

DON'T CALL IT A COMEBACK! EMPLOYERS ON ALERT AS CALIFORNIA SEEMS POISED TO REVIVE INDUSTRIAL WELFARE COMMISSION

Insights
Jun 26, 2023

After nearly two decades of being defunded by California lawmakers, the controversial Industrial Welfare Commission (IWC) may be on the verge of being reinstated – but are employer concerns premature? Originally established over a century ago, the IWC was charged with adopting “Wage Orders” that created industry-specific rules and regulations. Although designed to provide flexibility and eliminate clumsy one-size-fits-all problems, many employers are fearful that a resurrected IWC could only add to your compliance obligations. What do you need to know about the latest developments – and what should you do in the meantime?

Brief History of IWC

Formed in 1913, the IWC became mired in controversy in the 1990s as it tried to repeal the eight-hour day in certain circumstances. The California Legislature stamped out this effort by codifying daily overtime in 2000 with a statewide law – but lawmakers didn’t forget the IWC’s attempts and took direct aim at it.

A few years later, lawmakers defunded the IWC in 2004 to prevent it from engaging in any further actions that Democratic leadership believed could be harmful to workers. The IWC has therefore been dormant for the last 20 years or so, with the Division of Labor Standards Enforcement (DLSE) taking on the role of updating the IWC Wage Orders on an annual basis as needed.

Budget Proposal Would Re-Fund the IWC

Related People



Benjamin M. Ebbink

Partner

916.210.0400



Alden J. Parker

Regional Managing Partner

916.210.0404

But California lawmakers are close to resurrecting the IWC in a very different environment than we had a few decades ago. They are currently considering budget bill language – which may be voted upon as soon as tomorrow – that allocates \$3 million for a reawakened IWC to:

convene industry-specific wage boards and adopt orders specific to wages, hours, and working conditions in such industries, **provided that any such orders shall not include any standards that are less protective than existing state law.**

In other words, the IWC would not roll back compliance obligations or employer responsibilities, but only permitted to add stronger language and requirements when it comes to Wage Orders.

The budget language also requires the IWC to prioritize industries in which more than 10% of workers are at or below the federal poverty level.

The IWC would have the authority to receive petitions to amend or modify Wage Orders and to convene “wage boards” to consider changes applicable to any occupation, trade, or industry. Most significantly, the IWC would be charged with reviewing the adequacy of the state minimum wage at least every two years.

What Happens Next?

Should the budget language pass the Legislature and be signed in the law, the IWC would convene by January 1, 2024 and provide final recommendations for wages, hours, and working conditions to be adopted by October 31, 2024.

The Governor would first need to name the five appointees to the IWC. There would also need to be a process to ramp-up the IWC in terms of staff and other resources before it could begin any work.

Given the budget language cited above that directs the IWC to focus on industries in which more than 10% of the workers are at or below the federal poverty level, it is likely that it would initially focus on those industries that meet those benchmarks.

It’s also notable that the budget language provides that any wage orders amended or adopted by the IWC shall not be “less protective” than existing state law. Business groups

Service Focus

Wage and Hour

Related Offices

Irvine

Los Angeles

Sacramento

San Diego

San Francisco

Woodland Hills

have already expressed concern that this language would prevent the IWC from making any changes to provide more flexibility to employers or reflect the needs of the modern workplace.

What Should You Do?

Lots of rumors abound in Sacramento about what really may be going on with this budget play. Like other budget negotiations and discussions currently underway, there may be further discussions happening behind the scenes about whether this plan will move forward and, if so, what the IWC will be charged with focusing on.

We'll monitor developments and keep you posted regarding anything you need to know as the situation evolves. For now, we advise employers to stay tuned and make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information directly to your inbox. If you have questions, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in any one of [our six California offices](#).