

RESOLUTION 2-04-05

DIGEST

Minimum Wage: Restrictions on Lodging Credits

Amends Labor Code section 1182.8 to increase the credit allowed toward an employer’s minimum wage obligation for lodging provided to a resident apartment manager.

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

History:

No similar resolutions found.

Reasons:

This resolution amends Labor Code section 1182.8 to increase the credit allowed toward an employer’s minimum wage obligation for lodging provided to a resident apartment manager. This resolution should be disapproved because it would erode employer obligations under the state’s minimum wage laws.

Under this proposed statutory amendment, one can easily envision a situation in which a resident apartment manager gets free rent and no salary at all as full compensation (e.g., when the fair market value of the apartment reaches a value of 1/3 more than a monthly full-time salary at minimum wage). This would go against the legislative purpose and policy behind section 1182.8 and IWC Wage Order No. 5 of preventing employers from circumventing the state’s minimum wage requirements. (See *Brock v. Carrion, Ltd.* (E.D. Cal. 2004) 332 F.Supp.2d 1320, 1328.) The Division of Labor Standards Enforcement of the Office of the Labor Commissioner likewise construes section 1182.8 “to require an employer to pay resident managers gross wages at least equal to the minimum wage after the apartment charges imposed by the employer are taken into consideration.” (*Id.* at 1329, citing Richard J. Simmons, *Wage and Hour Manual for California Employers*, § 6.8(c) (9th ed. 2003).)

Also, because fair market rental value is subject to interpretation and manipulation and can vary greatly from area to area, the proposed statutory amendment could lead to abuse in creating a situation where the actual working conditions of resident apartment managers would be difficult to monitor. For example, in areas where apartment values are high, the manager could be working well in excess of 40 hours per week with no compensation at all other than free rent, while the book value of that manager’s salary would actually be much higher than that of colleagues in other markets who were working fewer hours.

Finally, if amended as proposed, this statute could also be used by employees solely to avoid income tax obligations, as the value of the apartment is not included in a resident manager’s taxable gross income. (See 26 U.S.C.A. § 119(2).) Such a result could lead to changes in the tax laws to the detriment of all resident managers who are receiving reduced rent or rent-free apartments while also being paid a salary.

TEXT OF RESOLUTION

Labor Code: Restrictions on Lodging Credits

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Labor Code section 1182.8 to read as follows:

- 1 §1182.8
- 2 (a) No employer shall be in violation of any provision of any applicable order of the Industrial
- 3 Welfare Commission relating to credit or charges for lodging for charging, pursuant to a voluntary
- 4 written agreement, a resident apartment manager up to two-thirds of the fair market rental value of
- 5 the apartment supplied to the manager, if no credit for the apartment is used to meet the employer’s
- 6 minimum wage obligation to the manager.
- 7 (b) No employer shall be in violation of any provision of any applicable order of the Industrial
- 8 Welfare Commission relating to credit or charges for lodging for applying, pursuant to a voluntary
- 9 written agreement, up to two-thirds of the fair market rental value of the apartment supplied to satisfy

10 the manager to the employer's minimum wage obligations to the manager, if the manager is not
11 charged to occupy the apartment.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Bar Association of San Francisco

STATEMENT OF REASONS

Existing Law: Limits the credit toward minimum wage obligations that an employer may receive for providing a resident apartment manager with a free apartment.

This Resolution: Provides a limited exception to the Wage Order restrictions on applying the fair market rental value of an apartment toward the employer's minimum wage obligations.

The Problem: Under the Industrial Welfare Commissions Wage Orders, an employer has two options for compensating a resident manager. The employer may charge rent of up to \$381.20 for the apartment and pay the resident manager the minimum hourly wage, or charge no rent and use up to \$381.20 as credit regardless of the fair market rental value of the apartment. Labor Code Section 1182.2 provides a limited exception, but only as to the rent that may be charged.

Under this system, the employer can obtain a greater value for the apartment by charging 2/3 of the rent and paying the resident manager minimum wage. This creates a discrepancy between what is collectable as rent and what may be used to satisfy minimum wage obligations, which is particularly acute in urban counties with typically higher rental values. Local minimum wage obligations will further reduce the number of hours that an employee may work for free rent without receiving additional compensation. As a result, many landlord employers are not offering resident managers the free rent option.

This has a dramatic impact on many resident manager candidates. Many individuals who are receiving Social Security or other government-provided benefits cannot take a paid job without impairing their benefits. Students reduce their ability to obtain student loans. For other individuals, the tax burden of the additional income eliminates the benefits of having a reduced rent apartment.

This resolution would provide landlord employers with the flexibility of offering rent-free apartments as compensation for resident manager services, and would maintain safeguards to assure that the resident manager is fairly compensated.

In accordance with CDCBA rules, BASF timely offers this resolution for consideration. Consistent with traditional CDCBA practice, the Proponent reserves the right to timely withdraw or amend the resolution.

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

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