UC 149-2

PLAINTIFF'S EXHIBIT
tabbies
UC-1590

UNION CARBIDE

INTERNAL CORRESPONDENCE

MINING AND METALS DIVISION • 270 PARK AVENUE, NEW YORK, NEW YORK 10017

To (Name) Mr. F. H. Larrison
Division Mining & Metals Div.
Location King City, Calif. LOC 305

Date May 1, 1974

Originating Dept.

Answering letter date

Copy to Mr. W. C. Thurber

Subject

Attached is a copy of a reply from J. W. Whittlsey of the Law Department in response to our questions on the California Industrial Welfare Commission's order concerning hours of work. As you will note, he is of the opinion that employment is a contract, and thus we meet the order if we post a notice indicating that hours of work could exceed the daily or weekly norm. I suggest the following notice:

Notice to All Employees

As a condition of employment
at the King City operations,
it may be necessary for employees
at times to work beyond their
normal daily schedule of eight
hours or beyond their normal
weekly schedule of forty hours,
If you feel you can not be
available for such overtime work,
please contact me.

F. H. Larrison, Manager

If we can be of any further help, do not hesitate to contact us.

W. J. Kovack

mg
Att.

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UNION CARBIDE CORPORATION
270 PARK AVENUE, NEW YORK, N.Y. 10017
LAW DEPARTMENT

RECEIVED
APR 22 1974
M&M Employee Relations

April 19, 1974

Mr. W. J. Kovack
Mining and Metals Division
38th Floor

Dear Mr. Kovack:

I have reviewed in response to your letter of April 10, 1974 the attached collection of orders from the California Industrial Welfare Commission which purport to limit hours of employment in manufacturing and other private enterprise. Certainly, on the face of it, the order looks as if it would do just that; moreover Section 1182 does permit the commission to set maximum hours and standard conditions of labor for employees engaged "in any occupation, trade or industry in the state". This is a relatively recent provision.

The order itself, however, is confusing in the extreme. For one thing, it does not apply to any employees who are employed under a union contract. It does not apply to any exempt employees nor does it apply to any truck drivers or other employees who are covered by the Interstate Commerce Act. Moreover the actual order merely forbids employment more than ten hours in one work day or forty hours in one work week only where an employee fails to get time and a half for all work performed over ten hours in any one work day. This is not, of course, a flat prohibition of such work but merely an additional overtime requirement. The order does go ahead to state that employment beyond ten hours in a work day or six days in a work week is permissable under a number of conditions, one of which is that such employment be "expressly stipulated by the parties to a contract." Employment, of course, is a contract even though the terms may not be in writing and I would think it reasonable to say that this condition could be met by an employer posting a notice to employees specifying that as a condition of their employment it would be required to hold themselves available for such additional work and that they should signify their acceptance by initialing or signing the notice.

I freely concede that the provisions of the order are inconsistent in their language and could stand considerable

Union Carbide trial exhibit UC-1590: W. J. Kovack to F. H. Larrison on California Industrial Welfare Commission Ho... Published by AsbestosClaims.Law
ACL Doc 16688 · Page 2 of 11 asbestosclaims.law/library/16688/2

clarification. However, as indicated above, there are more loopholes than may have appeared at first blush; there certainly appear to be enough to enable us to meet the situation even if the order is not changed.

I will be glad to clarify anything further in connection with the above.

Very truly yours,

John W. Whittlesey

JWW:me

UC 149-2

UNION CARBIDE

INTERNAL CORRESPONDENCE

MINING AND METALS DIVISION • 270 PARK AVENUE, NEW YORK, NEW YORK 10017

To (Name) Mr. J. W. Whittlesey
Division Law Department
Location 270 Park Ave. - 46 floor

Date April 10, 1974

Originating Dept.

Answering letter date

Subject

Copy to Mr. F. H. Larrison
Mr. W. C. Thurber

Recently, the Industrial Welfare Commission in the state of California issued an order that in effect would limit hours of employment in manufacturing to no more than 10 hours in any one work day or more than six days in any one work week. Exceptions are very narrow, and our unorganized location at King City, California would not appear to qualify.

As you know, our division has two operating locations in California, with continuous, around the clock operations, and the effect of such an order could be meaningful.

We do not have much information on this subject, other than the attached, supplied by Floyd Larrison, Manager of our King City operation. We would appreciate, therefore, it you would have the subject reviewed and your opinion as to its affect on our operation.

W. J. Kovack

mg
Att.

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WJK
UC-1

RECEIVED
APR 2 1974
M&M Employee Relations

3-26-74

Bill;

Enclosed find the CMA article on Hours and Working Conditions. I've also sent you a copy of Working Hours and Day of Rest which covers 2 of the Sections referred to in section 4, -2, of order M-74. Employees of the Division of Labor Law Enforcement in Salinas gave me this copy, but were unable to give me the other sections referred to. I was unable to get a copy of the California Labor Code - in fact no one in Salinas was sure such a thing existed, as a booklet form.

The same people at the Div. of Labor Law Enforcement weren't sure really what the order says. They were of the opinion that it did not mean that employees could not be worked over ten hours a day. This is sure the way it reads to me as we do not qualify for any of the exemption conditions listed.

Larrison

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MAR 28 1974

MAR 25 1974
CC - CALIFORNIA
KING CITY, CA.

CALIFORNIA MANUFACTURERS ASSOCIATION

Sacramento Report

Vol. 13 March 22, 1974 No. 11

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Commission Issues Decision on Hours and Working Conditions

The Industrial Welfare Commission has handed down its decision on the highly controversial issue of hours and working conditions for all employees, including men. New orders covering employees in manufacturing and other private enterprises were announced at a stormy public meeting in San Francisco on March 14. A group of protesters, representing some employee groups, contributed to the occasion by interruptions in the form of chanting and shouted comments.

The new orders still have several items which may be troublesome.

Permissible Overtime.

The most serious may be the provision in Section 4-a that overtime employment, beyond ten hours in any work day or more than six days in any work week, is permissable only under at least one of four express conditions. Three of the four conditions are about the same as in the original proposal.

They are the provisions for an emergency as defined in the order, when necessary to process perishable products, and when total employment does not exceed thirty hours in any week. The fourth provision is new, where expressly stipulated by contract, or in a valid collective bargaining agreement.

(Continued on page 2)

CMA Annual Meeting Plans "Really Big Show..."

CMA's committees and directors are wrapping up their various program plans for an exciting 56th Annual Meeting to be held at the Woodlake Inn in Sacramento on April 30 and May 1, 1974. Below listed is the first installment on the highlights of the event:

Environmental Quality (See pages 6, 7)

Winfred Adams, Chairman of the State Water

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Resources Control Board has agreed to speak at the Environmental Quality Committee meeting Wednesday April 30 at the Woodlake Inn, Sacramento. The title of his talk will be: "Sewage User Charges and Other Industrial Water Problems". Since the Board is now formulating its guidelines for industrial sewage user charges, we anticipate high interest in Win Adam's speech. As we have noted in the past, sewage user charges will be going WAY UP, to figures ten times (or more) the enlarged bills now being charged. A feature of the previous proposed guidelines was the proposal; where a facility is paid for by a bond issue (the normal course), that charges be sufficiently high to not only pay all interest and retire the bonds, but also to include a depreciation charge such that the full cost of the plant is recovered. By the time of the meeting, the next guidelines are expected to be out, so we expect a lively interest in this aspect of his subject, to say nothing of the many other industrial water problems.

Fuel and Utilities (See page 7)

Energy Legislation, California Energy Supply Picture, and Utility Regulatory Action lead off a busy program for CMA's Fuel and Utilities Committee. Main speakers will be featured in next week's Sacramento Report.

Governmental Relations, Industrial Relations

An all-day seminar on Wednesday, May 1 will cover the Governmental Relations and Industrial Relations areas. Featured will be three of the most controversial issues now facing industry: Hours and working conditions, pension reform and campaign finance. Details of programs and speakers will be carried in a later issue.

Taxation

Two prominent legislators will discuss measures affecting the revenue and taxation areas on Tuesday, April 30. "Legislative Update, 1974" will be the title of the first presentation, and "Increased Controls and Taxation vs. the Free Market" will be the subject of the second. Details begin next week in the Report.

Private Trucking Seminar

Mr. Kenneth Kyle, representing Region IX of the Federal Energy Office, will conduct a briefing on the mandatory fuel allocation program at the Private Trucking Seminar on May 1.

Mr. Kyle will explain the allocation procedures for freight, cargo and mail hauling organizations as well as the various government forms involved.

The Private Trucking Seminar is sponsored by the CMA Transportation and Distribution Committee and will begin at 10:00 a.m. on May 1 at the Woodlake Inn.

HOURS AND WORKING CONDITIONS (from page 1)

The limitations on overtime have been criticized by industry as being unjustified and unnecessary, for giving organized labor a new advantage over management, and as being wrong in principle, and leaving the door open to further restrictions.

Other Problem Areas.

Other sections of the order are also likely to be of concern to industry. Under Section 5, an employer may not deduct from wages for cash shortage, breakage or loss of equipment, unless it can be shown that the loss is caused by a dishonest or willful act, or by the gross negligence of the employee.

New requirements for men employees are also found in Sections 6, Uniforms and Equipment; Section 7, Meals, Section 8, Rest Periods; Section 9, Change Rooms; and Section 10, Seats. Section 11, Temperature, may be in conflict with Cal-OSHA requirements. Section 12, requires elevators or escalators for employees on the fourth or high floors.

Publication Date Set.

At its meeting in San Francisco, the Commission established two dates, of importance to employers. The first is the date of publication, March 29, the second is the effective date of the new orders, on June 1, 1974.

Remedies Available.

Apparently there are several remedies available to employers, as well as employees, who may be dissatisfied with the new order. The first is by petition for rehearing, as authorized by Section 1188, Labor Code. Under Section 1189, only two grounds are available for such a petition, that the

(continued on page 10)

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Staff cost witness F. W. Foley and Commission rate witness C. F. Gerughty introduced exhibits recommending the Wage Offset method of adjusting rates which would produce an average percentage increase of 6.2% in MRT-2. The estimated total annual increase would be 84.5 million dollars.

Further hearings are scheduled for March 25-26-27 at which time shipper witnesses, including CMA, will introduce evidence and the CTA will present rebuttal testimony. One of the primary items of contention is the level of fuel costs which may be utilized for rate making purposes. The tariff rate adjustments are scheduled to become effective July 1, 1974.

CTA Appeal Denied on Empty Carriers

The California Public Utilities Commission denied California Trucking Association's Petition for Rehearing of Decision 82320 which ordered permanent classifications for the return of used carriers and packages (Item 330.6, MRT-2).

The proceeding began in March, 1972, when CMA filed Petition 691, Case 5432, requesting the Commission to remove the expiration date and establish permanent ratings for empty carriers returning. These items include barrels, carboys, boxes, pallets and reels.

The Commission's Decision 82320 removed the expiration date on the empty carriers tariff item but was subsequently suspended by CTA's petition filed on January 18, 1974. CTA's rehearing was denied effective March 23, 1974.

ICC OK's Rocky Mountain Rate Hike

In an almost unbelievable decision the Interstate Commerce Commission's Board of Suspension voted on March 13 not to suspend a 1% general rate increase proposed by the Rocky Mountain Motor Tariff Bureau to be effective on March 16.

The rate increase filing by the truckers would be added on top of the 6% fuel-cost increase allowed by the Commission under the provisions of Special Permission 74-2525.

Protesting shipper groups will undoubtedly appeal the ICC's decision to a higher level.

APPOINTMENTS

Schmidt Confirmed by Senate

The Senate has confirmed the reappointment of James C. Schmidt, of San Diego, as a member of the state Transportation Board. He has served on the board since February 17, 1972.

Schmidt, 45, is a former assistant secretary of the Business and Transportation Agency. Presently, he is the executive vice president and managing officer of the San Diego Federal Savings and Loan Association.

Governor's PR Assistant

Peter D. Hannaford of Piedmont has been appointed as assistant to the governor and director of public affairs.

The appointment fills the vacancy created February 1 when James E. Jenkins became the state's health and welfare secretary and member of the governor's Cabinet.

Hannaford is president of Hannaford & Associates, Inc., an Oakland-based marketing public relations and advertising consulting firm.

Since last September he has been a member of both the bi-state Tahoe Regional Planning Agency and the California Tahoe Regional Planning Agency. He resigned from those positions to assume his new position.

Hours and Working Conditions

from page 2

Commission acted fraudulently, or in excess of its powers.

Section 1188 allows only 20 days for filing a petition for rehearing, from the date of publication. This would mean that the last date for filing such a petition would be Thursday April 18.

Discussion Meeting Set.

A meeting of interested CMA members is being scheduled for Tuesday March 26, to discuss the prospective impact of this order on industry. It will be in Sacramento, in the CMA Conference Room, beginning at 10:00 a.m. Our plans would be helped by a note or phone call to Al Libra, if you plan to attend.

To assist members in understanding the new order, it is being reprinted in full in this issue. See pages 3, 4.

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INDUSTRIAL WELFARE COMMISSION'S HOURS AND WORKING CONDITIONS ORDER COVERING EMPLOYEES IN THE MANUFACTURING INDUSTRY

(Sections 1, 2, 13, no change, omitted)

(NOTE: ◘ Indicates item changed by order, and probably important to most employers.)

3. DEFINITIONS Order M-74

(Subparagraphs a-g omitted)

(h) "Hours Worked" means the time during which an employee is subject to the control of the employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

◘ (i) "Emergency" means an unpredictable or unavoidable occurrence at unscheduled intervals requiring immediate work to be performed in the protection of life or property from loss or destruction including any unavoidable or unpredictable work necessary to preserve the public health or safety or to meet public service obligations or to control conditions arising from circumstances beyond the employer's immediate control.

(j) "Wages" means all amounts paid for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.

(k) "Paid on an hourly basis" means payment to employees based on the number of hours or fraction or multiple thereof which the employee works.

(l) "Outside salesman" means a person, 18 years of age or over, who customarily and regularly works more than half the working time away from the employer's place of business selling tangible or intangible items, or obtaining orders or contracts for products, services or use of facilities.

(m) "Split Shift" means a work schedule which is interrupted by a non-paid nonworking periods established by the employer, other than bona fide rest or meal periods.

4. HOURS AND DAYS OF WORK

◘ (a) No employee eighteen (18) years of age or over shall be employed more than ten (10) hours in any one (1) work day nor more than forty (40) hours in any one (1) work week unless the employee receives one and one-half (1½) times the regular rate of pay for all work over ten (10) hours in any one (1) work day of twenty-four (24) hours or over forty (40) hours in the work week. Employment beyond ten (10) hours in any one (1) work day or more than six (6) days in any one (1) work week is permissible under at least one (1) of the following conditions:

(1) If expressly stipulated by the parties to a contract; or when the employer and a labor organization representing employees of the employer have entered into a valid collective bargaining agreement respecting the hours of work of such employees.

(2) In an emergency as defined in Section 3(i) above and as additionally provided in Sections 554,556,604,607,751, and 751.5 of the California Labor Code; or,

(3) During periods when it is necessary to process perishable products to prevent such products from spoiling, or to perform work in the necessary care of animals, crops, or agricultural lands, or work performed in the protection of life or property from loss or destruction, or any work for a common carrier engaged in or connected with the movement of any train or other common carrier; or,

(4) When the total hours of employment do not exceed thirty (30) hours in any work week or six (6) hours in any one (1) work day thereof.

(5) Nothing in this Section shall be construed to prevent an accumulation of days of rest when the nature of the employment reasonably requires that the employee work seven (7) or more consecutive days, providing that in each calendar month the employee receives days of rest equivalent to one (1) day's rest in seven (7).

(b) No minor shall be employed more than eight (8) hours in any one day nor more than six (6) days in any one week. One and one-half (1½) times the regular rate of pay shall be paid for all work over forty (40) hours on the sixth (6th) day. No minor shall be employed before 5 o'clock in the morning or after 10 o'clock in the evening, except that during any evening preceding a nonschool day said minor may work until 12:30 in the morning of such nonschool day.

(c) Minors 16 years of age or older and under the age of 18 years enrolled in work experience education programs approved by the State Department of Education may work after 10 p.m. but not later than 12:30 a.m., providing such employment is not detrimental to the health, education, or welfare of the minor and the approval of the parent and the work experience coordinator has been obtained. However, if any such minor works any time during the hours from 10 p.m. to 12:30 a.m., he shall be paid for work during that time at a rate which is not less than the minimum wage paid to adults.

(d) Except as provided in Subsections 4(b) and (c), this section shall not apply to employees who are exempt as to overtime hours of work under Section 7 or Section 13 of the Fair Labor Standards Act as amended through March 1, 1974, nor to employees whose overtime hours of work are restricted or otherwise determined by the U.S. Department of Transportation as amended through March 1, 1974, or the Interstate Commerce Act as amended through March 1, 1974, or the Hours of Service Act as amended through March 1, 1974.

◘ (e) Except in an emergency as defined herein or by a valid collective bargaining agreement, or other contract expressly stipulated by the parties, the workday shall be performed within a period of not more than twelve (12) hours. Twelve (12) hours shall elapse between the end of one (1) workday of the employee and the beginning of the next, except when there is a bona fide change of shift, including rotation of shifts or in an emergency as defined above, or when otherwise provided by a valid collective bargaining agreement or other contract expressly stipulated by the parties.

5. CASH SHORTAGE AND BREAKAGE

◘ Subject to the requirements of Sections 400-410 of the California Labor Code, no employer shall make any deduction from the wage or require any refund of an employee for any cash shortage, breakage, or loss of equipment, unless it can be shown that the shortage, breakage, or loss is caused by a dishonest or willful

Hours and Working Conditions

act, or by the gross negligence of the employee. Notwithstanding the foregoing, an employee who has the exclusive and personal control of cash funds of the employer may be held accountable therefor upon prior written notice or agreement, nor shall this section prohibit any agreement or arrangement between an employer and an employee to require reasonable deposit or bond to be made covering the proper care, safeguarding and return of valuable merchandise, samples, supplies, moneys, records and the like.

6. UNIFORMS AND EQUIPMENT

(a) Except as provided in subsection (c) of this section, when uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer, except that in industries, trades, occupations and companies where by custom, practice or written agreement, uniforms are not furnished and maintained entirely or in part by the employer, this section shall not invalidate such custom or practice.

The term "uniform" includes wearing apparel and accessories of distinctive design and color other than the traditional black or white worn in establishments covered by this Order.

(b) Except as provided in subsection (c) of this section, when tools or equipment are required by the employer, or are necessary to the performance of a job such tools and equipment shall be provided and maintained by the employer, except that an employee may be required to provide and maintain the hand tools and equipment normally and traditionally required by the trade, occupation or craft as a result of custom or practice.

(c) Subject to the requirements of Sections 400-410 of the California Labor Code, an employer may require a reasonable deposit or bond as security for the return of the items furnished by him under the provisions of subsections (a) and (b) of this section upon issuance of a receipt to the employee for such deposit. All items furnished by the employer shall be returned by the employee on completion of the job and if not returned, the value of such item or items may be deducted from the security deposit or from the earnings of the employee.

7. MEAL PERIODS

(a) Except in emergencies or by a valid collective bargaining agreement, or other contract expressly stipulated by the parties, no employer shall employ any employee for a work period of more than five (5) hours without a meal period of not less than thirty (30) minutes; except that when a work period of not more than six (6) hours will complete the day's work, the meal period may be waived by mutual consent of employer and employee. Unless the employee is relieved of all duty during a thirty (30) minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty, or where by written agreement between the parties an on-the-job paid meal period is agreed to.

(b) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

8. REST PERIODS

Every employer shall authorize and permit all employees to take rest periods which insofar as practicable, shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

Employers may, in lieu of formal, fixed or scheduled rest periods, grant equivalent personal privilege time off to employees, so long as such time shall total not less than ten (10) minutes per four (4) hours worked or major fraction thereof.

9. CHANGE ROOMS

Employers shall provide suitable lockers, closets, or equivalent for the safekeeping of employees' outer clothing during working hours, and when required, for their work clothing during nonworking hours. When the occupation requires a change of clothing, a change room or equivalent space shall be provided where employees may change their clothing in privacy and comfort. This room or space may be adjacent to but shall be separate from the toilets and shall be kept reasonably clean and sanitary.

10. SEATS

(a) All employees shall be provided with suitable seats when the nature of the work permits.

(b) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats for the employees shall be available within a reasonable distance from the work area.

11. TEMPERATURE

(a) The temperature and humidity maintained in each work room, rest room and dressing room shall provide reasonable comfort consistent with accepted standards for the nature of the process and the work performed.

(b) Where the nature of the employment requires a controlled temperature of less than 65° F., a heated room or area shall be maintained at reasonable comfort consistent with accepted standards for the nature of the process and the work performed.

12. ELEVATORS

When employees are employed on the fourth (4th) or higher floors, adequate elevator, escalator and/or similar service shall be provided consistent with accepted standards for the nature of the process and the work performed.

BULLETIN

A special meeting to discuss this order will be held in Sacramento, in the CMA Conference Room, on Tuesday March 26, starting at 10:00 a.m. Anyone interested in the subject is welcome to attend. No reservations are necessary, but it would be helpful if we could have a note or call from you, to know you are planning to attend. Phone 443-8107, area code 916, or write CMA, P.O. Box 1138, Sacramento 95805, Attention: Al Libra.

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Issued By
State of California--Human Relations Agency
Department of Industrial Relations
DIVISION OF LABOR LAW ENFORCEMENT
455 Golden Gate Avenue, San Francisco

WORKING HOURS AND DAY OF REST
Excerpts From California Labor Code

510. Eight hours of labor constitutes a day's work, unless it is otherwise expressly stipulated by the parties to a contract.

550. As used in this chapter "day's rest" applies to all situations whether the employee is engaged by the day, week, month, or year, and whether the work performed is done in the day or night time.

551. Every person employed in any occupation of labor is entitled to one day's rest therefrom in seven.

552. No employer of labor shall cause his employees to work more than six days in seven.

553. Any person who violates this chapter is guilty of a misdemeanor.

554. This chapter shall not apply to any cases of emergency nor to work performed in the necessary care of animals, crops or agricutural lands, nor to work performed in the protection of life or property from loss or destruction, nor to any common carrier engaged in or connected with the movement of any train. Nor shall the provisions of this chapter apply when the employer and a labor organization representing employees of such employer have entered into a valid collective bargaining agreement respecting the hours of work of such employees. Nothing in this chapter shall be construed to prevent an accumulation of days of rest when the nature of the employment reasonably requires that the employee work seven or more consecutive days, providing that in each calendar month the employee receive days of rest equivalent to one day's rest in seven. The requirement respecting the equivalent of one day's rest in seven shall apply, notwithstanding the other provisions of this section relating to collective bargaining agreements, where the employer and a labor organization representing employees of the employer have entered into a valid collective bargaining agreement respecting the hours of work of the employees, unless the agreement expressly provides otherwise.

In addition to the exceptions herein, the Chief of the Division of Labor Law Enforcement may, when in his judgment hardship will result, exempt any employer or employees from this chapter. Nothing contained herein shall affect contracts existing on the effective date of this amendment.
(Added by Stats. 1941, Ch. 1264, by Stats. 1945, Ch. 1431, and by Stats. 1961, Ch. 839.)

555. Sections 550, 551, 552 and 554 of this chapter are applicable to cities which are cities and counties and to the officers and employees thereof.
(Added by Stats. 1941, Ch. 1184; amended by Stats. 1955, Ch. 624).

556. This chapter shall not apply to any employer or employee when the total hours of employment do not exceed 30 hours in any week or six hours in any one day thereof.
(Added by Stats. 1941, Ch. 1267.)

Reproduced DLLE 10/63