

AB 2751 (HANEY) – OPPOSE/JOB KILLER



JOB KILLER

April 9, 2024

TO: Members, Assembly Labor and Employment Committee

**SUBJECT: AB 2751 (HANEY) EMPLOYER COMMUNICATIONS DURING NONWORKING HOURS
OPPOSE/JOB KILLER – AS AMENDED MARCH 21, 2024**

The California Chamber of Commerce is **OPPOSED** to **AB 2751 (Haney)** as a **JOB KILLER**. The bill will effectively subject all employees to a rigid working schedule and prohibit communication between employers and employees absent an emergency. This blanket rule is a step backwards for workplace flexibility. It fails to consider California's longstanding laws regarding hours worked, exempt employees, and fails to account for the uniqueness of different industries and professions. It would prevent the Governor and State agencies from contacting their staff outside of normal work hours, which would lead to basic functions of the state being imperiled. One of the only groups of people exempt from this would be the legislature, which would be a disincentive for someone to work for an Assemblymember or Senator.

California Has Strong Laws to Deter Working Outside of Scheduled Hours

California has the most stringent labor laws in the country. That includes laws in place to deter employers from contacting workers outside of working hours. For example:

- **Overtime:** California is one of the only states with an 8-hour daily overtime requirement in addition to the requirement to pay overtime after 40 hours in a week. Overtime is paid at one and one-half times the employee's regular rate of pay¹ or at double time, depending on the amount of time worked. If an employee even performs one minute of work over their 8-hour shift, an employer owes overtime.
- **Reporting Time Pay:** An employee is owed reporting time pay for any time they "report to work" but do not actually complete work or furnish less than half of their scheduled shift, which includes logging onto a computer remotely or talking to the employer about whether they may need to perform work or a shift.² This policy already encourages proper scheduling and notice so that employees do not need to constantly check in to see if they need to show up for work.
- **Meal and Rest Break Premiums:** California non-exempt workers are entitled to specific meal and rest break breaks above and beyond what federal law requires. Any time an employer causes an employee to take a break late, cut their break short, or miss a break, the employer is required to pay a premium in the amount of one hour of pay at the regular rate.
- **On-Call and Standby Pay:** Where a worker is on an on-call or standby status, that time may qualify as hours worked. There are also rules surrounding the employer's ability to restrict the employee's geographic boundaries and how long the employee must be given to report to work. This is to ensure that employees are compensated if the employer is expecting them to be on standby and to deter employers from effectively keeping employees under control while they are not working.

If an employer fails to provide any of the above pay, they are subject to penalties under the Labor Code (including PAGA penalties) in addition to any owed wages and open themselves up to litigation. Employers often maintain strict policies that prohibit managers from expecting employees to work outside of working hours.

AB 2751 Would Likely Lead to Employees Making Less in Earnings

Because **AB 2751** requires employers to establish pre-set working hours for every employee and is silent as to if or when those hours can ever change, the bill may effectively ban overtime unless it is pre-planned. That would result in significant lost wages for workers who regularly want to work overtime. The only way to seemingly work around this issue would be to set a working hours schedule that is more than the employee's usual shift just in case they ever need to work later. That would then defeat the purpose of the

¹ The regular rate of pay is higher than the hourly rate because it includes additional forms of compensation.

² [Division of Labor Standards Enforcement \(DLSE\) - Reporting time pay \(ca.gov\)](https://www.dir.ca.gov/dlse/ReportingTimePay.htm)

bill because the assigned working hours would not actually reflect the employee's regular work schedule and may conflict with the aforementioned laws on scheduling and reporting time.

Applying a "Right to Disconnect" To Exempt Employees Would Lead to Less Flexibility for Workers

AB 2751 appears to apply to exempt employees. California law on exemptions is stricter than federal law. To be classified as exempt, the employee must: 1) make more than double minimum wage and 2) spend more than half of their time performing job duties that satisfy one of the exemptions identified in the appropriate Wage Order. The reason that this bar is so high is because the employee is being paid a regular salary regardless of hours worked and is not subject to laws like overtime or meal or rest break requirements. The employee has flexibility to perform work at the time of their choosing, and their pay does not change even if the amount of work they have ebbs and flows. The salary minimum and exemptions are in place to protect those workers to ensure they are being well compensated and performing specialized or managerial type work.

Requiring employers to assign those exempt workers "nonworking hours" completely defeats the intent behind being an exempt employee. It also restrains an employee's flexibility. For example, exempt employees may choose to sometimes stop work earlier in the day to take care of other tasks and then return to work at night. They may work on the weekend to free up time during the week. Absent certain requirements specific to their job duties, their status as exempt allows them to do this. **AB 2751** would effectively require them to stick to a specific schedule because their employer could not contact them outside of those hours without risking violating this law. They may as well be non-exempt employees and their salary base may suffer.

AB 2751's Scope is Exceptionally Vague, Creating Legal and Logistical Nightmares

AB 2751 does not specify *who* can or cannot contact employees outside of working hours. It simply says the "employer" can contact workers outside of working hours for an emergency or immediate scheduling (implying one cannot be contacted for any other reason). Because the bill does not limit the application of the law to a group like managers or supervisors, presumably anyone else at the company would qualify as the "employer." It is also unclear what counts as "contact". This raises countless questions, such as:

- If the prohibition is limited to managers, what if Employee A is working on a project with a manager and Employee B? Can Employee B contact Employee A at night, but the manager cannot?
- If Employee A's hours do not match Employee B's hours, who they are working on a project with, is Employee A now limited as far as when they can contact Employee B?
- What if additional time-sensitive work comes up and Employee A cannot get to a project until later in the day than they want to work? Must the project go unfinished or past its deadline?
- What if two coworkers work in different time zones?
- How does the working-hours schedule apply during travel? Can Employee B change their hours unilaterally? Must they notify Employee A? Or anyone else at the company?
- Does an email or call directly from a client or other third party count as employer contact and therefore it can just be ignored?
- Does it count as contact for Employee A or a manager to send an email late at night that they do not expect Employee B to read until the following day?

Any of these scenarios could create liability for the employer. To avoid these issues, it is highly likely that employers will be forced to impose stringent schedules and reverse current flexible policies, such as hybrid work or work-from-home, and potentially eliminate exempt positions.

AB 2751's definition of emergency is also vague. Because an "emergency" is narrowly defined and "disrupts operations" is so vague, it is unclear what would qualify. Such vague language will force people to err on the side of caution and not contact each other. One can only begin to imagine the kinds of difficulties this would create in different industries. Communications, media, public relations, social media managers, or public affairs positions essentially exist to respond in real time to news. Would those jobs have working hours of 24 hours per day? Or would contacting someone to issue a press release or a social media post qualify as an "emergency"? If an attorney is notified of an *ex parte* hearing on the same day that they have

other filings to tend to, would the associate working on the case be permitted to stop responding to emails at 5 p.m.? Does this conflict with the ethical duty owed to their client to provide them with adequate representation?

Also, ironically, to determine whether the worker can ignore the email because it is not an emergency or scheduling issue, *they would have to first read it*. Otherwise, they have no way of knowing whether they can ignore it, which asks the question: what is the point of allowing these exceptions if all emails can be ignored?

Sometimes unexpected problems or workloads arise. California's laws are designed to ensure that people are compensated when that happens. And there are some positions where compensation is higher *because* people in those professions are expected to be available more often or be responsive during atypical times. **AB 2751's** one-size-fits-all mandate ignores and conflicts with existing laws.

For these and other reasons, we **OPPOSE** your **AB 2751** as a **JOB KILLER**.

Sincerely,



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California Chamber of Commerce

Acclamation Insurance Management Services (AIMS)
Allied Managed Care (AMC)
American Petroleum and Convenience Store Association (APCA)
Brea Chamber of Commerce
Building Owners and Managers Association (BOMA)
California Association of Licensed Security Agencies, Guards & Associates
California Association of Sheet Metal and Air Conditioning Contractors National Association
California Association of Winegrape Growers
California Business Properties Association (CBPA)
California Chamber of Commerce
California Credit Union League (CCUL)
California Farm Bureau
California Financial Services Association (CFSA)
California Fuels & Convenience Alliance (CFCA)
California League of Food Producers (CLFP)
California State Council of the Society for Human Resource Management
California Trucking Association
Carlsbad Chamber of Commerce
CAWA, Representing the Automotive Parts Industry
Coalition of Small and Disabled Veteran Businesses
Construction Employers' Association
Corona Chamber of Commerce
Cupertino Chamber of Commerce
Danville Area Chamber of Commerce
Family Business Association of California
Flasher Barricade Association (FBA)
Fontana Chamber of Commerce
Garden Grove Chamber of Commerce
Glendora Chamber of Commerce
Greater Coachella Valley Chamber of Commerce
Greater Concord Chamber of Commerce
Greater Conejo Valley Chamber of Commerce
Greater High Desert Chamber of Commerce
Greater Irvine Chamber of Commerce

Greater Riverside Chambers of Commerce
Housing Contractors of California
Huntington Beach Chamber of Commerce
La Cañada Flintridge Chamber of Commerce
Laguna Niguel Chamber of Commerce
Lodi District Chamber of Commerce
Long Beach Area Chamber of Commerce
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San Marcos Chamber of Commerce
San Pedro Chamber of Commerce
Santa Ana Chamber of Commerce
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Simi Valley Chamber of Commerce
Society for Human Resource Management (SHRM)
South Bay Association of Chambers of Commerce
Southwest California Legislative Council
Torrance Area Chamber of Commerce
Tri-County Chamber Alliance
Tulare Chamber of Commerce
Vacaville Chamber of Commerce
West Ventura County Business Alliance
Western Growers Association

cc: Legislative Affairs, Office of the Governor
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