



Navigating Through California’s Wage And Hour Laws

What employers should know

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Navigating through California's wage and hour laws is a daunting task for employers. The following summarizes California's requirements relating to meal and rest breaks, overtime pay, timekeeping, work weeks, and paychecks in an effort to assist in ensuring compliance with California laws.

Summary of California Laws Regarding Timekeeping/Recording and Workdays/Workweeks

Every employer must keep accurate time records with respect to when non-exempt employees begin and end each work period, meal period, and split-shift intervals. It is not permissible under state law simply to rely on work schedules posted in advance. Employers also must keep a record of the applicable rates of pay as well as the total hours worked in a payroll period.

Timekeeping and Recording Guidelines: Employers must maintain accurate records of their employees' hours of work and compensation. Failure to maintain accurate records of hours of work and compensation will make it difficult for an employer to disprove what an employee claims to have been his/her actual work hours.

The state Labor Commissioner uses the U.S. Department of Labor practice of rounding employees' hours to the nearest five minutes when calculating the number of hours worked. However, for enforcement purposes, the Labor Commissioner will accept the practice of computing working time by rounding to the nearest five minutes, or one-tenth or one-quarter of an hour. These rounding methods can be used, provided that they are used in such a manner that will not result, over a period of time, in failure to compensate the employees properly for all time they have actually worked.

Workday: The workday must be defined by the employer. A workday is any consecutive 24-hour period starting at the same time each calendar day. If an employer does not define the workday, the California Labor Commissioner will presume a workday of 12:01 a.m. to midnight.

Workweek: A workweek must be defined by the employer. If an employer does not define the workweek, the California Labor Commissioner will presume a workweek of Sunday through Saturday. The definition of workday and workweek are important because they affect the payment of overtime compensation.

Summary of California Laws Regarding Rest Breaks

Requirements: While there are a variety of exceptions and caveats that are beyond the scope of this article, the general rule under California law is that employers must "authorize and permit" non-exempt employees to take rest breaks of at least 10 consecutive minutes for every four hours worked "or major fraction thereof" or whose total daily work time is at least 3 1/2 hours. The rest breaks should occur as near as possible to the middle of the work period. California law also requires employers to provide a reasonable amount of rest time. Additionally, employers must provide a private place for employees to express breast milk which may extend the "10 consecutive minutes for every four hours worked" rule.

Note: Employers may not allow employees to combine rest breaks or add them to meal breaks, even at an employee's request. Rest breaks cannot be used to allow an employee to come in 10 minutes late or leave 10 minutes early. Employers must pay employees for rest breaks as time worked. Employees should be permitted to leave the premises during rest breaks and should not

Penalty: An employer found in violation of the law may be liable to pay one additional hour of pay at the employee's **regular rate** for each workday the employer did not "authorize and permit a rest break and may be subject to attorneys' fees relating to defending a case.

The following chart summarizes employers' general rest break obligations under California law:

Hours of Work	10 Minute Paid Rest Breaks
> 0 <= 3 1/2	0
> 3 1/2 <= 5	1
> 5 <= 6	1
> 6 <= 10	2
> 10 <= 14	3

Summary of California Laws Regarding Meal Breaks

Requirements: Employers must provide all non-exempt employees with the opportunity to take a meal break of at least 30 minutes for every work period of more than five hours. However, if six hours of work will complete the day's work, an employee may voluntarily agree with his or her employer to waive the right to a meal period. A second meal break of not less than 30 minutes must be provided to an employee, who works more than 10 hours in a workday. Meal breaks may be longer than 30 minutes at an employer's discretion but if they are longer than one hour, split-shift issues may occur. The meal break is unpaid. Employees must be free to leave the premises during the 30-minute meal break and must be relieved of all duties during the meal break. Employers must not require employees to remain on-call during meal breaks.

Note: It is common practice for employers to hold business lunches during the lunch hour. Please keep in mind that even if a meal is provided by the employer, the meeting is still considered working time and the employee must be paid. To avoid this issue altogether, schedule the first half-hour as on-the-clock meeting time and during the second half-hour allow the employee to either stay and eat the meal provided or leave.

Meal Period for Workday Exceeding 10 Hours: An employee may waive his or her right to a second meal break if: (1) the total hours worked on that workday is not more than 12, (2) there is mutual consent of the employer and employee, and (3) the first meal break of the workday was not waived.

On-Duty Meal Breaks: Under very limited circumstances an employee and employer may enter into a written agreement for an on-duty meal period that is counted as time worked. There are three requirements for a valid on-duty meal period: (1) the nature of work prevents an employee from being relieved of all duty; (2) the employee must voluntarily agree to the on-duty meal period, in writing and in advance; and (3) the agreement must state that the employee can revoke the agreement at any time. While the latter two requirements are easily met, the first requirement is construed extremely narrowly by the Division of Labor Standards Enforcement ("DLSE"). The written agreement must state that the employee may revoke the agreement, in writing, at any time and that he or she voluntarily entered into the written agreement.

Penalty: An employer found in violation of the law may be liable to pay one additional hour of pay at the employee's **regular rate** for each workday the employee did not receive a meal break.

Hours of Work	30-Minute Unpaid Meal Breaks
> 0 < 3½	0
≥ 3½ ≤ 5	0
≥ 5 ≤ 6	1
≥ 6 ≤ 10	1
≥ 10 ≤ 14	2

Summary of California Laws Regarding Overtime

Employers are required to pay non-exempt employees (not covered by a collective bargaining agreement or other limitations as defined by certain Wage Orders) overtime on a daily or weekly basis for any hours worked over eight in a day or 40 in a workweek.

Basic Overtime Requirements: Most non-exempt employees that are not covered by collective bargaining agreements receive overtime pay based primarily on the number of hours worked in a day. Employers must provide time-and-one-half of the employee's regular rate of pay for: (1) all hours worked beyond eight in a single workday; and (2) the first eight hours worked on the seventh consecutive day worked in a single workweek. Employers must provide double time pay for all hours worked beyond 12 in a single workday and any hours worked beyond the eighth hour on the seventh consecutive day worked in a single workweek. Employers must provide time and one half of the employee's rate of pay for all hours worked over 40 in a workweek.

Note: There are restrictions on how many hours minors may work per day and per week, regardless of overtime payment requirements.

Electronic Pay Stub Rules

Paycheck Requirements: An employer must furnish its employees, either a detachable part of the check, draft, or voucher paying the employees' wages, or a separate accurate itemized statement when wages are paid by personal check or cash showing: gross wages earned; total hours worked (except for salaried exempt employees); piece rate units and rate, if applicable; all deductions; net wages earned; the dates of the pay period; the name of the employee and the last four digits of the SSN or to some other identifying number; the name and address of the employer (legal entity); all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

A copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

Employers should consult legal counsel before adopting or implementing wage and hour policies and practices. For specific advice on particular matters, including wage and hour matters, consult legal counsel.

Notes

'Ideally, an employer's payroll software is already calculating the regular rate of pay correctly for overtime purposes, which rate must also be used when calculating premiums for meal and rest break premium payments. The regular rate must include other compensation paid to a non-exempt employees, such as non-discretionary bonuses, commissions, etc. Employers face liability for unpaid wages if the regular rate is not calculated correctly.'

Author Bio



Nancy "Niki" Lubrano is a Partner at [CDF Labor Law LLP](#) where she specializes in defending California employers in labor and employment litigation (including all forms of discrimination and harassment, wrongful discharge, and wage and hour litigation). She also regularly provides employer advice and counseling, including sexual harassment prevention training.

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