

# TriNet and State of California: Working in the New Normal—Considerations for Employers in California

April 13, 2021

Samantha Wellington  
Senior Vice President, Chief Legal  
Officer & Secretary, TriNet

Von Boyenger  
Senior Deputy Labor Commissioner,  
State of California



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*Applicability of the information discussed may differ in individual situations. You should not act on the information presented here without consulting an attorney about your particular situation.*



# Welcome from the California Labor Commissioner



Lilia García-Brower was appointed by Governor Newsom as the California State Labor Commissioner on July 29, 2019. As Labor Commissioner, she oversees the primary law enforcement agency for workplace protections. The Labor Commission has 19 offices throughout California and employs 700 hardworking public servants who investigate and adjudicate a wide range of workplace violations from unpaid wages to retaliation. Prior to her appointment, she was the executive director of the Maintenance Cooperation Trust Fund for 19 years. Working with a powerful team of committed individuals, Lilia directed the MCTF as it grew to be one of the state's most effective joint labor management organizations.

**Lilia Garcia-Brower**  
State Labor Commissioner



# Commissioner's Office Overview

“The mission of the **California Labor Commissioner's Office** is to ensure a just day's pay in every workplace in the state and to promote economic justice through robust enforcement of labor laws. By combating wage theft, protecting workers from retaliation, and educating the public, we put earned wages into workers' pockets and help level the playing field for law-abiding employers”.



# All Workers in California Have Rights

Workers in California have the right to file a wage claim when their employers do not pay them the wages or benefits they are owed. A wage claim starts the process to collect on those unpaid wages or benefits. California's labor laws protect all workers, regardless of immigration status.



# Labor Commissioner's Office

The screenshot shows the website for the California Department of Industrial Relations, specifically the Labor Commissioner's Office. The header includes the state logo, the text "State of California Department of Industrial Relations", and navigation links for "Press room", "Índice en español", and "Settings". A secondary navigation bar lists various topics: "Labor Law", "Cal/OSHA - Safety & Health", "Workers' Comp", "Self Insurance", "Apprenticeship", "Director's Office", and "Boards".

## Labor Commissioner's Office

The mission of the California Labor Commissioner's Office is to ensure a just day's pay in every workplace in the State and to promote economic justice through robust enforcement of labor laws. By combating wage theft, protecting workers from retaliation, and educating the public, we put earned wages into workers' pockets and help level the playing field for law-abiding employers. This office is also known as the Division of Labor Standards Enforcement (DLSE).

### California Minimum Wage Effective January 1, 2019

- \$12.00 per hour for workers at businesses with 26 or more employees.
- \$11.00 per hour for workers at small businesses (25 or fewer employees).

For more information on California minimum wage, [click here](#).

### Overtime Law for Agricultural Workers

Effective January 1, 2019, agricultural workers employed by employers with 26 or more employees must receive overtime (1.5 times the employee's regular rate of pay) for all hours worked over 9.5 hours in any workday or over 55 hours in any workweek. [AB 1066](#)

### Employer Requirement to Notify Employees of Inspection by Immigration Agencies

Requisitos del empleador de avisar al empleado de inspección por agencias de inmigración


中文 (Chinese) 한국어 (Korean) Tagalog Tiếng Việt (Vietnamese)

### Quick Links

- ▶ Bureau of Field Enforcement
- ▶ Wage Claim Adjudication
- ▶ Retaliation (RCI)
- ▶ Registration Services
- ▶ Public Works
- ▶ Electrician Certification Unit
- ▶ Frequently asked questions
- ▶ Legislative reports
- ▶ Labor Commissioner's Databases
- ▶ Private Attorney General Act (PAGA)

### Resources

- ▶ Frequently asked questions
- ▶ Labor Commissioner's Databases
- ▶ Legislative reports
- ▶ Publications
- ▶ Forms



Home Page: [dir.ca.gov/dlse/dlse.html](http://dir.ca.gov/dlse/dlse.html)

# Workplace Postings

- IWC Order(s) — Generally IWC, section 22
- Payday notice — LC, section 207
- Minimum wage (state) — LC, section 1183(d)
- Wage theft protection template — LC, section 2810.5 (Paid Sick Leave, AB 1522)
- Workers' compensation — LC, section 3550
- Whistleblower protections — LC, section 1102.8
- Time off to vote — Elections Code 14001
- Complete listing available at: [dir.ca.gov/wpnodb.html](https://dir.ca.gov/wpnodb.html)



# COVID-19 Medical Checks

- Employers that require their workers to complete a medical check at work (including a temperature check) in order to begin a shift, even if it is recommended under public health orders, **must compensate workers for that time worked.**
- Employers must compensate a worker for that time worked, even if the temperature check takes only a small amount of time to complete and record.
- Employers who require a COVID-19 test or vaccination must pay for the time it takes for testing or vaccination because such time would constitute “hours worked.”
- Employers cannot require the worker to utilize paid sick leave or PTO if the time is considered “hours worked” as referenced above.
- If an Employer expressly requires a vaccine or test, then the Employer must also indemnify the workers for the costs of it, if any, and any associated cost such as travel expenses.

See FAQs at:

<https://www.dir.ca.gov/dlse/COVID19resources/FAQs.html>



# Retaliation Protections – Health and Safety

## Labor Code (LC) section 6310 protects employees who:

- Request Personal Protective Equipment.
- Ask questions about safety protocols.
- Seek assistance from local, or government agencies related to workplace safety or file worker health or safety related complaint with these agencies.
- Ask questions or complain to their supervisor, manager or owner about workplace health or safety.



# Retaliation Protections – Health and Safety (cont.)

## LC section 6311 protects employees who:

- Refuse to perform work that violates an occupational safety or health standard or order
- AND creates a real and apparent hazard that puts the employee or their co-workers in imminent danger.
- In most areas of California, COVID-19 appears to create the real and apparent hazard referred to in this law.



# Indemnification for Expenses Reasonably Incurred – Labor Code section 2802

- Labor Code section 2802 is a minimum state standard stemming from common law and early versions of the CA Civil Code which requires an employer to *indemnify* an employee for all reasonable expenses and/or costs incurred in the scope of their employment
- As the COVID-19 Pandemic has led Employers to have many more employees *work from home*, this should raise questions with the Employer as to what types of new expenses and/or costs their employees are incurring due to working from home
  - Internet and phone
  - Use of their own instruments (laptops, phones, printers, etc.)
  - Use of office space
- Look to the Court's ruling on use of personal cell phone in *Cochran v Schwan's Home Service Inc.*, (2014) 228 Cal.App.4th 1137

# Indemnification for Expenses Reasonably Incurred – Labor Code section 2802

## Typical Reimbursements:

- 2021 mileage rate 56 cents (per mile)
- Tolls
- Parking
- Meals (reimbursement)
- Vehicle insurance
- Uniforms and equipment

Note re: COVID-19 Protocols: Employers are required to pay workers for reasonable expenses if the employer requires that workers complete a medical check using a particular cell phone application.



# Meal Periods & Work From Home

## Duty Free Meal periods must be provided by the Employer

- IWC Wage Orders and the Labor Code in most cases require an employee who works a shift of at least 5 hours gets a 30 minute duty free meal period
- Where an employee works 10 hours, they get a second meal period
- A meal period is not compensated, unless an employee works through it
- Where a meal period is not provided, a premium hour of pay is due to the employee as a meal period premium wage (cap 1 hour per day)
- Duty free meal periods are an affirmative duty for employer to provide
- New case law states that where an Employer fails to record the taking of a meal period, it is presumed that it was not taken  
*Donohue v. AMN*
- Also, make sure that Employees are taking true 30 minutes lunches or more, rounding for meal periods is not allowed see  
*Donohue v. AMN*



# Meal Periods & Work From Home

## Rest periods must be authorized or permitted by Employer

- IWC Wage Orders and the Labor Code require an employee who works a shift of at least 4 hours gets a 10 minute duty free rest period.
- Subsequent rest period for each major fraction of 4 hours worked
- Should be made available in the middle of the 4 hour period
- Rest periods are compensable time (on the clock)
- Employers must authorize and permit all employees to take rest periods
- Rest period not authorized or permitted? Premium hour of pay is due to the employee as a rest period premium wage (cap 1 hour per day)
- No “on call” rest periods & no restrictions on geography — *Augustus v ABM*



# Employer Record Keeping Requirements

**Similarly, just because an Employee is working from home does not change an Employer's obligations to keep legally required records:**

- Time/Pay & wage statements — Labor Code § 226 & IWC Orders, section 7
- Employee's right to review/copy pay stubs & records — Labor Code § 226
- Duty to keep records for 3 years — Labor Code § 1174
- Notice of employment conditions at time of hire — Labor Code § 2810.5
- Personnel files — Labor Code § 1198.5 (including review)
- Penalty for failure to allow employee to inspect — Labor Code § 226
- Effect on enforcement: See *Hernandez v. Mendoza (1988) 199 Cal.App.3d 721* (where an employer fails to keep accurate records, employee can come forward with approximation and employer then must rebut with specific evidence)



# Split Shifts

## IWC Wage Order Requirements re Split Shifts:

- “Split shift” means a work schedule, which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods, so longer than an hour
- When an employee works a split shift, one hour’s pay at the minimum wage shall be paid in addition to the minimum wage required for that workday, except when the employee resides at the place of employment.
- Add one hour to Employer’s minimum wage obligation

