



Judicial Council of California

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April 2, 2010

Hon. Edward P. Hernandez
Member of the Assembly
State Capitol, Room 4112
Sacramento, California 95814

Subject: AB 790 (Hernandez), as amended March 22, 2010 – Oppose Unless Amended
AB 1699 (Hernandez), as introduced – Oppose Unless Amended

Dear Assembly Member Hernandez:

The Judicial Council regrets that it must oppose AB 790 and AB 1699 related to employee compensation during a budget impasse.

AB 790 and AB 1699 seek to provide the state Controller with the statutory authority to distribute the necessary amount of General Fund dollars required to fully compensate state employees in order to address the California Supreme Court's hold in *White v. Davis*. In *White v. Davis*, 30 Cal.4th 528 (2003), the California Supreme Court held that while state employees were *ultimately* entitled to payment of their full salary earned during a period of budget impasse, the Controller was not authorized to disburse funds under state law without an appropriation. The court further held that pursuant to the Supremacy Clause, the federal Fair Labor Standards Act did require that employees covered by the Act receive immediate payment at *the minimum wage rate* until funds were appropriated to fund their full salaries, and that employees who work overtime were entitled to their full salaries plus overtime.

Despite the express intent to extend the protection of the provision to all state employees, the bill defines state employees by those individuals included in Government Code section 19815, which excludes the judicial branch. State employees within the branch include the employees of the Supreme Court, Courts of Appeal, Commission on Judicial Performance, State Bar and Habeas Corpus Resource Center and Administrative Office of the Courts. Those employees are subject to the same case law that governs the pay of executive branch employees during periods of a budget impasse.

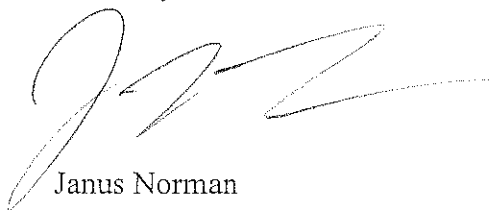
The judicial branch also employs trial court employees, which are a unique category created by the Trial Court Employment Governance and Protection Act (Government Code section 71600 et seq.). Trial Court employees are employed by the Superior Courts of California and their payment is directly dependent on the monthly General Fund Transfer to the Trial Court Trust Fund.

During recent budget impasses, the state Controller and the state Department of Finance have agreed that trial court employees should be treated in the same manner as traditional state employees, including those that work for the judicial branch where it comes to meeting payroll obligations. During the summer months of 2008 and 2009, the state Controller transferred enough General Fund dollars to the Trial Court Trust Fund to meet the payroll obligations of the trial courts in the absence of a state budget.

As drafted, the bills would call into question whether judicial branch employees would continue to be compensated in same manner as executive branch employees. We respectfully request that AB 790 and AB 1699 be amended to include judicial branch employees as state employees that would be receive statutory protection from the negative impacts of a delayed budget act.

If you have any questions, please feel free to contact me at (916) 323-3121.

Sincerely,

A handwritten signature in dark ink, appearing to read 'J. Norman', with a stylized, flowing script.

Janus Norman
Senior Governmental Affairs Analyst

cc: Mr. Patrick Moran, Aaron Read & Associates
Mr. Aaron Maguire, Deputy Legislative Affairs Secretary, Office of the Governor
Ms. Kristen Kolpitzke, Deputy Director of Legislation, Governor's Office of Planning and Research