

EXECUTIVE CONNECT

LeadingAge[®]CA

Wage & Hour Compliance

California

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Our Path



- The WHY
- Overview
 - Which Rules Apply?
 - Minimum Wage
 - Overtime & Doubletime
 - Meal & Rest Breaks
- The MATH
 - Break Schedule
 - Overtime Calculations: Special Circumstances
- Employee Classification
 - Employee vs Independent Contractor
 - Exempt vs Nonexempt
- Noncompliance Consequences
- Preferred Approaches



Overview

Which Rules Apply?

- Whichever rules are most generous to employees
- California Industrial Welfare Commission (IWC)
 - Issues Wage Orders
 - 18 different wage orders
 - Healthcare workers: **Wage Order 5**
 - Specific Requirements by Industry or Profession
 - Governs employment standards:
 - Minimum wages, overtime, meal & rest breaks, record-keeping
- Federal Fair Labor Standards Act
- State industry regulations: **California Nursing Practices Act**

State Minimum Wage

- 2023 and beyond
 - Hourly/Nonexempt
 - Currently \$15.50 per hour
 - *1/1/2024: \$16.00 per hour*
 - Salary Threshold/Exempt
 - Current minimum \$64,480 annually
 - *1/1/2024: \$66,560 annually*
 - Double hourly minimum wage x standard hours worked per year
 - \$15.50 x 2080

2023 City/County Minimum Wage

Location	Rate	<25 Employees
Alameda	\$16.52	
Belmont	\$16.75	
Berkeley	\$18.07	
Burlingame	\$16.47	
Cupertino	\$17.20	
Daly City	\$16.07	
East Palo Alto	\$16.50	
El Cerrito	\$17.35	
Emeryville	\$18.67	
Foster City	\$16.50	
Fremont	\$16.80	
Half Moon Bay	\$16.45	
Hayward	\$16.34	\$15.50
Los Altos	\$17.20	
Los Angeles	\$16.78	
Los Angeles County (unincorporated)	\$16.90	
Malibu	\$16.90	
Menlo Park	\$16.20	
Milpitas	\$17.20	

Location	Rate	<25 Employees
Mountain View	\$18.15	
Novato	\$16.07	\$15.53
Oakland	\$15.97	
Palo Alto	\$17.25	
Pasadena	\$16.93	
Petaluma	\$17.06	
Redwood City	\$17.00	
Richmond	\$16.17	
San Carlos	\$16.32	
San Diego	\$16.30	
San Francisco	\$18.07	
San Jose	\$17.00	
San Mateo	\$16.75	
San Mateo County (unincorporated)	\$16.50	
Santa Clara	\$17.20	
Santa Monica	\$16.90	
Santa Rosa	\$17.06	
Sonoma	\$17.00	\$16.00
South San Francisco	\$16.70	
Sunnyvale	\$17.95	
West Hollywood	\$19.08	

Overtime & Doubletime Baseline

- Hourly/Nonexempt only
 - 1.5x regular rate of pay
 - Beyond 8 hours/day AND
 - 40 hour/workweek
 - 2x regular rate of pay
 - Beyond 12 hours/day
 - Beyond 8 hours on *7th consecutive day worked/workweek*

One Day of Rest in Seven

- Required
 - At least 24 hours of consecutive rest in any calendar week
 - Applies to all: exempt/nonexempt/full time/part time
- Exceptions
 - Emergency services
- Penalties
 - 1 hour of regular rate pay for each day of rest not provided
- Employees can agree to work seven days in a row if:
 - Fully informed of right to a day of rest
 - Sign written agreement to waive that right

Rest Breaks – Hourly/Nonexempt Only

Rest Breaks

- Must be paid
- At least 10 minutes for every 4 hours worked or "major fraction" thereof
 - “Major fraction” is defined: any amount of time greater than 2 hours
- Must be provided in the middle of each work period as much as possible
- Cannot work during rest breaks
- Must keep accurate records of all rest breaks provided to employees
- Don’t comply?
 - Employee is entitled to one additional hour of pay at their regular rate of pay for each workday that a rest break was not provided

Meal Breaks – Hourly/Nonexempt Only

- Meal Breaks
 - Working 5+ hours:
 - Minimum 30 minutes
 - Unpaid
 - Must be taken before the END of the 5th hour worked
 - Working 10+ hours:
 - Minimum 2 @ 30 minutes
 - Unpaid
 - Must be taken before the END of the 10th hour worked
 - Working 12+ hours:
 - Minimum 3 @ 30 minutes
 - Must be taken before the END of the 12th hour worked

Waiving Rights: Meal Breaks – Hourly/Nonexempt Only

- Working NO MORE than **6 hours/day**
 - First meal period can be waived
- Working NO LESS THAN **10 hours/day** and MORE than **12 hours/day**
 - Second meal period can be waived if first meal not waived
- Conditions
 - Must be voluntary on employee's part
 - Must be mutual agreement & in writing
 - Employee can revoke at any time

A photograph of two healthcare professionals, a woman with dark hair and a woman with short curly hair, both wearing blue scrubs. They are standing in front of a large window, looking down at a tablet held by the woman on the left. The woman on the right is pointing at the screen with her right index finger. The background is a blurred view of a city through the window.

The MATH

Meals Breaks – Hourly/Nonexempt Only

Shift: 8:00 a.m. - 4:00 p.m.

What time is lunch?

- 1st hour 8:00 a.m.
- 2nd hour 9:00 a.m.
- 3rd hour 10:00 a.m.
- 4th hour 11:00 a.m.
- 5th hour 12:00 p.m.

Lunch must be taken the END of the 5th hour worked: between 12 – 12:59 p.m.

Shift: 8:00 a.m. – 6:00 p.m.

What time are the meal breaks?

- 1st hour 8:00 a.m.
- 2nd hour 9:00 a.m.
- 3rd hour 10:00 a.m.
- 4th hour 11:00 a.m.
- 5th hour 12:00 p.m.

MEAL 1 between 12-12:59 p.m.

- 6th hour 1:00 p.m.
- 7th hour 2:00 p.m.
- 8th hour 3:00 p.m.
- 9th hour 4:00 p.m.
- 10th hour 5:00 p.m.

MEAL 2 between 5-5:59 p.m.

Calculating Nonexempt Overtime – Special Circumstances

- **Non-hourly wages:** Nonexempt employees paid on a *commission, piece-rate, or incentive* basis may require additional calculations to determine their **regular rate of pay**.
 - Regular rate is used to calculate overtime pay.
 - Regular rate of pay may vary from week to week based on productivity or performance
- **Multiple rates of pay:** Some nonexempt employees may receive different rates of pay for different types of work or for work performed during different shifts.
 - Regular rate of pay and overtime rate may need to be **calculated separately for each rate of pay**.

Calculating Nonexempt Overtime – Special Circumstances

- **Alternative workweek schedules:** May need to calculate overtime based on a **different workweek** than the standard Monday through Sunday workweek.
 - Can require additional calculations to ensure compliance
- **Bonuses and other payments:** Bonuses, incentive payments, and other forms of compensation **may need to be included in the regular rate of pay** used to calculate overtime pay.
 - Can require additional calculations to ensure compliance

Tips

- Must receive **at least** state's minimum wage for all hours worked, **if local minimum wage is higher must be paid local minimum wage for all hours worked**
- "Tip Credit"
 - Can put towards the minimum wage
 - Can pay tipped employees **a lower hourly rate** if the tips received by the employee **bring their total compensation up to the state's or local minimum wage whichever is higher.**
- **Cannot** require tipped employees to share tips with non-tipped employees, such as managers or back-of-house staff
- Tipped employees **must be allowed to keep all tips they receive**, except in cases where a valid tip pooling arrangement is in place
 - Tip pooling can only include employees who customarily and regularly receive tips, such as servers and bartenders
- Tipped employees **must be provided with meal and rest breaks** in compliance with state law.
- Must provide **accurate wage statements to tipped employees**: hourly wage rate, tip credit, & total compensation

Commissions

- Must be paid **at least** minimum wage for all hours worked. , if local minimum wage is higher must be paid local minimum wage for all hours worked
- Employers **can take a "draw" against future commissions:**
 - Can pay a base salary or hourly rate, with understanding that the employee will earn commissions more than that amount
- If a commissioned employee's earnings in a pay period do not meet or exceed minimum wage for all hours worked, **the employer must make up the difference**
- Entitled to **overtime and doubletime** pay rules
- Entitled to **meal and rest breaks** in accordance with state law
- Must provide **accurate wage statements:** information about commission earnings and deductions

Commission Plans

Commission plans **must be in writing**, and include:

- **Method** by which commissions will be **computed and paid**
- **Frequency** of commission payments.
- **Formula or method** used to calculate commissions
- **Definition of terms** used in the commission plan, such as "commission," "sale," and "gross receipts"
- **Manner and timing** by which the commissions will be paid
- **Specific date** on which the commissions will be paid
- **Method** by which the employee can **access commission records**

California law requires that employers provide employees with a signed copy of the commission plan and obtain a signed receipt from the employee acknowledging receipt of the commission plan.

Piece Rate

- Must be paid **at least minimum wage** for all hours worked
- **Paid rest and recovery periods** and other non-productive time **separately** from piece-rate compensation
- Rest and recovery periods must be paid at a rate of **at least minimum wage**
- Entitled to **overtime and doubletime** pay rules
- Entitled to **meal and rest breaks** in accordance with state law
- Employers must provide accurate wage statements to piece-rate workers, which include information about piece-rate earnings and deductions.
- Must provide **accurate wage statements**: time spent on non-productive activities, rest and recovery periods, and other time for which the worker is entitled to payment



Employee Classification

1099 vs W2 – California Raises the Bar

Exempt or Nonexempt – The Million Dollar Question

Employee vs. Independent Contractor (IC) Classification

Control and Independence

- IC
 - Hired to perform specific task or project
 - Total control over how and when work is done
- Employee
 - Employer dictates what work is done
 - Employer dictates how and when work is done

Employee vs. Independent Contractor (IC) Classification

Compensation

- IC
 - Flat fee or by project
- Employee
 - Hourly wage or salary

Employee vs. Independent Contractor (IC) Classification

Taxes & Benefits

- IC
 - Pays their own taxes directly to the state/feds
 - No benefits: insurance, paid leave, sick leave, vacation time
- Employee
 - Taxes withheld by employer and remitted on employee's behalf
 - Entitled to benefits: insurance, paid leave, sick leave, vacation time

Employee vs. Independent Contractor (IC) Classification

Labor & Employment Laws

- IC
 - Not covered by wage & hour laws, workers compensation or anti-discrimination laws
- Employee
 - Entitled to protections under these laws

Employee vs. Independent Contractor (IC) Classification

Relationship

- IC
 - In business for themselves
 - Business to business relationship
 - Free to engage with multiple businesses at any time
- Employee
 - Employment relationship
 - Subject to company policies and procedures

Exempt vs. Nonexempt Classification

Overtime eligibility

- Nonexempt are NOT EXEMPT from overtime/doubletime
- Exempt are... EXEMPT and those rules don't apply

Compensation

- Nonexempt = Hourly wage
- Exempt = Guaranteed weekly salary

Exempt vs. Nonexempt Classification

Minimum Wage

- Nonexempt: Hourly minimum
- Exempt: Double hourly minimum

Meal & Rest Breaks

- Nonexempt = Required
- Exempt = Not required (*but giving them is a good idea*)

Exempt vs. Nonexempt Classification

Job Duties

- **Nonexempt:** Routine work, administrative or manual labor, follow procedures, must generally ask for permission to deviate from policy
- **Exempt:**
 - Must satisfy minimum salary test: \$64,480 increasing to \$66,650 on January 1, 2024
 - Must pass strict job duties test:
 - **Categories:** Executive, Professional, Administrative, Outside Sales, Commissioned Sales, Computer Professional

Exempt vs. Nonexempt Classification

Job Duties Continued

- Nonexempt: Paid for their time
- Exempt: Paid to address the organizations needs with some level of discretion
 - Self-manage schedule/workweek
 - Have control over how they get the job done
 - Have control over how much time is spent on tasks

Additional Considerations

Travel Time

- California Wage Orders
- Federal Portal-to-Portal Act

Child Labor

- California Labor Code
- California Education Code
- California Wage Orders 11 & 12 (Broadcasting & Motion Picture Industry)
- Federal Fair Labor Standards Act (FLSA)
- Federal Hazardous Occupations Orders

The WRONG Way

The Heavy Cost of Noncompliance



Why Comply?

- Avoid legal penalties and liabilities
 - Fines
 - Back Pay
 - Legal Fees
- Reputation damage
- Decreased employee morale
 - Lower productivity
 - Increased turnover

Misclassifying Nonexempt as Exempt

- Overtime/doubletime
 - Look back period:
 - 3 years if not willful
 - 4 years if willful
- Missed meal &/or rest breaks
 - 1 hour of regular pay per day of missed (or late) meal periods; and
 - 1 hour of regular pay per day of missed (or late) rest breaks

Misclassifying Nonexempt as Exempt

- **Waiting time penalties**
 - Full day's pay for each day wages unpaid
 - Up to 30 days
- **Civil Penalty up to \$10k for EACH misclassified employee**
 - 15 misclassified as exempt = \$150,000 penalty
 - Additional penalties for **EACH** pay period of misclassification
 - Under 25 ees: \$50 per misclassified employee
 - Over 26 ees: Based on actual wages & hours worked
- **Liquidated damages**
 - Equal to the amount of unpaid overtime wages

Misclassifying Employee as Independent Contractor

- Back pay
 - Unpaid overtime/doubletime
 - Meal & rest break penalties
 - Difference between what was paid and minimum wage
 - Benefits (health insurance, retirement plan(s), paid time off)
 - Waiting time penalties

Misclassifying Employee as Independent Contractor

- Taxes & penalties
 - Liable for unpaid state & federal payroll taxes
 - Penalties for failing to withhold and pay payroll taxes on time
- Workers Compensation
 - Liability for injuries that occurred on the job
- Civil penalties
 - Up to \$25,000 per violation

A diverse group of healthcare professionals, including nurses and doctors, are seated around a table in a bright, modern setting. They are all smiling and looking towards the right side of the frame. A woman in the foreground, wearing blue scrubs, is holding a pen and looking up with a smile. Other people in the background are also smiling and looking in the same direction. The overall atmosphere is positive and collaborative.

Preferred Approaches

Preferred Approaches

- Properly classify employees
 - Review employment classifications based on job duties
 - Rectify misclassifications in good faith
- Establish clear policies & procedures for employee compensation
 - Proactively paying meal/rest break premiums
 - Holding policy violators accountable
- Provide regular training

Preferred Approaches

- Conduct regular audits
 - Take corrective action as necessary
- Consult with legal counsel
 - Address questions and concerns



Thank You!

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