

National Lawyers Guild

Labor & Employment Committee

April 25, 2009

State Senator Mark DeSaulnier, Chair
Senate Labor and Industrial Relations Committee
1020 N Street Room 545
Sacramento, CA 95814

RE: SB 187 (Benoit) - OPPOSE

Dear State Senator DeSaulnier:

On behalf of the National Lawyers Guild Labor & Employment Committee [L&EC], I am writing to express our opposition to Senate Bill 187 (Benoit) which would undermine the fundamental right to the eight-hour day for California workers under the guise of increased flexibility, and will be heard on April 29 in Committee. We urge you and all committee members to vote against this bill.

Since 1937, the National Lawyers Guild has provided legal support to movements for social change, principally on a volunteer basis. The Labor & Employment Committee focuses on struggles for economic and social justice. In the 1930s the Guild focused on workers' rights, supporting New Deal legislation to assist working people and the unemployed; in the 1950s the Guild defended labor leaders and others attacked for their progressive political views. Then and now, the Guild L&EC actively supports progressive labor and employment law struggles. The L&EC is comprised of several hundred labor and employment attorneys across the country.

Current law was carefully crafted to ensure adequate flexibility for employers and employees while protecting the basic right to overtime. Employers who want to institute an alternative workweek schedule can either negotiate one through collective bargaining or conduct an employee election. Employees who need an occasional schedule change can request make up time, allowing them to leave early one day and work late the next without accruing overtime.

Alternate Workweek Election. Over 15,000 California employers have successfully used the alternate workweek election process to establish alternate schedules for some or all of their employees. The process set forth in current law is not a complicated or burdensome one. In fact, its provisions are the result of labor-management discussions at the Industrial Welfare Commission to establish terms that both sides thought were fair and workable.

The alternative workweek election process is largely in the hands of the employer:

- The employer has sole discretion over whether or not to conduct an election.
- The employer decides which worksite, department, or division is eligible to participate in the election, regardless of its size. Even a unit of just one employee may be offered this alternate schedule election.
- The employer decides what alternate schedules to make available and can offer just one or a menu of options.
- The employer can determine how many workers are needed on each shift and how many can elect a particular shift.

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Make-Up Time Provision. Current law also allows an employee to request to do "make up time." The make up time provision allows an employee, with the employer's permission, to work a shortened day to attend to personal or family needs and then make up that time by working longer hours on another day in the same week. While working make up time, that worker can work additional hours at the end of the regular shift without accruing overtime. Make up time gives working parents the flexibility they need without sacrificing the basic protections of daily overtime.

Whether an employer initiates a vote to move employees to an alternate schedule or an employee asks to do "make up time" on an occasional basis, current law promotes cooperation, communication, and flexibility at the workplace. SB 187 would replace this system of carefully crafted protections by giving employers the right to negotiate alternate schedules one individual employee at a time. There would be no criteria for schedules to be approved or denied and nothing to prevent employers from awarding desirable schedules to employees based purely on favoritism. There would be no protection for workers who feel pressured to waive daily overtime because the workplace election would be replaced by a one on one discussion with the boss.

Because the current election process strikes the right balance between the fundamental right to daily overtime and the need for flexibility, we urge you to oppose SB 187 (Benoit) when it comes before you in the Senate Labor and Industrial Relations Committee. Please feel free to contact me with any questions.

Sincerely,

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cc:
State Senator John Benoit

Committee Members:
State Senator Mark Wyland, CoChair
State Senator Dave Cogdill
State Senator Denise Moreno Ducheny
State Senator Mark Leno
State Senator Leland Yee

State Senator Dave Cogdill
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