



The Most Common Wage and Hour Violations in California – and How to Avoid Them



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State of California

Welcome from the California Labor Commissioner



Lilia García-Brower
State 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.

Disclaimer



This information is provided for general information only. None of the information provided here should be interpreted as providing legal advice or a separate attorney client relationship. 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.

Labor Commissioner's Mission Statement

“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).”

Labor Commissioner's Office



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State of California

Department of Industrial Relations

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Labor Commissioner's Office

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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 \(Vietnamese\)](#)

The Labor Commissioner is Hiring!

Workers

- Learn about [your rights as a worker](#)
- File a [wage claim](#) to recover your unpaid wages
- [Report a labor law violation](#)
- File a [public works complaint](#)
- File a [retaliation complaint](#) if you're fired, demoted, or punished for reporting labor law violations or workplace safety hazards

Employers

- Review requirements before the first employee starts work ([English](#)) ([Spanish](#))
- Obtain [required notices and posters](#)
- Learn about [Wage Theft Prevention Act](#)
- Obtain [licenses, permits, registrations, and certificates](#)
- Learn about [Piece Rate Compensation \(AB 1513\)](#)

Quick Links


- ▶ [Bureau of Field Enforcement](#)
- ▶ [Wage Claim Adjudication](#)
- ▶ [Retaliation \(RCI\)](#)
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WAGE THEFT IS A CRIME

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.



Non-Exempt Employees and Overtime Requirements

- **“Non-exempt”** employee is someone who is not exempt from overtime
 - This is usually an employee who is paid hourly, and not a salary
 - *BUT* paying a salary does not mean a worker is exempt from overtime
 - Most exemptions from overtime found in the IWC Wage Orders & include salary and duties tests
- **Overtime** requirements:
 - **One and one-half times** the employee's regular rate of pay for all hours worked in excess of eight hours up to and including 12 hours in any workday, and for the first eight hours worked on the seventh consecutive day of work in a workweek; and
 - **Double** the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight on the seventh consecutive day of work in a workweek
 - For special rules regarding overtime for agricultural workers, please see **Overtime for Agricultural Workers**

Duties and Salary Tests Summarized

- **Duty Test Salary Exempt**

- 50% or more exempt-level work rather than routine work
- Must exercise discretion and independent judgment as to matters of significance – e.g., hiring/firing, determining course of business operations or policies, etc.
- Must directly supervise two (or more) full-time employees if one is to be exempt under the executive exemption

- **Salary Test Salary Exempt**

- At least 2x minimum wage/higher compensation standards apply for the computer professional exemption
- No OT for salary exempt – wages are not docked for partial absences – can be paid 1x per month
- Salaried employees (non-exempt) do earn overtime and can be docked for partial day absences – must be paid 2x per month

Wages – Labor Commissioner's Definition

- All amounts for labor performed by employees of every description.
- **Labor Code § 200:** “Wages” includes all amounts 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.



Tips / Gratuities – Labor Commissioner's Definition

- **Labor Code § 350:** Gratuity is any tip or money left for an employee by a patron of a business over and above the actual amount due the business for services rendered or for goods, food, drink, or articles sold or served to the patron.
- **Labor Code § 351:** Gratuity is the sole property of the employee.



Hours Worked

- On-Call / Standby Time (controlled vs. uncontrolled)
- Travel time
- Training (voluntary vs. mandatory)
- Doffing and Donning (changing into and out of gear or uniform)
- Day of Rest – Labor Code §§ 550, 551 and 552
- Maximum Hours
- Alternative Work Week – IWC, Section 3 and Labor Code § 511
- Election / Repeal
- Filing with Directors Office of Policy, Research & Legislation (OPRL)



Pay Days / Pay Periods

- Paydays – governed by Labor Code § 204
- Saturday/Sunday/holiday/next business day
- Requirement to Post Notice of Pay Day/ Method - Labor Code § 207
- Penalty for failure to pay wages timely - Labor Code § 210

***Now available to claimants in LCO's WCA process

*** \$100/first violation, \$200 + 25% on subsequent violations

Itemized Wage Statement (Pay Stub)

- LC, section 226(a)
- Required information (**hourly, piece rate, etc.**)
- Penalty for failure to provide:
 - Initial - \$200 per employee per violation.
 - Subsequent - \$1,000 per employee per violation.

Pay Stub (Hourly)

California Labor Commissioner's Office

Pay stub (hourly)

SMITH AND COMPANY, INC. 123 West Street Smalltown, CA 98765			
EMPLOYEE Johnson, Bob	SOCIAL SECURITY NO. XXX-XX-6789	PAY RATE 18.00 regular 27.00 overtime	PAY PERIOD 1/7/XX to 1/13/XX
EARNINGS	HOURS	AMOUNT	DEDUCTIONS
Regular	40.00	720.00	Federal W/H
Overtime	2.00	54.00	FICA
			Medicare
			CA State W/H
			CA State DI
			401k
GROSS EARNINGS:		774.00	
TOTAL DEDUCTED:		213.29	
NET EARNINGS:		560.71	
SICK LEAVE: 24.00 HOURS AVAILABLE			

Example itemized wage statement (pay stub) for a worker paid hourly.
As required by Labor Code section 226(a).

Pay Stub (Piece Rate)

California Labor Commissioner's Office

Pay stub (piece rate)

SMITH AND COMPANY, INC. 123 West Street Smalltown, CA 98765			PAY PERIOD 1/7/XX to 1/13/XX	
EMPLOYEE Johnson, Bob		SOCIAL SECURITY NO. XXX-XX-6789		PAY RATE
PIECE RATE	NO. OF PIECES	AMOUNT		
\$0.50	720	\$360.00		
\$0.25	864	\$216.00		
\$0.10	1,440	\$144.00		
EARNINGS	HOURS			
Regular	40.00			
GROSS EARNINGS:		720.00		
TOTAL DEDUCTIONS:		208.73		
NET EARNINGS:		511.27		
SICK LEAVE: 24.00 HOURS AVAILABLE				
DEDUCTIONS				
				AMOUNT
Federal W/H				60.45
FICA				44.64
Medicare				10.44
CA State W/H				10.04
CA State DI				5.76
401k				77.40

Example itemized wage statement (pay stub) for a worker paid piece rate.
As required by Labor Code section 226(a).

Wage Issues Typical for Non-Exempt Employees (1 of 5)

- **Minimum wage – IWC Wage Orders, Section 4**

- Everyone must be paid the minimum wage for all hours worked.
- Tiny exception → Learners: first 160 hours of employment in occupations in which employee has no previous similar or related experience, may be paid not less than 85 % of the minimum wage (rounded to the nearest nickel).

- **Split shift differential – IWC Wage Orders**

- A split shift is where a work schedule is interrupted by non-paid non-working period established by the employer, other than bona fide rest or meal period.
- 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.

- **Reporting time pay – IWC Wage Orders, Section 5**

- If an employee is required to report for work and does report, but is not put to work or is furnished less than half of their usual or scheduled day's work, then employee shall be paid for half the usual or scheduled day's work, but not less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay.

Wage Issues Typical for Non-Exempt Employees (2 of 5)

- **Liquidated Damages – Labor Code section 1194.2**

- Where an employee is paid less than the minimum wage
- Employee is entitled to recover an amount equal to the minimum wages unlawfully unpaid
- Plus interest
- No Liquidated Damages for failure to pay overtime premium, but LDs available for any wholly unpaid amount of time, including wholly unpaid Overtime hours

- **Commissions**

- Based upon agreement of employer and employee, but must be committed to writing – LC §2751
- Employer required to give Employee signed copy, and retain a signed copy – Labor Code §2751
- A commission is payment of a percentage or flat rate for the sale of a good or service which the employee did not make or perform
- Barber example: commission selling shampoo, whereas performing a haircut would be piece rate

Wage Issues Typical for Non-Exempt Employees (3 of 5)

- **Piece Rate**

- Payment method based upon tasks completed by employee, either making something or performing a service
- Piece rate only compensates an employee for the time spent working on that task
- Rest breaks need to be separately compensated
- Non-productive time, or time spent working but not engaged on a task involving the piece making, must be compensated separately

- **Vacation**

- No requirement that an employer offers any vacation or PTO, but if offered = “deferred wages”
- Use it or Lose it Policies not allowed → but caps on accrual are allowed
- All accrued but unused vacation hours due as wages at the final rate of pay at time of termination

Wage Issues Typical for Non-Exempt Employees (4 of 5)

- **Bonuses**

- Based upon meeting a goal set by the employer besides a percentage of a sale (commission) or an amount per something completed (piece rate)
- Discretionary Bonus: based upon employer's discretion to award or not
- Non-discretionary Bonus: based on some metric set by the employer to be calculated on a certain date
- Bonus pay due the pay period after calculated, does not need to be paid if employee does not work there on the date set for calculation

Wage Issues Typical for Non-Exempt Employees (5 of 5)

- ***De Minimus* Time and Rounding**

- California law calls for all time worked to be compensated, while FLSA allows *de minimus* time not to be compensated
- The California Supreme Court in *Troester v. Starbucks* (2019) 5 Cal. 5th 829, ruled that no such regulation allowing *de minimus* time not to be compensated existed under California law, and that it was clear that ALL time had to be paid
- Similarly, rounding, or the act of approximating time worked, has been disfavored in CA, and whatever loophole may still exist after *Troester* and its progeny is extremely narrow □ BUYER BEWARE
- We are currently awaiting Supreme Court decision on Rounding *Donohue v. AMN Services, LLC* – CASC Case No. S2536777

Authorized Deductions

- Authorized Deductions (see Labor Code § 224):
 - Taxes
 - Healthcare contributions authorized in writing
 - Garnishments (like Child Support garnishments)



Recordkeeping

- Payroll Records – Labor Code §§ 226 & 1174
 - IWC Wage Orders, section 7
- Wage Theft Protection Act of 2011
 - LC, section 2810.5(a) (Sample template)
- Personnel Files
 - LC, section 1198.5
- Employee's Right to Review/Copy & Penalty
 - Labor Code §§ 226 and 1198.5



Meal and Rest Periods

- Requirements
 - Generally LC, section 512 and IWC, sections 11 (meal) and 12 (rest)
- Additional hour of pay
 - Generally LC, section 226.7 and IWC, sections 11 (meal) and 12 (rest)
- **Piece-rate**/by the job/rest period compensation/grace period to avoid potential liability for past violations
 - LC, section 226.2 (also includes employees on commission)
- Regulations
 - IWC Orders, Title 8, section 13700
- Rest areas
 - Generally IWC, section 13
- Lactation accommodation
 - LC, section 1030

Meal Periods

- IWC Wage Orders and the Labor Code in most cases require an employee who works a shift of at least five 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.

Time Off From Work

- Jury duty/witness
 - LC, section 230
- Victims of domestic violence/sexual assault
 - LC, section 230.1
- Victim of crime
 - LC, section 230.2
- Appearance at school after child suspended
 - LC, section 230.7

Time Off From Work (Continued)

- Visit to child's school/daycare facility
 - LC, section 230.8
- Sick leave to attend to family
 - LC, section 233
- Voting
 - Elections Code 14001



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

