

## RESOLUTION 09-06-2014

### DIGEST

#### Labor Code: Restrictions on Lodging Credits

Amends Labor Code section 1182.8 to allow an employer to take credit toward a minimum wage obligation or charge rent, using the same capped value for either.

### RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

#### History:

Similar to Resolution 02-04-2005, which was withdrawn, and similar to Resolution 11-06-2008, which was approved in principle.

#### Reasons:

This resolution amends Labor Code section 1182.8 to allow an employer to take credit toward a minimum wage obligation or charge rent using the same capped value for either. This resolution should be approved in principle because it provides alternative ways to reach an agreement between a landlord and a prospective employee that will benefit both parties.

This resolution provides a limited exception to California wage order restrictions by allowing an employer to either (a) offer managers an apartment rent free or (b) taking a credit toward the minimum wage by capping the amount taken at two-thirds of the fair rental value of the apartment.

If the apartment is rent free, the owner can take a credit against the minimum wage for up to two-thirds of the fair rental value of the apartment. For instance, if the fair rental value is \$600/month, the owner can take a credit of \$400 toward any minimum wage obligation to the manager. If the apartment is provided rent free for a resident manager, the manager receives any other compensation as negotiated by the parties in a written agreement.

Alternatively, the employer can obtain greater value by charging two-thirds of the rent and paying the resident manager minimum wage for a set number of hours per month. The number of hours allowed will vary with the credited minimum wage amounts specified by the Industrial Welfare Commission Wage Orders.

### TEXT OF RESOLUTION

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

#### § 1182.8

- 1           (a) No employer shall be in violation of any provision of any applicable order of the
- 2 Industrial Welfare Commission relating to credit or charges for lodging for charging, pursuant to
- 3 a voluntary written agreement, a resident apartment manager up to two-thirds of the fair market
- 4 rental value of the apartment supplied to the manager, if no credit for the apartment is used to

5 meet the employer's minimum wage obligation to the manager.  
6 (b) No employer shall be in violation of any provision of any applicable order of the  
7 Industrial Welfare Commission relating to credit or charges for lodging for applying, pursuant to  
8 a voluntary written agreement, up to two-thirds of the fair market rental value of the apartment  
9 supplied to satisfy the manager to the employer's State minimum wage obligations to the  
10 manager, if the manager is not charged to occupy the apartment.

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

**PROPONENT:** Contra Costa County Bar Association

## **STATEMENT OF REASONS**

The Problem: Existing law limits the credit toward minimum wage obligations that an employer may receive for providing a resident apartment manager with a free apartment, even for expensive apartments. On the other hand, existing law permits the employer to pay minimum wage and charge the apartment manager up to 2/3 of the fair rental value of the apartment.

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 \$451.89 for the apartment and pay the resident manager the minimum hourly wage, or charge no rent and use up to \$451.89 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, not the minimum wage credit that may be used.

Under the current law, 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. The discrepancy 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. For example, in Oakland, the employer may use an apartment as compensation for 56.48 hours of work each month. If the San Francisco minimum wage is applied, the maximum number of hours is 42.83.

As a result, many landlord employers are not offering resident managers the free rent option. An employer may lawfully pay a resident manager minimum wage, then charge her 2/3 of the fair rental value. If the resident manager is living in a \$1,200 apartment, working 80 hours each month, the employer can collect \$900.00 in rent and pay only \$640 in minimum wage. If the same apartment could be used as compensation for all of the 80 hours of work, the landlord could provide the apartment without charge and avoid the need to set up payroll.

The practice of paying minimum wage and collecting rent has a dramatic impact on many resident manager candidates. Many individuals who are receiving certain government-provided benefits cannot take a paid job without impairing those benefits. Students may reduce their ability to obtain student loans. For other individuals, the tax burden associated with the additional income eliminates the benefits of having a reduced rent apartment. In addition, there is no federal income tax charged on the value of the apartment, when the employee is required to live in it.

The Solution: This Resolution provides a limited exception to the Wage Order restrictions, permitting the employer to applying up to 2/3 of the fair market rental value of an apartment

toward the employer's minimum wage obligations.

This resolution would provide landlord employers with the flexibility of offering high-value apartments rent free, as compensation for resident manager services, rather than charging for the apartment, as permitted under the Code, and paying minimum wage for all hours worked. The Resolution maintains safeguards to assure that the resident manager is fairly compensated by capping the amount used as credit toward minimum wages at 2/3 of the fair rental value, the amount that can currently be charged if no credit for the apartment is taken toward minimum wage.

#### **LEGISLATIVE HISTORY**

Not known.

#### **IMPACT STATEMENT**

This resolution would impact all Industrial Welfare Wage Orders, as each one provides a cap on the value of rent credit that may be used to satisfy minimum wage obligations.

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