

AB 5 (Gonzalez) Employers: Opportunity To Work Act

POSITION: The Chamber's Public Policy will consider AB 5 on January 10, 2017.

STATUS: AB 5 was introduced by Assembly Member Lorena Gonzalez (D-San Diego) on December 5, 2016. It has not been referred to a committee.

AT-A-GLANCE

AB 5 would require employers with 10 or more employees to offer additional hours of work to existing nonexempt employees before hiring additional employees or subcontractors.

ANALYSIS

AB 5 expands on existing laws within the California Labor Code that establishes 8 hours as a day's work and a 40-hour work week and requires overtime compensation for additional hours worked.

This bill requires employers to offer additional hours of work to an existing employee who is experienced and able to perform the work prior to hiring new employees, subcontractors or temporary employees. Employers do not have to offer additional hours of work if the employer would need to compensate the employee with overtime.

Further, the employer must document that the employer offered additional hours of work to existing employees prior to new hires and retain work schedules of all employees.

Employees may file complaints against employers who violate this provision or bring a civil action in court. This requirement may be waived if addressed in a collective bargaining agreement.

The author argues AB 5 helps fight underemployment for part-time workers. It was modeled on San Jose's Measure E which applied the law to employers with more than 36 employees. Measure E passed by a vote of the people in November. San Jose Silicon Valley Chamber opposed the measure, arguing that it created red tape for employers and reduces flexibility. It would also allow more employees to become eligible for coverage under the Affordable Care Act.