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## Employment Practices

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# Employment Practices

## Employment Practices; fingerprints and photographs

Labor Code § 1057 (new); § 1051 (amended).  
AB 1175 (Hill); 1987 STAT. Ch. 77

If the photograph or fingerprints of an employee can be used to the employee's detriment,<sup>1</sup> existing law prohibits any person from requiring the employee<sup>2</sup> to be photographed or fingerprinted for the purpose of furnishing that information to any other employer.<sup>3</sup> Under Chapter 77 employees of diversified or nondiversified management companies<sup>4</sup> who are required to be fingerprinted pursuant to federal law, are not protected by this prohibition.<sup>5</sup>

*EAW*

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1. See CAL. LAB. CODE § 1051 (violators are guilty of a misdemeanor). See *id.* § 1054 (civil liability may also be imposed). An employer may require photographs and fingerprints of an employee for the employer's own use, or to obtain information concerning the employee. 10 Op. Att'y Gen. 19, 21 (1947); 67 Op. Att'y Gen. 23, 26 (1984).

2. See CAL. LAB. CODE § 1051 (or applicant).

3. *Id.* (or third person in order to retain or secure employment).

4. See *id.* § 1057 (includes affiliates). See 15 U.S.C. § 80a-5(b)(1), (2) (1940) (definition of diversified and nondiversified management companies); see also *id.* § 80a-2(a)(2), (3) (1940) (definition of affiliated company and affiliated person).

5. CAL. LAB. CODE § 1057.

## Employment Practices; horseracing employees—working hours and compensation

Labor Code § 1182.10 (new).  
SB 342 (Maddy); 1987 STAT. Ch. 1407

Existing law requires overtime compensation to be paid to agricultural employees at one and one-half times the regular rate of pay

for all hours worked over ten hours in a workday<sup>1</sup> and for the first eight hours on the seventh day of work in a workweek.<sup>2</sup> Chapter 1407 provides that stable employees<sup>3</sup> engaged in the raising, feeding, or management of racehorses by a trainer<sup>4</sup> must be subject to the same standards as those for employees in agricultural occupations engaged in similar activities directed to the care of other livestock.<sup>5</sup> These standards govern the same wages, hours and labor conditions as those established by the Industrial Welfare Commission (Commission).<sup>6</sup> In addition, stable employees must not be employed more than ten hours in any workday,<sup>7</sup> or more than fifty-six hours during a seven day workweek, if these employees are compensated at a rate of not less than one and one-half times the employee's regular rate of pay<sup>8</sup> for all hours worked over ten hours in any workday, or fifty-six hours in any workweek.<sup>9</sup>

SAW

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1. CAL. ADMIN. CODE tit. 8, § 11140(2)(N) (1980) (definition of workday).

2. *Id.* § 11140(3)(A) (1980). See *Akala v. Western Ag Enterprises*, 182 Cal. App. 3d 546, 551, 227 Cal. Rptr. 453, 457 (1986) (California wage orders govern compensation for overtime during both the "workweek" and the "workday"). See also CAL. ADMIN. CODE tit. 8, 11140(2)(O) (1980) (definition of workweek).

3. Stable employees includes, but is not limited to, grooms, hotwalkers, exercise workers, and any other employee engaged in the raising, feeding or management of racehorses, employed by a trainer at a racetrack or other nonfarm training facility. CAL. LAB. CODE § 1182.10(c)(1).

4. See CAL. FOOD & AGRIC. CODE § 24001(d) (definition of trainer).

5. CAL. LAB. CODE § 1182.10(a) (absent an explicit agreement on wages).

6. *Id.*

7. "Workday" and "workweek" have the same definition as in the order of the Commission applicable to persons employed in agricultural occupations. *Id.* § 1182.10(c)(3).

8. Regular rate of pay includes all wages paid by the trainer to the stable employee for a workweek of not more than 56 hours, but does not include amounts excluded from regular pay by Section 7(e) of the Fair Labor Standards Act (FLSA) (29 U.S.C. § 207(e)), and does not include the payment of the stable employee's share, if any, of the purse of a race, whether that share is paid by the owner of the racehorse or by the trainer. *Id.* § 1182.10(c)(4).

9. *Id.* § 1182.10(b) (notwithstanding the provision of any order of the Commission permitting employees employed in agricultural occupations to work ten hours on each of six workdays in a seven-day workweek without overtime compensation). See generally Johnson, *An Overview of Federal and State Wage-Hour Laws—Part I*, 14 COLO. LAW. 384 (1985) (in computing overtime pay under the FLSA, employees must be paid time and one-half their regular rate for all hours worked in excess of 40 hours for the workweek).