

Workforce Management

Time & Attendance Excellence



How To Avoid Timekeeping Pitfalls

Non-exempt versus exempt employees

Posted on 01-19-2021, by:

[Joel M. Van Parys CDF Labor Law LLP](#)
[Dalia Z. Khatib CDF Labor Law LLP](#)

As the Covid-19 pandemic continues throughout California, employees and employers have learned to adapt to working remotely. Some employers have decided to allow employees to work remotely until at least mid-2021 to ensure a safer environment upon return. But remote work creates challenging wage and hour issues, especially related to timekeeping. Accurate timekeeping is a company's first line of defense against all too common PAGA and class action lawsuits, so it is important for employers to be vigilant on this issue.

In general, employers should work to ensure that time records submitted by employees are accurate. As a starting point, employers should set policies and practices to ensure that employee time records are accurate, consistently remind employees of those policies, and focus on potential timekeeping problem areas such as meal periods, rest periods, and overtime.

Non-Exempt versus Exempt Employees

It is normal for employers to have both exempt and non-exempt employees working remotely; however, the rules for each classification of employee is different. Employers must pay exempt employees their entire weekly salary as long as they perform some type of work, even if it is less than their normal workload, in that week. Since exempt employees do not normally track hours worked, and we do not advise employers to ask their exempt employees to keep track of the time they work, employers should consider creating a system for all exempt employees to log their activities such as keeping a list of tasks completed.

Under California law, non-exempt employees operate under different rules than exempt employees. For non-exempt employees, California law requires that their time worked be accurately recorded, including their paid breaks. This usually means actually recording the time when a person started and stopped work or takes a 30-minute unpaid meal period.

Meal and Rest Periods

Employers are required to track the time their non-exempt employees take meal periods. In addition to being required by the law, accurate tracking can help an employer if an employee brings forth a claim for non-compliant meal periods. It can also help an employer keep track of employee workload as well. If employees constantly miss or take breaks late, it could signal a staffing issue.

To combat any claims related to non-compliant meal and rest periods, employers must require employees to record the time(s) when they take their 30 minute unpaid meal periods. Specifically, employees should record when they stop working and then when they come back to work. As a reminder, under California law, non-exempt employees must take their 30-minute meal period before the end of the fifth hour of work. In addition, non-exempt employees are entitled to a second 30-minute meal period, if they work more than 10 hours unless it is lawfully waived.

Employers must also provide non-exempt employees with the opportunity to take a 10-minute paid rest break for every four hours they work, or greater portion thereof. While rest breaks are not normally recorded on timecards, employers can consider requiring employees to sign a weekly form confirming that they have taken all earned rest breaks. These forms should be kept in a file for each employee. In the event an employee makes a claim that they did not receive their breaks, these forms may be a helpful way to show that the company provides the required breaks.



Management should always encourage employees to take their meal periods and rest breaks and report any missed or late breaks, even when working remotely. Supervisors should take written notes for any complaints of a missed or late meal and rest periods and investigate those issues to determine if the company did provide the opportunity for the employee to take their break. Note that employees may be entitled to one hour of pay for any meal or rest break they were forced to miss or that was late.

Overtime

In California, an employer is required to pay for all overtime an employee works. For most non-exempt employees any hours worked over 40 in a week or 8 in a day is overtime. All overtime must be paid at 1.5x the employee's regular hourly rate of pay (this may be more than their base hourly rate). To prevent unnecessary overtime, employers should remind employees that there is no need to work overtime unless they are asked to do so or have prior approval from a supervisor.

Off-the-Clock Work

Another issue employers should be mindful of is the potential for off-the-clock work while employees are working from home. A common way off-the-clock work can happen is by employees responding to emails, phone calls, and text messages after hours. To reduce this, employers should only reach out to employees via text or phone during their scheduled work hours. Employers are also discouraged from allowing non-exempt employees to maintain work email on their cell phones. If non-exempt employees are only allowed to access their email during work hours, then this reduces the likelihood of off-the-clock work.

Overall, as we continue to push through the Covid-19 crisis, it is important for employers to keep accurate records of when their employees work to avoid potential class action or PAGA lawsuits. These issues are problematic and the source of substantial litigation in California. If you have any questions whatsoever about company policies or practices in this area contact your labor and employment attorney for a full discussion.

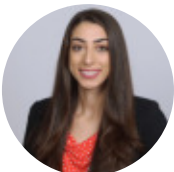
Author Bio



Joel M. Van Parys is a Partner in the Sacramento office of [CDF Labor Law LLP](#), a California-based labor and employment defense law firm. Joel's practice focuses on advising and defending companies with workforces in California in employment-related matters, including claims of sexual harassment, discrimination, and wage and hour violations.

Connect [Joel M. Van Parys](#)

Follow [@CDFLaborLaw](#)



Dalia Z. Khatib is an Associate in the Sacramento office of [CDF Labor Law LLP](#). Dalia's practice focuses on assisting employers with a broad range employment-related matters, including defending against administrative law charges, including drafting position statements to the Department of Fair Employment and Housing and the National Labor Relations Board.

Connect [Dalia Z. Khatib](#)

Follow [@CDFLaborLaw](#)