDUSTRIAL RELATIONS

DIVISION OF INDUSTRIAL WELFARE

ADMINISTRATIVE OFFICE: 455 GOLDEN GATE AVENUE, SAN FRANCISCO



225 Chester Ave., Bakersfield
588 Broadway, El Centro
619 Second St., Eureka
2550 Mariposa St., Fresno
520 N. La Brea Ave., Inglewood
230 E. Fourth St., Long Beach

107 S. Broadway, Los Angeles
1111 Jackson St., Oakland
2115 Akard St., Redding
714 P St., Sacramento
303 W. Third St., San Bernardino
1350 Front St., San Diego

888 N. First St., San Jose
1624 W. 19th St., Santa Ana
411 E. Canon Perdido, Santa Barbara
750 Mendocino Ave., Santa Rosa
31 E. Channel St., Stockton
6931 Van Nuys Blvd., Van Nuys

TO WHOM IT MAY CONCERN:

TAKE NOTICE: That pursuant to and by virtue of authority vested in it by Sections 1171 through 1204 of the Labor Code of the State of California, and after public hearing duly had, notice of said hearing having been duly given in the manner provided by law, the Industrial Welfare Commission, upon its own motion, having found and concluded that the Mercantile Industry Order, Number 7-63, enacted by the Industrial Welfare Commission on April 18, 1963, should be altered and amended:

NOW, THEREFORE, The Industrial Welfare Commission of the State of California does hereby alter and amend said Mercantile Industry Order, Number 7-63, and does hereby enact its amended Order as follows:

No person, as defined in Section 18 of the Labor Code, shall employ any woman or minor in any establishment, industry, or occupation in which the wages, hours, or working conditions are not in conformance with the standards herein-after set forth:

1. APPLICABILITY OF ORDER

This Order shall apply to all women and minors employed in the mercantile industry whether paid on a time, piece rate, commission, or other basis, except that the provisions of Sections 3 through 12 shall not apply to women employed in administrative, executive, or professional capacities.

No woman shall be considered to be employed in an administrative, executive, or professional capacity unless one of the following conditions prevails:

- The employee is engaged in work which is predominantly intellectual, managerial, or creative; and which requires exercise of discretion and independent judgment; and for which the remuneration is not less than \$450 per month; or
- 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, architecture, engineering, teaching, or accounting.

2. DEFINITIONS

- "Commission" means the Industrial Welfare Commission of the State of California.
- "Division" means the Division of Industrial Welfare of the State of California.
- "Mercantile Industry" means any industry, business, or establishment operated for the purpose of purchasing, selling, or distributing goods or commodities at wholesale or retail; or for the purpose of renting goods or commodities.
- "Employ" means to engage, suffer, or permit to work.
- "Employee" means any woman or minor employed by an employer.
- "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 the wages, hours, or working conditions of a woman or minor.
- "Minor" means, for the purpose of this Order, a male or female person under the age of eighteen (18) years.
- "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.
- "Teaching" means, for the purpose of Section 1 of this Order, the profession of teaching under a certificate from the California State Board of Education or teaching in an accredited college or university.
- "Emergency" means an unpredictable or unavoidable occurrence at unscheduled intervals requiring immediate action.
- "Wages" means all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.

3. HOURS

(a) Unless otherwise provided by statute*, no woman eighteen (18) years of age or over shall be employed more than eight (8) hours in any one day nor more than five (5) days in any one week unless the employee receives one and one-half (1½) times her regular rate of pay for all work over forty (40) hours on the sixth (6th) day. Employment beyond eight (8) hours in any one day or more than six (6) days in any one week is permissible only under the following conditions:

- In an emergency as defined in Section 2(j) above; or
- During periods when it is necessary to process perishable products to prevent such products from spoiling; provided that
- The employee is compensated for such overtime at not less than:
 - One and one-half (1½) 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 one day, and for the first eight (8) hours worked on the seventh (7th) day; and
 - Double the employee's regular rate of pay for all hours worked in excess of twelve (12) hours in any one day, and for all hours worked in excess of eight (8) hours on the seventh (7th) day.

* See last column for "Excerpts from Labor Code," Sections 1350-1356.

(b) No minor shall be employed more than eight (8) hours in any one day nor more than six (6) days in any one week. One and one-half (1½) times the regular rate of pay shall be paid for all work over forty (40) hours on the sixth (6th) day. No minor shall be employed before 5 o'clock in the morning, or after 10 o'clock in the evening.

(c) An employee may be employed seven (7) days in one week when the total hours of employment during said week do not exceed thirty (30) and the total hours of employment in any one day thereof do not exceed six (6).

(d) The eight (8) hours of employment shall be performed within a period of not more than twelve (12) hours. Twelve (12) hours shall elapse between the end of one work day of the employee and the beginning of the next, except when there is a bona fide change of shift, but in no event shall the elapsed time be less than eight (8) hours.

(e) No woman employee shall be required to report for work or be dismissed from work between the hours of 10 p.m. and 6 a.m. unless suitable transportation is available. If a meal period occurs during these hours, facilities shall be available for securing hot food or drink, or for heating food and drink; and a suitable sheltered place shall be provided in which to consume such food and drink.

NOTE: Refer to State Labor Code for additional restrictions on working hours of minors.

4. MINIMUM WAGES

(a) Every employer shall pay to each woman and minor employee wages not less than one dollar and sixty-five cents (\$1.65) per hour for all hours worked; except that a lesser rate but not less than one dollar and thirty-five cents (\$1.35) per hour may be paid to:

- LEARNERS. Women eighteen (18) years of age or over, during their first one hundred sixty (160) hours of employment in skilled or semi-skilled occupations in which they have had no previous similar or related experience, provided that the number of women employed at such rate shall not exceed ten percent (10%) of the persons regularly employed in the establishment. An employer of less than ten (10) persons may employ one (1) learner at said lesser rate.
- MINORS, provided that the number of minors employed at said lesser rate shall not exceed ten percent (10%) of the persons regularly employed in the establishment. An employer of less than ten (10) persons may employ one (1) minor at said lesser rate.
- STUDENT WORKERS (boys under 18 and girls under 21) enrolled in an educational institution employed part-time, after school or when school is not in session, with no limitation on the number employed at the lesser rate.

(b) Every employer shall pay to each employee, on the established pay day 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) Amounts may be credited as part of the minimum wage for gratuities received by any woman or minor engaged in an occupation in which the employee customarily and regularly receives more than twenty dollars (\$20) per month in gratuities. The credited amount shall in no case exceed twenty cents (20¢) per hour.

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

(e) On any day in which an employee works a split shift, one dollar and sixty-five cents (\$1.65) per day shall be paid in addition to the minimum wage except when the employee resides at the place of employment.

("Split Shift" means a work schedule which is interrupted by nonworking periods other than bona fide rest or meal periods.)

5. REPORTING TIME PAY

Each day 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, at the employee's regular rate of pay, which shall be not less than the minimum wage herein provided.

6. PERMIT FOR HANDICAPPED WORKERS

A permit may be issued by the Commission authorizing employment of a woman or minor whose earning capacity is impaired by advanced age, physical disability, or mental deficiency, at less than the minimum wage herein provided. Such permits shall be granted only upon joint application of employer and employee.

7. RECORDS

(a) Every employer shall keep accurate information with respect to each employee as follows:

- Full name, home address, occupation and social security number.
- Birth date, if under eighteen (18) years, and designation as a minor.
- Time records showing all in-and-out time which shall be recorded when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Such records shall be available to employees for inspection on request. Meal periods during which operations cease and authorized rest periods need not be recorded.
- Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
- Total hours worked in the payroll period.
- When a piece rate or incentive plan is in operation, a schedule of rates shall be available in the work area. An accurate production record shall be maintained by the employer. A copy of the production record shall be furnished to each employee, unless the employer's system of recording is acceptable to the Division.

(b) Every employer shall furnish to each employee at the time of payment of wages, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing the payroll period covered, gross wages paid and all deductions from such wages.

(c) All required records shall be in the English language, 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. Such records shall be available to employees for inspection on request.

(d) Clocks shall be provided in all major work areas.

8. CASH SHORTAGE AND BREAKAGE

No employer shall make any deduction from the wage or require any refund of an employee for any cash shortage, breakage, or loss of equipment, notwithstanding any contract or arrangement to the contrary, 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.

9. UNIFORMS, EQUIPMENT AND PROTECTIVE GARMENTS

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

(b) Except as provided in subsection (d) of this section, 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 employees in beauty salons, schools of beauty culture offering beauty care to the public for a fee, and barber shops may be required to furnish their own manicure implements, curling irons, rollers, clips, hair-cutting scissors, combs, razors, and eyebrow tweezers. All other equipment and supplies of such employees shall be furnished by the employer.

(c) Except as provided in subsection (d) of this section, when protective garments or protective equipment are required by the employer, or are necessary to safeguard the health of, or prevent injury to, an employee, such garments or equipment shall be provided, maintained and paid for by the employer.

(d) An employer may require a reasonable deposit as security for the return of the items furnished by him under the provisions of subsections (a), (b), and (c) of this section upon issuance of a receipt to the employee for such deposit. All items furnished by the employer shall be returned by the employee on completion of the job.

10. MEALS AND LODGING

"Meal" means an adequate, well-balanced serving of a variety of wholesome, nutritious foods.

"Lodging" means living accommodations which are adequate, decent, and sanitary according to usual and customary standards. Employees shall not be required to share a bed.

When meals or lodging are furnished by the employer as part of the minimum wage, they may not be evaluated in excess of the following:

Room Occupied Alone	\$10.00 per week
Room Shared	\$ 8.00 per week
Apartment—Two-thirds (⅔) of the ordinary rental value, and in no event more than	\$115.00 per month
Breakfast	75 cents
Meals: Lunch	\$1.00
Dinner	\$1.35

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.

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

11. MEAL PERIODS

(a) No employer shall employ any woman or minor 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.

(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 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 (3½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

13. DRESSING AND REST ROOMS

(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, a change room or equivalent space with adequate heat and light shall be provided where women employees may change their clothing in privacy and comfort. This room shall be separate from the toilet room and it shall be kept reasonably clean and sanitary.

(b) When the number of females employed at one time is more than ten (10) and less than fifty (50) there shall be provided one couch, and thereafter at least one additional couch shall be provided for every one hundred (100) female employees or fraction thereof. Beds in hospital rooms may not be counted in the number of required couches.

(c) Couches shall be placed in a rest room for the exclusive use of women and separated from the toilet room. The enclosing walls of the rest room shall be of solid construction and extend to a ceiling. In new installations a minimum of sixty (60) square feet of floor space shall be provided for each couch. The rest room shall have adequate ventilation, heat and light and shall be open to the employees during all working hours.

14. DRINKING WATER AND WASHING FACILITIES

(a) Each place of employment shall be supplied with pure, wholesome and potable water for drinking purposes, located conveniently to employees during working hours. Individual drinking cups shall be provided, or sanitary drinking fountains shall be installed and so regulated that a jet of at least two (2) inches shall be constantly available. If conditions permit, the temperature of the water supplied for drinking purposes should not be lower than 40° F. or greater than 80° F., and preferably between 45° F. and 50° F.

(b) For every twenty-five (25) women employees or fraction thereof, there shall be provided one (1) wash basin with hot and cold running water *, or if group washing facilities are provided, twenty-four (24) inches of sink space with individual hot and cold water faucets * shall be considered to equal one (1) such wash basin. Such washing facilities shall be kept clean and in sanitary condition.

* It is understood that this requirement is met when modern pre-mixing plumbing fixtures provide tepid water from a single faucet.

(c) Sufficient soap and either individual cloth or paper towels or hot air blowers shall be supplied. Towels used in common are prohibited; mechanically controlled, properly serviced, continuous cloth towels are permissible.

15. TOILET ROOMS

(a) NUMBER. Separate toilet facilities shall be provided and marked for women employees in the following number except as otherwise provided: *

Where the number of females employed at one time is between:	The number of toilets shall be not less than:
1- 15 *	1
16- 30	2
31- 45	3
46- 60	4
61- 80	5
81-100	6

and thereafter one toilet for every twenty-five (25) female employees or major fraction thereof.

* When there are less than a total of five (5) employees employed at a place of employment, the same facilities may be used by both sexes. (See Title 3, California Administrative Code, Section 956(a) for requirements in meat processing plants.)

(b) GENERAL CONSTRUCTION.

- (1) Each water closet shall be in a separate compartment, not less than thirty (30) inches in width, equipped with a door and latch or bolt.
- (2) Entrances to toilet rooms shall be effectively screened so that no compartment is visible from any work area.
- (3) Walls of the toilet rooms shall extend to the ceiling.
- (4) Floors shall be of cement, terrazzo, tile, glazed brick, or other composition which is impervious to moisture, and the angle formed by the floor and wall shall be sealed or coved.
- (5) Surfaces of walls, partitions, doors, fixtures, toilet seats, bowls, and other equipment shall be smooth and nonabsorbent, and all painted surfaces shall be a light color.

(c) SUPPLIES. An adequate supply of toilet paper in a proper holder shall be provided and maintained in each water closet. Sanitary napkins shall be readily obtainable at a reasonable price, and a suitable means for their disposal shall be provided in each toilet room.

(d) LOCATION. Toilet rooms shall be conveniently located on the immediate premises and not more than one floor immediately above or below the employee's work place unless adequate elevator service is available. In existing establishments when, in the judgment of the Division, a toilet cannot be located on the premises, relief periods other than required rest periods shall be authorized for women and minors.

(e) MAINTENANCE. Toilet rooms shall be kept clean and sanitary, and shall contain only such equipment, fixtures, and supplies as properly belong therein.

16. FIRST AID

Adequate first aid supplies shall be provided in a clean and sanitary dustproof container. First aid supplies shall not be allowed to become stale and/or outdated. A responsible person who is familiar with procedures for obtaining medical assistance, ambulance service, and/or hospitalization in emergency situations shall be designated.

17. LIFTING

No female employee shall be required to lift or carry any object weighing in excess of twenty-five (25) pounds, except upon permit from the Division.

(See last column for "Excerpts from Labor Code," Section 1252.)

18. SEATS

(a) All working female employees shall be provided with suitable seats when the nature of the work permits.

(b) When female 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 adjacent to the work area and employees shall be permitted to use such seats.

19. FLOORS

(a) Unless the surface of the floor is of wood, cork, rubber composition, linoleum, asphalt tile, or other material of comparable resilience, the floor surface in the work area where women or minors stand in the performance of their duties shall be supplied with a covering material of suitable resilience.

(b) The floors and stairs of every establishment shall be safe, smooth, and tight.

(c) Where wet processes are employed, the floor shall be properly drained. When floors are wet or slippery, racks or gratings of sufficient height and free from hazard shall be provided. If the nature of the employment will not permit the use of racks or gratings, protection for the feet shall be provided by and maintained by the employer.

20. CLEANLINESS AND UPKEEP

Premises, equipment, and fixtures shall be kept safe, clean, sanitary, and in good repair.

21. LIGHTING

(a) Each work area and work station shall have sufficient natural or artificial light to meet accepted standards for the nature of the work performed.

(b) Toilet compartments, dressing rooms and rest rooms shall be provided with natural or artificial light equivalent to a minimum of five (5) foot candles of light measured thirty (30) inches above the floor.

22. VENTILATION

(a) Each workroom in which women or minors are employed shall have sufficient ventilation to provide a reasonable condition of comfort for employees working therein consistent with the nature of the processes and the work performed.

(b) Adequate ventilation for the toilet room, dressing room and rest room shall mean that, by artificial or natural means, a minimum of four (4) changes of air per hour are provided.

23. TEMPERATURE

(a) The temperature maintained in each workroom shall provide reasonable comfort consistent with accepted standards for the nature of the process and the work performed.

(b) If excessive heat or humidity is created in the work-

room, special devices shall be installed to reduce such excessive heat or humidity. Where the nature of the employment requires a temperature of less than 65° F., a heated room shall be provided to which employees may retire for warmth and such room shall be maintained at not less than 72° F. during working hours.

(c) A minimum temperature of 72° F. shall be maintained in the rest room and dressing room during working hours.

24. EXITS

In general, stairs, exits, and smokeproof enclosures shall be provided as specified in Article 33, Title 24, California Administrative Code.

EXCEPTIONS:

(a) Every floor, basement, mezzanine, or balcony on which women or minors are employed shall have at least two (2) approved exits, remotely located from each other, access to which is unobstructed. Such exits shall be other than elevators. Exits shall be plainly marked and kept unlocked during working hours.

(b) The requirement of two (2) exits shall not apply for single story buildings if, because of the number of persons, occupancy, and hazard, one (1) exit is sufficient under the minimum exit facilities required by Article 33, Title 24, California Administrative Code and the enforcing agency having jurisdiction.

25. ELEVATORS

When females are employed on the fourth or higher floors, adequate elevator service shall be provided.

26. EXEMPTIONS

If, in the opinion of the Division after due investigation, it is found that the enforcement of any provision contained in Section 7 pertaining to the location of records, or Sections 11 through 25 of this Order, would not materially affect the comfort, health, or safety of employees and would work an undue hardship on the employer, exemption may be made at the discretion of said Division, provided such exemption, if pertaining to exits, has the written concurrence of other agencies having jurisdiction. 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.

27. FILING REPORTS

Every employer shall furnish to the Commission and to the Division any and all reports or information which may be required to carry out the purpose of this Order, such reports and information to be verified if and when so requested.

28. INSPECTION

The Commission and duly authorized representatives of the Division shall be allowed free access to any office or establishment covered by this Order to investigate and gather data regarding wages, hours, working conditions, and employment practices, and shall be permitted to inspect and make excerpts from any and all records and to question all employees for such purposes.

29. PENALTIES

Failure, refusal, or neglect to comply with any of the provisions of this Order is a violation of the Labor Code of the State of California, and is punishable by fine or imprisonment, or both.

(See last column for "Excerpts from Labor Code," Section 1199.)

30. SEPARABILITY

If the application of any provision of this Order, or any section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Order shall 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.

31. POSTING OF ORDER

Every employer shall keep a copy of this Order posted in an area frequented by women and minors where it may be easily read during the work day.

Dated at Los Angeles, California, this twenty-sixth day of September 1967.

Order 7-63, enacted April 18, 1963, is hereby rescinded as and of the date when this Order becomes effective.

INDUSTRIAL WELFARE COMMISSION

STATE OF CALIFORNIA

THEODORE J. TODD, *Chairman*

EDWARD M. CURRAN

JOYCE VALDEZ

STANTON D. ELLIOTT

MIKE R. ELORDUY

Virginia Allee, *Chief*

Division of Industrial Welfare

EXCERPTS FROM STATE LABOR CODE

Section 18. "Person" means any person, association, organization, partnership, business trust, or corporation.

Section 1199. Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than fifty dollars (\$50) or by imprisonment for not less than 30 days, or by both, who does any of the following:

(a) Requires or causes any woman or minor to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission.

(b) Pays or causes to be paid to any woman or minor a wage less than the minimum fixed by an order of the commission.

(c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission.

Section 1252. No female employee shall be requested or permitted to carry any object weighing 10 pounds or more up or down any stairway or series of stairways that rise for more than five feet from the base thereof.

EIGHT HOUR LAW:

Section 1350. No female shall be employed in any manufacturing, mechanical, or mercantile establishment or industry, laundry, cleaning, dyeing, or cleaning and dyeing establishment, hotel, public lodginghouse, apartment house, hospital, beauty shop, barbershop, place of amusement, restaurant, cafeteria, telegraph or telephone establishment or office, in the operation of elevators in office buildings, or by any express or transportation company in this state, more than eight hours during any one day of 24 hours or more than 48 hours in one week, except as provided in Section 1350.5.

Section 1350.5. (a) Employers of employees covered under the provisions of the Fair Labor Standards Act may employ females up to 10 hours during any one day of 24 hours or up to 58 hours in one week, provided that they are compensated at the rate of 1½ times the regular rate of pay for time worked for one employer in excess of eight hours in any one day or 40 hours in any one week.

(b) The provisions of subdivision (a) shall not apply to: (1) employers whose employees are exempted in Section 13 of the Fair Labor Standards Act, as amended through February 1, 1967, from the provisions of Section 7 of the Fair Labor Standards Act; (2) employers whose employees are exempted in Section 7 of the Fair Labor Standards Act, as amended through February 1, 1967, from the provisions of Section 7 of the Fair Labor Standards Act, if the employees are not entitled under such exemptions to the period of 1½ times the regular rate of pay for time worked in excess of 8 hours in one week; and (3) employers whose employees are engaged in the laundering, cleaning, or repairing of clothing, or in the clothing manufacturing industries.

(c) The provisions of subdivisions (a) and (b) of this section shall not affect or change the provisions of any existing collective bargaining agreement.

(d) Notwithstanding the provisions of subdivision (b) of this section, the provisions of subdivision (a) of this section shall apply to the employment of females by railroads or airlines certificated by the federal or state government.

Section 1351. No employer shall employ, cause to be employed, or permit any female to work any number of hours whatever, with knowledge that such female has theretofore been employed within the same day of 24 hours in any establishment or industry and by any previous employer for a period of time which when combined with the period of 1½ times the regular rate of pay for time worked in excess of 8 hours in one week or 58 hours in one week, shall not prevent the employment of any female in more than one establishment where the total number of hours worked by her does not exceed 10 hours in any one day of 24 hours or 58 hours in one week.

Section 1352. The provisions of this article in relation to hours of employment shall not apply to or affect graduate nurses in hospitals, licensed vocational nurses in hospitals, hospital bioanalysts, clinical laboratory technologists, X-ray laboratory technicians, surgical technicians or inhalation therapists in hospitals during an emergency; provided, that any such licensed vocational nurse, technologist, technician or therapist who, by reason of an emergency, is permitted or required by her employer to work in excess of the maximum hours prescribed by other provisions of this article, shall be paid, for time worked in excess of such hours, at a rate of not less than 1½ times her straight time rate of pay, nor the harvesting, curing, canning, packing, or drying of any variety of perishable fruit, fish, or vegetable during the periods when it is necessary to harvest, cure, can, pack, or dry fruit, fish, or vegetables to prevent spoiling, nor to employees actually engaged in the processing of biologicals, human blood products and other such products of laboratories operating under license from either the United States Department of the Treasury and the United States Department of Agriculture during such periods when it is necessary to continue the processing of such products to prevent spoilage or deterioration. Emergency within the meaning of this section means an unpredictable or unavoidable occurrence at unscheduled intervals, requiring immediate action. The exception provided herein shall be effective only in cases where the employee upon learning of the emergency exercises reasonable diligence to provide immediately relief for the employee required to work over the prescribed number of hours.

Section 1352.1. The provisions of this article shall not apply to or affect executives, administrators, or professional women. No women shall be considered to be employed in an administrative, executive or professional capacity unless one of the following conditions prevail:

(a) The employee is engaged in work which is predominantly intellectual, managerial, or creative; which requires exercise of discretion and independent judgment; and for which the remuneration is not less than four hundred dollars (\$400) per month, or

(b) 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, architecture, engineering or accounting.

Section 1352.2. No employer engaged in the operation of a licensed hospital shall be deemed to have violated any provision of this article by having adopted, pursuant to an agreement or understanding voluntarily arrived at between the employer and the employee before performance of the work, a work period of 14 consecutive days in lieu of the workweek of seven consecutive days for purposes of overtime computation; and no employer shall be deemed to have violated any provision of this article by compensating for her employment in excess of eight hours in any such workday and in excess of 80 hours in any such work period at a rate of not less than 1½ times her regular rate of pay. Except in the case of an emergency as defined in Section 1352, no such employee shall be permitted to work in excess of the maximum hours otherwise permitted for any workday or during any such two-week work period.

"Employee" for purposes of this section shall include a graduate nurse.

Section 1352.5. In the event compliance with Section 1350 prevents the completion of a service from being performed by a licensed cosmetologist to a member of the public and such service was commenced at a time when the service could reasonably have been expected to be completed within the eight hours provided in Section 1350, the licensed cosmetologist may complete the service, and her employer is exempt from the provisions of Section 1354 if such cosmetologist receives compensatory time off in the same workweek and the hours worked for that week do not exceed 48.

Section 1353. Every employer subject to this article shall keep an accurate record showing the names of, and actual hours worked by all female employees. This record shall be accessible at all reasonable hours to the officers and agents of the Division of Industrial Welfare.

Section 1354.2. Every person, or the agent or officer thereof, employing any female who violates any provision of this article or who employs, or permits any female to work in violation thereof, is guilty of a misdemeanor, punishable, for a first offense, by a fine of not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100); and for a second or subsequent offense, by a fine of not less than one hundred dollars (\$100) nor more than two hundred fifty dollars (\$250), or imprisonment for not more than 60 days, or both.

Section 1356. The Division of Industrial Welfare shall enforce this article; provided, however, that neither the Division nor the Industrial Welfare Commission may place on employers any limitations that are more restrictive than the provisions of this article.

INDUSTRIAL HOMEWORK:

Section 2558. No person shall employ an industrial homemaker unless the person employing an industrial homemaker has obtained a valid industrial homework license from the division.

Application for a license to employ industrial homeworkers shall be made to the division in such form as the division may by regulation prescribe. A license fee of fifty dollars (\$50) shall be paid to the division and said license shall be valid for a period of one year from the date of issuance unless sooner revoked or suspended. The fee for renewal of a license shall be fifty dollars (\$50) if five or less industrial homeworkers were employed during the preceding year. The renewal fee shall be seventy-five dollars (\$75) for 6 to 20 industrial homeworkers, one hundred dollars (\$100) for 20 to 100 industrial homeworkers and one hundred fifty dollars (\$150) for more than 100 homeworkers.

WORKING HOURS OF MINORS: See Labor Code Sections 1391 to 1398, inclusive.

EXHIBIT F

ORDER 7-76

Title 8, Calif.
Administrative
Code 11215

Replacing former
Orders 7-68 and 1-74
Effective October 18, 1976

INDUSTRIAL WELFARE COMMISSION WAGES, HOURS, AND WORK MERCANTILE

TO WHOM IT MAY CONCERN:

TAKE NOTICE: That pursuant to the Legislature's 1973 mandate to the Industrial Welfare Commission to review, update and promulgate regulations necessary to provide adequate and reasonable wages, hours, and working conditions appropriate for all employees, and by virtue of authority vested in the Commission by Sections 1171 through 1204 of the Labor Code of the State of California, and after investigation and findings pursuant to Section 1178 and after receiving recommendations from duly appointed wage boards, and after consideration of all written material and information submitted, and after public hearings duly held, notice of said hearings having been duly given in the manner provided by law, the Industrial Welfare Commission, upon its own motion has found and concluded that its Mercantile Industry Order, Number 7-68, enacted on September 26, 1967 and its Minimum Wage Order 1-74 enacted on January 1, 1974, should be altered and amended.

NOW, THEREFORE, the Industrial Welfare Commission of the State of California does hereby alter and amend said Mercantile Industry Order, Number 7-68, and its Minimum Wage Order 1-74.

1. APPLICABILITY OF ORDER

This Order shall apply to all persons employed in the mercantile 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 \$720.00 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, optometry, architecture, engineering, teaching, or accounting.

(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.

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) "Mercantile Industry" means any industry, business, or establishment operated for the purpose of purchasing, selling, or distributing goods or commodities at wholesale or retail; or for the purpose of renting goods or commodities.

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

(E) "Employee" means any person employed by an employer, and includes any lessee who is charged rent, or who pays rent for a chair, booth, or space and (1) who does not use his or her own funds to purchase requisite supplies, and (2) who does not maintain an appointment book separate and distinct from that of the establishment in which the space is located, and (3) who does not have a business license where applicable.

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

(K) "Teaching" means, for the purpose of Section 1 of this Order, the profession of teaching under a certificate from the Commission for Teacher Preparation and Licensing or teaching in an accredited college or university.

(L) "Wages" means all amounts paid for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis or other method of calculation.

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

(N) "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) No employee eighteen (18) years of age or over shall be employed more than eight (8) hours in any one workday or more than forty (40) hours in any one workweek unless the employee receives one and one-half (1½) 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 one workday or more than six (6) days in any one workweek is permissible provided the employee is compensated for such overtime at not less than:

- (1) One and one-half (1½) 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 one workday, and for the first eight (8) hours worked on the seventh (7th) workday; and
- (2) Double the employee's regular rate of pay for all hours worked in excess of twelve (12) hours in any one workday and for all hours worked in excess of eight (8) hours on the seventh (7th) workday in any one workweek.

(B) No employer shall be deemed to have violated the provisions of the above subsection (A) by instituting, pursuant to a written agreement voluntarily executed by the employer and at least two-thirds (⅔) of the affected employees before the performance of the work, a regularly scheduled week of work which includes not more than four (4) working days of not more than ten (10) hours each within five (5) consecutive workdays, provided that:

- (1) The employer is not required to pay the premium wage rate prescribed in subsection (A) for the 9th and 10th hours worked during such workdays;
- (2) If an employee on such a four-day schedule is required or permitted to work more than ten (10) hours in any workday, the premium wage rate provisions in subsection (A) above shall apply to such employee for those hours worked in excess of the 10th hour of that work day;
- (3) Any employee on such a schedule who is required or permitted to work on more than four (4) workdays shall be compensated at the rate of not less than one and one-half (1½) times the employee's regular rate of pay for the first eight (8) hours on such additional workdays and double the employee's regular rate of pay for work in excess of eight (8) hours on those workdays.

(C) Provisions of subsections (A) and (B) above shall not apply to any employee whose earnings exceed one and one-half (1½) times the highest applicable minimum wage if more than half (½) of that employee's compensation represents commissions.

(D) No minor shall be employed more than eight (8) hours in any one day or more than six (6) days in any one week. One and one-half (1½) times the minor's regular rate of pay shall be paid for all work over forty (40) hours in any one week. No minor shall be employed before 5 o'clock in the morning or after 10 o'clock in the evening, except that during any evening preceding a non-school day a minor may work the hours authorized by this section until 12:30 o'clock in the morning of such non-school day.

(E) Minors sixteen (16) years of age or older and under the age of eighteen (18) years who are enrolled in work experience education programs approved by the State Department of Education may work after 10 p.m. but not later than 12:30 a.m. providing such employment is not detrimental to the health, education or welfare of the minors and the approval of the parent and the work experience coordinator has been obtained. However, any such minor who works any time during the hours from 10 p.m. to 12:30 a.m. shall be paid for work during that time at a rate which is not

State of California

Department of Industrial Relations

DIVISION OF LABOR STANDARDS ENFORCEMENT

Administrative headquarters:

P.O. Box 603, San Francisco 94101

District offices:

**225 Chester Ave., Bakersfield 93301
1290 Howard Ave., Burlingame 94010
380 North 8th St., El Centro 92243
619 Second St., Eureka 95501
2550 Mariposa St., Fresno 93721
520 North La Brea Ave., Inglewood 90302
230 East 4th St., Long Beach 90812
107 South Broadway, Los Angeles 90012
1111 Jackson St., Oakland 94607
8155 Van Nuys Blvd., Panorama City 91402
300 South Park Ave., Pomona 91769
2115 Akard Ave., Redding 96001
2422 Arden Way, Sacramento 95825
21 West Laurel Drive, Salinas 93901
303 West 3rd St., San Bernardino 92401
1350 Front St., San Diego 92101
455 Golden Gate Ave., San Francisco 94102
888 North 1st St., San Jose 95112
28 Civic Center Plaza, Santa Ana 92701
411 East Canon Perdido, Santa Barbara 93101
725 Farmers Lane, Santa Rosa 95405
31 East Channel St., Stockton 95202
600 Marin St., Vallejo 94590**

Labor Standards Enforcement is one of the eight major programs administered by the State Department of Industrial Relations to protect Californians at work.

less than the minimum wage required for adults.

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.

(F) 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).

(G) If a meal period occurs on a shift beginning or ending 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.

(H) Except as provided in subsections (D), (E), and (G) above, this section shall not apply where the employer is obligated to provide premium wage rates for overtime work and to regulate the number of hours of work pursuant to a written collective bargaining agreement where such agreement covers employees who would otherwise be protected by this Order.

(I) The provisions of this section are not applicable to employees whose hours of service are regulated by the United States Department of Transportation Code of Federal Regulations, Title 49, Sections 395.1 to 395.13, Hours of Service of Drivers.

4. MINIMUM WAGES (See Order MW-78)

(A) Every employer shall pay to each employee wages not less than two dollars and fifty cents (\$2.50) per hour for all hours worked, except:

- (1) **LEARNERS.** Employees during their first one hundred and sixty (160) hours of employment in occupations in which they have no previous similar or related experience, for whom the rate of pay shall be not less than two dollars and fifteen cents (\$2.15) per hour.
- (2) **MINORS** may be paid two dollars and fifteen cents (\$2.15) per hour; 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.

(B) Every employer shall pay to each employee, on the established pay-day 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) On any workday in which an employee works a split shift two dollars and fifty cents (\$2.50) per workday shall be paid in addition to the minimum wage 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 herein provided.

(B) If an employee is required to report for work a second time in any one 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 herein provided.

- (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. PERMITS AND LICENSES FOR HANDICAPPED WORKERS

A permit 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 herein provided. Such permits 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 permits of such employees.

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

See California Labor Code, Sections 1191 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.
- (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

ON ORDER NO. 7-76, REGULATING WORKING CONDITIONS IN THE LE INDUSTRY

ORDER 7-76 MERCANTILE



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

Subject to the requirements of Sections 400-410 of the California Labor Code, 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. Notwithstanding the foregoing provision, where an employee has the exclusive and personal control of cash funds of the employer and is required by the employer to account, under reasonable accounting procedures, for said funds, the employer may upon prior written notice require reimbursement from such employee for cash shortages.

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.

(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 provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft. Notwithstanding any other provision of this section, employees in beauty salons, schools of beauty culture offering beauty care to the public for a fee, and barber shops may be required to furnish their own manicure implements, curling irons, rollers, clips, hair-cutting scissors, combs, air-combs, blowers, razors, and eyebrow tweezers.

(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. 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 which are adequate, decent, and sanitary according to usual and customary standards. Employees shall not be required to share a bed.

(B) When meals or lodging are furnished by the employer as part of the employee's compensation and when pursuant to a voluntary written agreement between the employer and the employee, such meals and lodging are to be credited towards the employer's minimum wage obligation, such meals and lodging may not be evaluated in excess of the following:

Room occupied alone	\$12.00 per week
Room shared	\$9.60 per week
Apartment—two-thirds (⅔) of the ordinary rental value, and in no event more than.....	\$140.00 per month
Where a couple are both employed by the employer, two-thirds (⅔) of the ordinary rental value, and in no event more than.....	\$210.00 per month
Meals: Breakfast.....	\$.90
Lunch.....	\$1.25
Dinner	\$1.65

(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 (3½) 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 where 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.

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

OCCUPATIONAL SAFETY AND HEALTH STANDARDS

The Occupational Safety and Health Standards Board (Cal/OSHA) now regulates some matters formerly regulated by the Industrial Welfare Commission. For this reason, sections in previous Industrial Welfare Commission orders which referred to protective garments, drinking water and washing facilities, toilet rooms, first aid, floors, cleanliness and upkeep, lighting, ventilation, and exits do not appear in this Order.

Information on matters of occupational health and safety can be obtained from the Division of Industrial Safety, Department of Industrial Relations, State of California, at P.O. Box 603, San Francisco 94101, or from its district offices.

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.

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 heated 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.

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, either above or below ground level.

17. LIFTING

No employee shall be required to lift, push, or carry any object which is beyond the employee's reasonable physical capability at any given time, except that it shall not be a violation of this section to require an employee to lift, push, or carry any object when such activity constitutes part of the usual duties of the job for which the employee was hired, or when it is specified in a classification or description of the job for which the employee was hired.

18. 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.

19. FILING REPORTS

Every employer shall furnish to the Commission and to the Division at all reasonable times any and all reports for information which may be required to carry out the purpose of this Order, such reports and information to be verified if and when so requested.

20. INSPECTION

The Commission and duly authorized representatives of the Division shall be allowed free access to any office or establishment covered by this Order to investigate and gather data regarding wages, hours, working conditions, and employment practices, and shall be permitted to inspect and make excerpts from any and all relevant records and to question all employees for such purposes.

The investigations and data gathering shall be conducted in a reasonable manner calculated to provide the necessary surveillance of employment practices and the enforcement of the Commission's orders.

21. PENALTIES

Failure, refusal, or neglect to comply with any of the provisions of this Order is a violation of the Labor Code of the State of California and is punishable by fine or imprisonment or both.

See excerpts from Labor Code, Sections 1196 and 1199.

22. 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.

23. 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 7-68, enacted September 26, 1967, and Order 1-74, enacted December 4, 1973, are hereby rescinded as and of the date when this Order becomes effective, October 18, 1976.

Dated at Sacramento, California, the twenty-seventh day of July, 1976.

INDUSTRIAL WELFARE COMMISSION
STATE OF CALIFORNIA

Howard Alan Carver, Chairperson

Joyce R. Valdez

Mike R. Elorduy

Jackie Walsh

James L. Quillin, Chief

Division of Labor Standards Enforcement.

Yvonne P. Aguilar

Excerpts from Labor Code

SECTION 18. "Person" means any person, association, organization, partnership, business trust, or corporation.

SECTION 403. If cash is received as a bond it shall be deposited in a savings account in a bank authorized to do business in this State, and may be withdrawn only upon the joint signatures of the employer and the employee or applicant.

Cash put up as a bond shall be accompanied by an agreement in writing made by the employer and employee or applicant, setting forth the conditions under which the bond is given.

SECTION 1193.6. The department or division may, with the consent of the employee or employees affected, commence and prosecute a civil action to recover unpaid minimum wages or unpaid overtime compensation owing to any employee under the provisions of this chapter or the orders of the commission, and, in addition to such wages and compensation, shall be entitled to recover costs of suit. The consent of any employee to the bringing of any such action shall constitute a waiver on the part of the employee of his or her cause of action under Section 1194 unless such action is dismissed without prejudice by the department or the division.

SECTION 1196. Any employer who discharges, threatens to discharge, or in any other manner discriminates against any employee because the employee has testified or is about to testify, or because the employer believes that the employee will testify in any investigation or proceedings relative to the enforcement of this chapter, is guilty of a misdemeanor.

SECTION 1199. Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than fifty dollars (\$50) or by imprisonment for not less than 30 days, or by both, who does any of the following:

(a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission.

(b) Pays or causes to be paid an employee a wage less than the minimum fixed by an order of the commission.

(c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission.

(d) Pays or causes to be paid any employee a wage less than the rate paid to an employee of the opposite sex as required by Section 1197.5 of this code.

(e) Reduces the wages of any employee in order to comply with Section 1197.5.

EMPLOYMENT OF MINORS: Persons under 18 are required to obtain work permits, and employers of minors under 16 are required to obtain permits to employ. Permits are obtained from school districts. Refer to Labor Code Sections 1285 to 1311 and 1390 to 1390 for restrictions on the employment of minors.

EXHIBIT G

ORDER 7-80

Title 8, Calif.
Administrative
Code 11070

Replacing former
Orders 1-76 and MW-78
effective January 1,
1980

INDUSTRIAL WELFARE COMMISSION WAGES, HOURS, AND WORK MERCANTILE

TO WHOM IT MAY CONCERN:

TAKE NOTICE: That the Industrial Welfare Commission of the State of California has reviewed the order for this industry, as mandated by Labor Code Section 1173, for the purpose of updating it to the extent found by the Commission to be necessary to provide reasonable wages, hours, and working conditions appropriate for all employees in the modern society; that the Commission called wage boards as required by Labor Code Sections 1178 and 1184 before promulgating and amending each of the previous succeeding orders setting standards in this industry and, in this review, considered the recommendations of the wage board for the Mercantile Industry, which met on March 21-22, 1979; that the Commission has 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; that it has considered all written material and information submitted and has held public hearings and given notice of said hearings as provided by law; that the Commission has, upon its own motion, concluded that its Order No. 7-76, regulating the Mercantile Industry, should be altered and amended to provide for the welfare of employees as specified in Labor Code Section 1182 and has explained such amendments in a statement as to the basis upon which they are predicated.

NOW, THEREFORE, the Industrial Welfare Commission of the State of California does hereby promulgate this Mercantile Industry Order No. 7-80, which alters, amends and supersedes any previous order regulating said industry, including Order 7-76 and Minimum Wage Order MW-78, and includes in this Order 7-80 the statement as to the basis upon which said order is predicated, in which a majority of the Commission concurred on September 7, 1979. This statement as to the basis of this order includes all of the above and that which is set forth on the reverse side of this order, which is incorporated herein as if fully set forth.

1. APPLICABILITY OF ORDER

This Order shall apply to all persons employed in the mercantile 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 \$900.00 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.

(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.

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) "Mercantile Industry" means any industry, business, or establishment operated for the purpose of purchasing, selling, or distributing goods or commodities at wholesale or retail; or for the purpose of renting goods or commodities.

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

(E) "Employee" means any person employed by an employer, and includes any lessee who is charged rent, or who pays rent for a chair, booth, or space and (1) who does not use his or her own funds to purchase requisite supplies, and (2) who does not maintain an appointment book separate and distinct from that of the establishment in which the space is located, and (3) who does not have a business license where applicable.

(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 the 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) "Split shift" means a work schedule which is interrupted by non-paid 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 this Order, the profession of teaching under a certificate from the Commission for Teacher Preparation and Licensing.

(M) "Wages" means all amounts paid for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis or other method of calculation.

(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) No employee eighteen (18) years of age or over nor any minor permitted to work as an adult as provided in (D)(1) shall 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 the above subsection (A) by instituting, pursuant to a written agreement voluntarily executed by the employer and at least two-thirds (2/3) of the affected employees before the performance of the work, a regularly scheduled week of work which includes not more than four (4) working days of not more than ten (10) hours each so long as the employee receives at least two (2) consecutive days off within each workweek, provided that:

- (1) The employer is not required to pay the premium wage rate prescribed in subsection (A) for the 9th and 10th hours worked during such workdays;
- (2) If an employee on such a four-day schedule is required or permitted to work more than ten (10) hours in any workday, the premium wage rate provisions in subsection (A) above shall apply to such employee for those hours worked in excess of the 10th hour of that workday;
- (3) Any employee on such a schedule who is required or permitted to work on more than four (4) workdays shall be compensated at the rate of not less than one and one-half (1 1/2) times the employee's regular rate of pay for the first eight (8) hours on such additional workdays and double the employee's regular rate of pay for work in excess of eight (8) hours on those workdays.
- (4) After a lapse of twelve (12) months and upon petition of a majority of the affected employees a new vote 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 sixty (60) days. Upon a proper showing by the employer of undue hardship the Division may grant an extension of the time for compliance.

(C) Provisions of subsections (A) and (B) above shall not apply to any employee whose earnings exceed one and one-half (1 1/2) times the minimum wage, if more than half (1/2) of that employee's compensation represents commissions.

(D) No minor shall be employed more than eight (8) hours in any workday or more than six (6) days in any workweek. One and one-half (1 1/2) times the minor's regular rate of pay shall be paid for all work over forty (40) hours in any workweek. No minor shall be employed before 5 o'clock in the morning or after 10 o'clock in the evening, except that during any evening preceding a non-school day a minor may work the hours authorized by this section until 12:30 o'clock in the morning of such non-school day.

State of California Department of Industrial Relations DIVISION OF LABOR STANDARDS ENFORCEMENT

Administrative Office:

525 Golden Gate Ave., San Francisco 94102
(P. O. Box 603, San Francisco 94101)

District offices are located in the following cities. Consult the white pages of your local telephone directory under CALIFORNIA, State of, Industrial Relations, Labor Standards Enforcement, for the address and telephone number.

BAKERSFIELD	SALINAS
EL CENTRO	SAN BERNARDINO
EUREKA	SAN DIEGO
FRESNO	SAN FRANCISCO
HOLLYWOOD	SAN JOSE
INGLEWOOD	SAN MATEO
LONG BEACH	SANTA ANA
LOS ANGELES	SANTA BARBARA
MARYSVILLE	SANTA ROSA
NAPA	STOCKTON
OAKLAND	VAN NUYS
POMONA	VENTURA
REDDING	WHITTIER
SACRAMENTO	

Labor Standards Enforcement is one of the eight major programs administered by the State Department of Industrial Relations to protect Californians at work.

(1) Notwithstanding the preceding provisions of this subsection, minors sixteen (16) and seventeen (17) years old who are not required by law to attend school may be employed for the same hours as an adult. Minors so permitted to work shall be subject to subsection (A) or (B) above.

(E) Minors sixteen (16) and seventeen (17) years of age who are enrolled in work experience education programs approved by the State Department of Education or in work experience education programs conducted by private schools may work after 10 p.m. but not later than 12:30 a.m. providing such employment is not detrimental to the health, education or welfare of the minor and the approval of the parent and the work experience coordinator has been obtained. However, any such minor who works any time during the hours from 10 p.m. to 12:30 a.m., shall be paid for work during that time at a rate which is not less than the minimum wage required for adults.

(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.)

(F) 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).

(G) If a meal period occurs on a shift beginning or ending 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.

(H) Except as provided in subsections (D), (E), and (G), 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.

(I) 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 Administrative Code Subchapter 6.5, sec. 1200 and following sections, regulating hours of drivers.

4. MINIMUM WAGES

(A) Every employer shall pay to each employee wages not less than three dollars and ten cents (\$3.10) per hour for all hours worked, effective January 1, 1980, and three dollars and thirty-five cents (\$3.35) per hour for all hours worked, effective January 1, 1981, 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 one 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 1191 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.

ORDER NO. 7-80 REGULATING WORKING CONDITIONS IN THE INDUSTRY

ORDER 7-80 MERCANTILE



- (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 second sentence of "Section 8, Cash Shortage and Breakage", Order 7-80 (Title 8, California Administrative Code Section 11070, Subsection 8) which was effective on January 1, 1980 was found to be invalid and inconsistent with California law pursuant to a judgment filed on January 16, 1986, entered by the Superior Court of the State of California, County of Santa Cruz.

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. Notwithstanding any other provision of this section, employees in beauty salons, schools of beauty culture offering beauty care to the public for a fee, and barber shops may be required to furnish their own manicure implements, curling irons, rollers, clips, hair-cutting scissors, combs, air-combs, blowers, razors, and eyebrow tweezers. 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 Jan. 1, 1980	Effective Jan. 1, 1981
Room occupied alone.....	\$ 15.00 per week	\$ 16.00 per week
Room shared	\$ 12.00 per week	\$ 13.00 per week
Apartment—two-thirds (2/3) of the ordinary rental value, and in no event more than.....	\$175.00 per month	\$190.00 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	\$260.00 per month	\$280.00 per month
Meals:		
Breakfast	\$1.10	\$1.20
Lunch.....	\$1.55	\$1.65
Dinner	\$2.05	\$2.20

(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 (3½) 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 non-working 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.

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 heated 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

Every employer shall furnish to the Commission and to the Division at all reasonable times any and all reports or information which may be required to carry out the purpose of this Order, such reports and information to be verified if and when so requested.

19. INSPECTION

The Commission and duly authorized representatives of the Division shall be allowed free access to any office or establishment covered by this Order to investigate and gather data regarding wages, hours, working conditions, and employment practices, and shall be permitted to inspect and make excerpts from any and all relevant records and to question all employees for such purposes.

The investigations and data gathering shall be conducted in a reasonable manner calculated to provide the necessary surveillance of employment practices and the enforcement of the Commission's orders.

20. PENALTIES

Failure, refusal, or neglect to comply with any of the provisions of this Order is a violation of the Labor Code of the State of California and is punishable by fine or imprisonment or both.

See Excerpts from 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 7-76, enacted July 27, 1976, and Order MW-78, enacted January 19, 1978, and any prior order regulating this industry are hereby rescinded as and of the date upon which this Order becomes effective, January 1, 1980.

Dated at San Francisco, California, the seventh day of September, 1979.

INDUSTRIAL WELFARE COMMISSION
STATE OF CALIFORNIA

Mike R. Elorduy, Chairperson
Jackie Walsh
Yvonne Postelle

James L. Quillin, Chief
Division of Labor Standards Enforcement
Howard P. Wackman II
John H. Bennett

Excerpts from Labor Code

SECTION 98.6. (a) No person shall discharge or in any manner discriminate against any employee because such employee has filed any bona fide complaint or claim or instituted or caused to be instituted any proceeding under or relating to his rights, which are under the jurisdiction of the Labor Commissioner, or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any rights afforded him.

SECTION 403. If cash is received as a bond it shall be deposited in a savings account in a bank authorized to do business in this State, and may be withdrawn only upon the joint signatures of the employer and the employee or applicant.

SECTION 1193.6. The department or division may, with the consent of the employee or employees affected, commence and prosecute a civil action to recover unpaid minimum wages or unpaid overtime compensation owing to any employee under the provisions of this chapter or the orders of the commission, and, in addition to such wages and compensation, shall be entitled to recover costs of suit. The consent of any employee to the bringing of any such action shall constitute a waiver on the part of the employee of his or her cause of action under Section 1194 unless such action is dismissed without prejudice by the department or the division.

SECTION 1199. Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than fifty dollars (\$50) or by imprisonment for not less than 30 days, or by both, who does any of the following:

- (a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission.
- (b) Pays or causes to be paid an employee a wage less than the minimum fixed by an order of the commission.
- (c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission.
- (d) Pays or causes to be paid any employee a wage less than the rate paid to an employee of the opposite sex as required by Section 1197.5 of this code.
- (e) Reduces the wages of any employee in order to comply with Section 1197.5

INFORMATION ON OCCUPATIONAL SAFETY AND HEALTH STANDARDS can be obtained from the Division of Industrial Safety, Department of Industrial Relations, State of California, at P.O. Box 603, San Francisco 94101 or from its district offices.

SUMMARIES IN OTHER LANGUAGES

The Department of Industrial Relations will make summaries of wage and hour requirements in this Order available in Spanish, Chinese and certain other languages when it is feasible to do so. Mail your request for such summaries to the Department at P.O. Box 603, San Francisco, CA 94101.

RESUMEN EN OTROS IDIOMAS

El Departamento de Relaciones Industriales confeccionara un resumen sobre los requisitos de salario y horario de esta Disposicion en espanol, chino y algunos otros idiomas cuando sea posible hacerlo. Envie por correo su pedido por dichos resúmenes al Departamento a: P.O. Box 603, San Francisco, CA 94101.

其它文字的摘錄

工業關係處將摘錄本規則中有關工資和工時的規定，用西班牙文、中文印出。其它文字如有需要，也將同樣辦理。如果您有需要，可以來信索閱，請寄到：DEPARTMENT OF INDUSTRIAL RELATIONS
P.O. BOX 603
SAN FRANCISCO, CA 94101

EXHIBIT H

ORDER 7-98
Title 8, California
Code of Regulations
Section 11070
Contains amendments
effective
January 1, 1998

Please Post After January 1, 1998

OFFICIAL NOTICE

This revised order incorporates:

- *Amendments related to overtime contained in Sections 3 and 11, effective January 1, 1998*
- *Changes in the minimum wage and meals and lodging credits contained in MW-98*



INDUSTRIAL WELFARE COMMISSION ORDER NO. 7-98 REGULATING WAGES, HOURS, AND WORKING CONDITIONS IN THE MERCANTILE INDUSTRY

SUMMARY OF ACTIONS

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 7-80 (Revised) for the Mercantile Industry, for the purpose of amending Section 2, Definitions, Section 3, Hours and Days of Work, and Section 11, Meal Periods. 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 amendments to Sections 3 and 11 of Order 7-80 (Revised). During a separate minimum wage review, which included a separate minimum wage board, the IWC also considered and eventually adopted changes to Section 10, Meals and Lodging.

This order also incorporates amendments to Section 4, Minimum Wages, previously made in accord with Labor Code Sec. 1182(b) to adopt the federal minimum wage increases consistent with federal law [Small Business Job Protection Act of 1996, Section 2104] and a separate mandate to adopt additional state minimum wage increases consistent with the Living Wage Act of 1996 [Proposition 210 on the November 1996 California ballot].

The IWC took no action with regard to any other sections of this order. For purposes of clarity in this printing, the IWC renumbered Order 7-80 (Revised) to Order 7-98.

1. APPLICABILITY OF ORDER

This Order shall apply to all persons employed in the mercantile 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 \$900.00 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 profes-

hours worked over forty (40) hours in the workweek. No overtime pay shall be required for hours of work in excess of any daily number.

(B) Provisions of subsection (A) above shall not apply to any employee whose earnings exceed one and one-half (1 1/2) times the minimum wage if more than half (1/2) of that employee's compensation represents commissions.

(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) above.

(VIOLATIONS OF CHILD LABOR LAWS are subject to civil penalties of from \$500 to \$10,000 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) If a meal period occurs on a shift beginning or ending 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.

(E) Except as provided in subsections (C) and (D), 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.

(F) 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.

4. MINIMUM WAGES

(A) Every employer shall pay to each employee wages not less than

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 1191 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

sions: law, medicine, dentistry, pharmacy, optometry, architecture, engineering, teaching, or accounting.

(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.

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) **"Mercantile Industry"** means any industry, business, or establishment operated for the purpose of purchasing, selling, or distributing goods or commodities at wholesale or retail; or for the purpose of renting goods or commodities.

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

(E) **"Employee"** means any person employed by an employer, and includes any lessee who is charged rent, or who pays rent for a chair, booth, or space and (1) who does not use his or her own funds to purchase requisite supplies, and (2) who does not maintain an appointment book separate and distinct from that of the establishment in which the space is located, and (3) who does not have a business license where applicable.

(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 the 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) **"Split shift"** means a work schedule which is interrupted by non-paid 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 this 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) No employee eighteen (18) years of age or over shall be employed 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

four dollars and seventy-five cents (\$4.75) per hour for all hours worked, effective October 1, 1996; not less than five dollars (\$5.00) per hour for all hours worked, effective March 1, 1997; not less than five dollars and fifteen cents (\$5.15) per hour for all hours worked, effective September 1, 1997; and not less than five dollars and seventy-five cents (\$5.75) per hour for all hours worked, effective March 1, 1998, 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 one 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

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. Notwithstanding any other provision of this section, employees in beauty salons, schools of beauty culture offering beauty care to the public for a fee, and barber shops may be required to furnish their own manicure implements, curling irons, rollers, clips, hair-cutting scissors, combs, air-combs, blowers, razors, and eyebrow tweezers. 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. 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 January 1, 1998

Room occupied alone.....	\$ 24.25 per week
Room shared.....	\$ 20.00 per week
Apartment—two-thirds (2/3) of the ordinary rental value, and in no event more than.....	\$290.80 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.....	\$430.20 per month
Meals:	
Breakfast.....	\$1.80
Lunch.....	\$2.55
Dinner.....	\$3.40

Effective March 1, 1998

Room occupied alone.....	\$ 27.05 per week
Room shared.....	\$ 22.30 per week
Apartment—two-thirds (2/3) of the ordinary rental value, and in no event more than.....	\$324.70 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.....	\$480.30 per month
Meals:	
Breakfast.....	\$2.05
Lunch.....	\$2.85
Dinner.....	\$3.80

(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

(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.

EXCERPTS FROM THE LABOR CODE

Section 98.6. (a) No person shall discharge or in any manner discriminate against any employee because such employee has filed any bona fide complaint or claim or instituted or caused to be instituted any proceeding under or relating to his rights, which are under the jurisdiction of the Labor Commissioner, or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any rights afforded him.

(b) Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated against in the terms and conditions of such employment because such employee has made a bona fide complaint or claim to the division pursuant to this part shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by such acts of the employer. Any employer who willfully refuses to hire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for such rehiring or promotion by a grievance procedure, arbitration or hearing authorized by law, is guilty of a misdemeanor.

Note: Nothing in this act shall be construed to entitle an employee to reinstatement or reimbursement for lost wages or work benefits if such employee willfully misrepresents any facts to support a complaint or claim filed with the Labor Commissioner.

Section 200. As used in this article: (a) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.

Section 201. If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

Section 202. If an employee not having a written contract for a definite period quits his employment, his wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his intention to quit, in which case the employee is entitled to his wages at the time of quitting.

Section 204.1. Commission wages paid to any person employed by an employer licensed as a vehicle dealer by the Department of Motor Vehicles are due and payable once during each calendar month on a day designated in advance by the employer as the regular payday. Commission wages are compensation paid to any person for services rendered in the sale of such employer's property or services and based proportionately upon the amount or value thereof.

Section 226. (a) Every employer shall semimonthly, or at the time of each payment of wages, furnish each of his or her employees either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an itemized statement in writing showing: (1) gross wages earned; (2) total hours worked by each employee whose compensation is based on an hourly wage; (3) all deductions; provided, that all deductions made on written orders of the employee may be aggregated and shown as one item; (4) net wages earned; (5) the inclusive dates of the period for which the employee is paid; (6) the name of the employee and his or her social security number; and (7) the name and address of the legal entity which is the employer.

Section 1174. Every person employing labor in this state shall:

(a) Furnish to the commission, at its request, reports or information which the commission requires to carry out this chapter. Such reports and information shall be verified if required by the commission or any member thereof.

(b) Allow any member of the commission or the employees of the Division of Labor Standards Enforcement free access to the place of business or employment of such person to secure any information or make any investigation which they are authorized by this chapter to ascertain or make. The commission may inspect or make excerpts, relating to the employment of employees, from the books, reports, contracts, payrolls, documents, or papers of such person.

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.

(C) Notwithstanding any other provision of this order, employees who work shifts in excess of eight (8) total hours in a workday may voluntarily waive their right to a meal period. In order to be valid, any such waiver must be documented in a written agreement that is voluntarily signed by both the employee and the employer. The employee may revoke the waiver at any time by providing the employer at least one day's written notice. The employee shall be fully compensated for all working time, including any on-the-job meal period, while such a waiver is in effect.

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.

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 heated room shall be provided to which employees may retire for warmth and such room shall be maintained at not less than 68°.

Order 7-80 was revised on April 11, 1997 to incorporate changes in Section 3, Hours and Days of Work, Section 10, Meals and Lodging, and Section 11, Meal Periods. Those changes become effective on January 1, 1998. A second step to the increases in Section 10, Meals and Lodging, becomes effective on March 1, 1998. Other changes with respect to increases in the minimum wage have also been incorporated into this order and are described under *Summary of Actions, Take Notice*.

Dated at San Francisco, California, the eleventh day of April, 1997.

INDUSTRIAL WELFARE COMMISSION
STATE OF CALIFORNIA

QUESTIONS ABOUT ENFORCEMENT of the Industrial Welfare Commission orders and reports of violations should be directed to the Division of Labor Standards Enforcement. Consult the white pages of your telephone directory under CALIFORNIA, State of, Industrial Relations for the address and telephone number of the office nearest you. The Division has offices in the following cities: Bakersfield, Eureka, Fresno, Long Beach, Los Angeles, Marysville, Oakland, Redding, Sacramento, Salinas, San Bernardino, San Diego, San Francisco, San Jose, Santa Ana, Santa Barbara, Santa Rosa, Stockton, Van Nuys.

SUMMARIES IN OTHER LANGUAGES

The Department of Industrial Relations will make summaries of wage and hour requirements in this Order available in Spanish, Chinese and certain other languages when it is feasible to do so. Mail your request for such summaries to the Department at: P.O. Box 420603, San Francisco, CA 94142-0603.

RESUMEN EN OTROS IDIOMAS

El Departamento de Relaciones Industriales confeccionara un resumen sobre los requisitos de salario y horario de esta Disposición en español, chino y algunos otros idiomas cuando sea posible hacerlo. Envíe por correo su pedido por dichos resúmenes al Departamento a: P.O. Box 420603, San Francisco, CA 94142-0603.

其他文字的摘要

工業關係處將摘錄本規則中有關工資和工時的規定，用西班牙文、中文印出。其他文字如有需要，也將同樣辦理。如果您有需要，可以來信索閱，請寄到： Department of Industrial Relations
P.O. Box 420603
San Francisco, CA 94142-0603

Section 1191. For any occupation in which a minimum wage has been established, the commission may issue to an employee who is mentally or physically handicapped, or both, a special license authorizing the employment of the licensee for a period not to exceed one year from date of issue, at a wage less than the legal minimum wage. The commission shall fix a special minimum wage for the licensee. Such license may be renewed on a yearly basis.

Section 1191.5. Notwithstanding the provisions of Section 1191, the commission may issue a special license to a nonprofit organization such as a sheltered workshop or rehabilitation facility to permit the employment of employees who have been determined by the commission to meet the requirements in Section 1191 without requiring individual licenses of such employees. The commission shall fix a special minimum wage for such employees. The special license for the nonprofit corporation shall be renewed on a yearly basis, or more frequently as determined by the commission.

Section 1199. Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less than 30 days, or by both, who does any of the following:

(a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission.

(b) Pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission.

(c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission.

Section 1391.2. (a) Notwithstanding Sections 1391 and 1391.1, any minor under 18 years of age who has been graduated from a high school maintaining a four-year course above the eighth grade of the elementary schools, or who has had an equal amount of education in a private school or by private tuition, or who has been awarded a certificate of proficiency pursuant to Section 48412 of the Education Code, may be employed for the same hours as an adult may be employed in performing the same work.

(b) Notwithstanding the provisions of the orders of the Industrial Welfare Commission, no employer shall pay any minor described in this section in his employment at wage rates less than the rates paid to adult employees in the same establishment for the same quantity and quality of the same classification of work; provided, however, that nothing herein shall prohibit a variation of rates of pay for such minors and adult employees engaged in the same classification of work based upon a difference in seniority, length of service, ability, skill, difference in duties or services performed, whether regularly or occasionally, difference in the shift or time of day worked, hours of work, or other reasonable differentiation, when exercised in good faith.

Section 2800. An employer shall in all cases indemnify his employee for losses caused by the employer's want of ordinary care.

PROOF OF SERVICE

I, the undersigned, hereby declare under penalty of perjury that the following is true and correct:

I am a citizen of the United States; am over the age of 18 years; am employed by THE KRALOWEC LAW GROUP, located at 188 The Embarcadero, Suite 800, San Francisco, California 94105, whose principal attorney is a member of the State Bar of California and of the Bar of each Federal District Court within California; am not a party to the within action; and that I caused to be served a true and correct copy of the following documents in the manner indicated below:

1. AMICUS LETTER IN SUPPORT OF REVIEW;
2. REQUEST FOR DEPUBLICATION; and
3. PROOF OF SERVICE.



By Mail: I placed a true copy of each document listed above in a sealed envelope addressed to each person listed below on this date. I then deposited that same envelope with the U.S. Postal Service on the same day with postage thereon fully prepaid in the ordinary course of business. I am aware that upon motion of a party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing in the affidavit.

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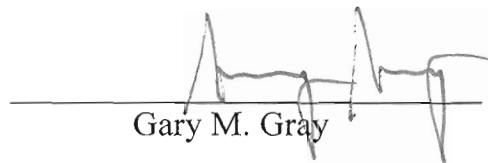
Superior Court of Los Angeles

Clerk of the Court
Superior Court of Los Angeles
Central District
Central Civil West Courthouse
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Executed June 29, 2011 at San Francisco, California.



Gary M. Gray