

WORKING IN THE NEW NORMAL:

Practical Solutions to Common Wage and Hour Issues in California

BEST PRACTICES CHECKLIST

CLASSIFICATION

Is my employee still exempt?

- Review job duties, preferably under the protection of the attorney-client privilege.
 - If deeper analysis is necessary, under the guidance of counsel, conduct an internal classification audit with a properly tailored job content questionnaire.
- If review or audit suggest problems with an employee's exempt classification, work with counsel on how best to address them.
- If planning to deploy employees to WFH, create a process that includes a review of the exempt employees' duties especially if they may change by virtue of being home.
- Review pay to make sure it meets the current state minimum salary (in most cases) for exempt status – even if an employee is expected to work less than the standard 40 hour week.
 - Do not dock pay at the beginning or end of a furlough or reduced schedule.
- If the employee has moved from outside of CA to within CA, review salary and duties under CA law to ensure exempt status remains.
 - Create and enforce a policy of requiring employees to seek approval from the company before working from another state.
- If the employee is no longer exempt and is now properly classified as non-exempt:
 - Notify the employee's manager on new requirements of timekeeping, breaks, and OT.
 - Inform the employee of the same and train them on your timekeeping system. Understand that this may be the employee's first time ever or recently working in a non-exempt capacity, and expect some forgotten punches, missed or late breaks, and inadvertent overtime.
 - Issue a wage theft notice.
 - Involve counsel if you may owe back wages for overtime.

Is my independent contractor still an independent contractor after their move to CA?

- If an independent contractor hired to work outside of CA is now working within CA for your company, apply the applicable CA test to determine if that person is still properly classified as an independent contractor.
 - Require workers moving between states to request approval of their move before it happens, especially a move into CA, through a clearly communicated policy.

BREAKS

How can I enforce meal and rest break policies with my non-exempt employees?

- Remind non-exempt employees of your policy regarding breaks, make sure they have acknowledged those policies in writing and ensure that the policies are available for employee review.
- Schedule meal and rest breaks.
- Managers should monitor when an employee responds to emails or attend meetings that occur during the employee's usual break time.
- Review time records and have managers connect with employees who are not taking compliant meal breaks to confirm in writing that they have waived the compliant breaks or pay premiums.
- Require employees to certify at the end of each pay period that the employer provided the opportunity to take compliant breaks or, if they claim the employer did not, to say that as well so the employer can pay the break premium.

What can I do to ensure that breaks are duty-free time?

- Train managers on the organization's obligations under the law and company policy.
- Encourage non-exempt employees to step away from their workstations during breaks.
- Tell non-exempt employees to not attend meetings, take or make work calls, answer work IM's, or answer work emails during breaks.
- Encourage employees to set auto replies during breaks.
- Set status on IM platforms and phone systems to Do Not Disturb.

OFF THE CLOCK WORK

What can I do to ensure my non-exempt employees do not work off the clock?

- Reinforce via policy and managers the need to report all time worked, even OT and even de minimus time.
- Recommend to employees that they establish start and stop times, as they would if going into the office.
- Require that managers take note and follow up with the employee if they observe the employee working outside of the employee's usual schedule.
- Monitor system activity for inconsistency between the employee's reported start and stop times and system activity such as logins and logouts.
- Encourage employees to set autoreplies directing after- or before-hours inquiries to their exempt manager.

How can I help reduce the risk of off the clock work by my non-exempt employees?

- Do not schedule meetings for times outside of an employee's usual schedule.
- Ask managers not to send emails or instant messages (IMs) to an employee outside of that employee's usual work schedule.
 - If emails or IMs must be sent to an employee outside of his/her usual work hours, set clear guidelines on when something needs an immediate response.
- If possible, be flexible in adjusting employees' schedules to when they may be most productive.
- Set realistic deadlines for assignments and invite non-exempt employees to request more time to finish assignments or OT if necessary.
- Avoid praising teams that do not work OT or stay under some specified amount of OT.
- Remind non-employees that attending work-required trainings is also considered work.
- Make sure you have a process by which an employee can report time worked before logging in or after logging out for the day.

OVERTIME

How can I minimize overtime in a work from home scenario where the workday blends into home life?

- Change your “overtime culture” if your company has not previously focused on minimizing overtime.
- Encourage non-exempt employees to maintain a regular start and stop schedule like when they commuted into the office.
- Avoid sending emails or IM’s or calling employees outside of their regular work hours.
- Have managers set clear expectations regarding timelines for responses to communications after the end of the regular workday.
- Give employees tools to work smarter, not longer.
- Set realistic deadlines for assignments and invite employees to report when workload is too much for them. Reallocate tasks as necessary to avoid OT.
- As with off the clock work, for non-exempt employees concerned about urgent matters arising after they have completed their full workday, advise them to set an email autoreply directing them to an exempt manager.

EXPENSES

Which of my CA work from home employees’ expenses must I reimburse?

- If the employee is voluntarily working from home, possibly none.
- If you have mandated that employees work from home:
 - Must reimburse a “reasonable percentage” of a cell phone bill, even if the employee has an unlimited data plan and would have incurred the expense even if not using the phone for work.
 - Internet is less clear, other than upgrades necessary to perform work, but a similar logic apply.
 - For supplies:
 - Be clear about expectations regarding expenses and the limits of what you will reimburse.
 - Consider requiring pre-approval of expenses or that the employee orders expenses through the company.
 - Have a mechanism in place by which an employee can protest the insufficiency of the reimbursement amount.
 - Note that even if the employee does not adhere to the reimbursement policy, reimburse the employee anyway and treat the non-compliance with policy as a disciplinary matter rather than a justification for denying reimbursement.
 - If you pay for expenses as a stipend rather than on a reimbursement basis, be careful not to exceed the reasonable amount of the expense as anything extra may need to be factored into the regular rate of pay for overtime purposes.
 - Review amounts annually to ensure they are still reasonable.