Provided By Employco USA, Inc.

Employment Law Summary

California

Work Hours and Wage Payment Laws

Several federal laws regulate work hours and wage payment requirements. These include the Fair Labor Standards Act (FLSA), the Davis-Bacon Act and the Service Contract Act. California law also imposes work hours and wage payment requirements and, in some cases, provides additional requirements that employers in the state must follow. When federal and state laws are different, the law more favorable to the employee will apply.

The Division of Labor Standards Enforcement (DLSE), also known as the Labor Commissioner's Office, enforces work hours and wage payment requirements throughout the state.

Compensable Time

Generally, employers must pay their employees for every hour of compensable time. In California, "**hours worked**" means the time during which an employee is subject to the employer's control and includes all time the employee is suffered or permitted to work, whether the employee is required to do so.

Security Screenings

The time an employee spends on the employer's premises waiting for and undergoing mandatory exit searches of bags, packages or personal technology devices that are voluntarily brought to work, purely for personal convenience, is compensable as hours worked. This can include time spent on an employer's premises in a personal vehicle waiting for and undergoing an employer-mandated exit security procedure. Factors to determine whether on-site employer-controlled activities must be compensable time include:

- The mandatory nature of the activity;
- The location of the activity;
- The degree of the employer's control;
- Whether the activity primarily benefits the employee or employer; and
- Whether the activity is enforced through disciplinary measures.

Lectures, Meetings and Training Programs

California follows the federal FLSA for determining the compensability of lectures, meetings and training programs.

Travel Time

An employee's ordinary commute, or regular home-to-work travel time, is generally not compensable time even if the employee commutes in a vehicle that is owned, leased or subsidized by the employer and is used for ridesharing. However, if an employee is required to report to the employer's business premises before proceeding to an off-premises worksite, all the time from the moment of reporting until the employee is released to go home is subject to the employer's control and constitutes hours worked.

In California, employers must pay wages for all hours an employee is engaged in travel. There is no distinction between hours worked during normal working hours, outside normal working hours, in connection with an overnight out-of-town assignment or in connection with a one-day out-of-town assignment. However, time spent taking a break from travel is not compensable (e.g., eating a meal, sleeping or engaging in purely personal pursuits not connected with traveling). Employers may establish a different pay scale for travel time.

Required Break Periods

California law requires employers to provide employees with break periods in certain circumstances.

Meal Breaks

Employers generally must provide nonexempt employees who work more than **five hours** in a day with an **unpaid meal period of at least 30 minutes**. However, if the workday is completed in six hours or less, the employer and employee may waive the meal period by mutual consent. Employees are entitled to a second meal period of at least 30 minutes for work periods of more than 10 hours. The second meal period may be waived by mutual consent if the total hours worked are not more than 12 hours and the first meal period was not waived. Employers may not require employees to work during meal periods. Meal periods must be paid if the employer requires an employee to remain at the worksite during the meal period, even if the employee is relieved of all work duties.

Unless employees are relieved of all duties during the 30-minute meal period, the meal period must be considered an **on-duty meal period** that is counted as hours worked and compensated at the employee's regular rate of pay. On-duty meal periods are permitted only if both:

- The nature of the work prevents an employee from being relieved of all duties; and
- The on-duty meal period is agreed to in writing by the employer and employee. The agreement must expressly state that the employee may revoke the agreement in writing at any time.

In certain industries, state law also dictates when employers must provide this meal break.

California's meal break requirements do not apply to employees working in the following industries:

- **Wholesale baking**: Employees in the wholesale baking industry who are subject to an Industrial Welfare Commission (IWC) wage order and covered by a valid collective bargaining agreement (CBA) that provides for a 35-hour workweek consisting of five seven-hour days, payment of 1.5 times the regular rate of pay for time worked in excess of seven hours per day, and a rest period of not less than 10 minutes every two hours;

- **Motion picture**: Employees in the motion picture industry may not work more than six hours without a meal period of at least 30 minutes, but not longer than one hour. A subsequent meal period must occur no later than six hours after the termination of the preceding meal period. Hot meals and drinks must be provided to employees in the motion picture industry if they are required to work after midnight (except for off-production employees who are regularly scheduled to work after midnight);
- **Commercial drivers; registered security officers; construction workers; or workers employed by an electrical corporation, gas corporation or local publicly owned electrical utility**: Employees working as commercial drivers, registered security officers or in construction, or who are employed by an electrical corporation, gas corporation or local publicly owned electrical utility are exempt from the state's meal period requirements if they are covered by a valid CBA that provides for meal periods; wages, hours of work and working conditions; final and binding arbitration of disputes related to meal periods; premium wage rates for overtime; and a regular hourly rate of pay of at least 30% more than the state minimum wage rate; and
- **Healthcare employees**: Healthcare industry employees may voluntarily waive one of their two meal periods if they work a shift of over eight hours in a workday. The waiver must be voluntary, written and signed by both the employer and the employee. The employee may revoke the waiver by providing at least a day's notice to the employer.

In addition, California's meal period requirements do not apply to employees working in the motion picture or broadcasting industry (as defined by IWC wage orders) that are covered by a valid CBA that provides for meal periods and includes a monetary remedy.

Certain occupations have different or additional meal break requirements, including:

- Airline cabin crew employees covered by a valid CBA under the federal Railway Labor Act (RLA) containing meal period and rest break provisions;
- Employees of 24-hour residential care facilities;
- Drivers transporting hazardous materials, working for interstate carriers regulated by U.S. Department of Transportation (DOT) hours-of-service requirements, or transporting nutrients and byproducts from a commercial feed manufacturer;
- Emergency ambulance employees who must remain on call;
- Unionized employees in the manufacturing industry; and
- Employees on oil platforms on the outer continental shelf.

Employers should consult IWC's wage orders for more information on meal break requirements for specific occupations or industries.

Rest Periods

Employers must provide nonexempt employees with rest breaks at a **daily rate of a net 10 minutes for every four hours** or major fraction thereof (meaning more than two hours). A "net 10-minute rest break" is 10 consecutive minutes starting when the employee reaches the worksite rest area. Rest periods must be counted as time worked and are compensable. To the extent possible, rest breaks must occur in the middle of the work period. Employers cannot require employees to work during rest periods.

In California, employees are entitled to rest periods as follows:

- For shifts less than 3.5 hours, no rest break is required;
- For shifts from 3.5-6 hours, one 10-minute rest break;
- For shifts of more than 6-10 hours, two 10-minute rest breaks;
- For shifts of more than 10-14 hours, three 10-minute rest breaks;
- For shifts of more than 14-18 hours, four 10-minute rest breaks; and
- For shifts of more than 18-22 hours, five 10-minute rest breaks.

Employers must provide suitable resting facilities during working hours in a separate area from restrooms. Employees paid on a commission or piece-rate basis are entitled to separate rest period pay.

Certain occupations have different or additional rest period requirements, including:

- Airline cabin crew employees covered by a valid CBA under the federal RLA containing meal period and rest break provisions;
- Swimmers, dancers, skaters and other performers engaged in strenuous physical activities;
- Private unionized security officers who may be required to remain on the employer's premises and on call during paid rest periods;
- Drivers transporting hazardous materials or working for interstate carriers regulated by DOT hours-of-service requirements;
- Emergency ambulance employees who must remain on call; and
- Unionized employees of petroleum facilities and other refineries holding safety-sensitive positions.

Employers should consult IWC's wage orders for more information on rest period requirements for specific occupations or industries.

Nursing Mothers

Employers must provide **reasonable break time** to accommodate an employee who desires to express breast milk for their infant child each time the employee needs to express milk. If possible, the break time must run concurrently with any break already provided to the employee. Break times that do not run concurrently with an authorized rest period are unpaid. However, employers are not required to provide lactation breaks if doing so would seriously disrupt their operations.

Employers must provide employees with the use of a room or other location, other than a bathroom, to express breast milk in private. The lactation room or location must be in close proximity to the employee's work area, shielded from view and free from intrusion while the employee is expressing milk. The room or location may include the employee's normal work area if all the criteria are met. If a multipurpose room is used for lactation, the room's use for lactation must take precedence over the other uses for the time it is used for lactation purposes.

The lactation room must:

- Be safe, clean and free of hazardous materials;
- Contain a surface for a breast pump and personal items;
- Contain a place to sit; and
- Have access to electricity or alternative devices (e.g., extension cords, charging stations) needed to operate electric or battery-powered breast pumps.

Employers must provide access to a sink with running water and a refrigerator suitable for storing milk near the employee's workspace. If a refrigerator cannot be provided, the employer may provide another cooling device suitable for storing milk, such as an employer-provided cooler.

Employers with **fewer than 50 employees** may be exempt from lactation room requirements if they can demonstrate that the requirement would impose an undue hardship by causing the employer significant difficulty or expense in relation to the size, financial resources, nature or structure of the employer's business. If an employer can demonstrate that the requirement to provide an employee with the use of a lactation room or other location, other than a bathroom, would impose undue hardship, the employer must make reasonable efforts to provide the employee with the use of a room or other location, other than a toilet stall, in close proximity to the employee's work area for the employee to express milk in private.

Employers must develop and implement a lactation accommodation policy that includes a statement about an employee's right to request a lactation accommodation, the process by which the employee requests an accommodation, the employer's obligation to respond to the employee's request and a statement about an employee's right to file a complaint with DLSE for any violations under the law. Employers must include the policy in their employee handbook or set of policies made available to employees. The policy must be distributed to new employees upon hiring and when an employee inquires about or requests parental leave. If an employer cannot provide break time or a location that complies with their lactation accommodation policy, the employer must provide the employee with a written response.

Day of Rest

Employees are entitled to one day of rest every seven days. Employers may not require employees to work more than six days per workweek if the employee's work schedule is **more than 30 hours** per week or **six hours** per day.

California's day of rest requirements do not apply in the following situations:

- The work is performed to protect life or property from loss or destruction;
- Any common carrier engaged in or connected with the movement of trains; and
- When the nature of the employment reasonably requires that the employee work seven or more consecutive days, an employer may require its employees to work seven consecutive days, so long as each month the employees receive the equivalent of one day off in seven.

Method of Payment

California law requires employers to pay wages in lawful U.S. currency with cash, check, direct deposit (requires voluntary employee authorization) or payroll card (requires voluntary employee authorization). Employers that pay their employees' wages using payroll cards must meet certain requirements.

Frequency of Payment

Employers must pay employee wages **at least twice per month** on established, regular paydays. Employers must establish a regular payday and post a notice showing the day, time and location of payment.

Employers must pay employees within the following time after a pay period:

Work between 1st and 15th day of the month	→	Payday must be between 16th and 26th day of that same month
Work between 16th and last day of the month	→	Payday must be between 1st and 10th day of the following month

However, overtime wages must be paid by the next regular pay period following the pay period in which the wages were earned.

Employers are permitted to pay wages on earlier days or at more frequent intervals. Other payroll periods, such as weekly, every two weeks or semi-monthly, must be paid within seven calendar days of the end of the payroll period.

Exceptions

California's frequency-of-payment regulations do not apply to the following individuals:

- Salaried executive, administrative and professional employees covered by the FLSA (they may be paid once per month on or before the 26th day of the month during which the labor was performed if the entire month's salaries, including the unearned portion between the date of payment and the last day of the month, are paid at that time);
- Employees covered by a collective bargaining agreement that provides different pay arrangements;
- Employees paid on a weekly basis;
- Licensed vehicle dealer employees paid commission wages (they may be paid once per month on a day designated in advance by their employers);
- Licensed employees pursuant to the Barbering and Cosmetology Act (they may be paid commission wages at least twice during each calendar month on a day designated in advance by their employers); and

- Certain domestic service and agricultural employees (they may be paid once per month on a day designated in advance by their employers, not more than 31 days apart if they receive board and lodging). However, agricultural employees employed by farm labor contractors must be paid at least once per week on a day designated in advance by the farm labor contractor.

Regular Payday Notice

Employers must post a notice of regular paydays conspicuously at the workplace, if practicable. Otherwise, employers may post the notice where it can be seen as employees come and go from the workplace, or at the office or nearest agency for payment kept by the employer.

Wage Notice

At the time of hire, employers must provide most nonexempt employees with a written notice in the language they normally use to communicate employment-related information to employees containing the following information:

- The pay rate and basis (e.g., paid by the hour, shift, day, week, salary, piece, commission or otherwise, including any rates for overtime);
- Allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances;
- The regular payday;
- The employer's name, including any "doing business as" names;
- The physical address of the employer's main office or principal place of business, and a mailing address, if different;
- The employer's telephone number;
- The name, address and telephone number of the employer's workers' compensation insurance carrier;
- That an employee:
    - May accrue and use sick leave;
    - Has a right to request and use accrued paid sick leave;
    - May not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and
    - Has the right to file a complaint against an employer who retaliates;
- The existence of a federal or state emergency or disaster declaration applicable to the county or counties where the employee is to be employed, and that was issued within 30 days before the employee's first day of employment, that may affect their health and safety during their employment; and
- Any other information the DLSE deems material and necessary.

Employers must notify employees in writing of any changes to the information set forth in the written notice within seven calendar days of the change, subject to certain exceptions.

Wage Statements

Employers must provide each employee with an itemized wage statement when wages are paid. The itemized wage statement must show:

- Gross wages earned;
- The total number of hours worked (unless the employee is compensated solely on a salary basis and exempt from overtime wage payment provisions under California Labor Code Section 515(a) or any applicable order of the California Industrial Welfare Commission);
- The number of piece-rate units earned and any applicable piece rate, if the employee is paid on a piece-rate basis;
- All deductions (if all deductions made on written orders of the employee can be aggregated and shown as one item);
- Net wages earned;
- The inclusive dates of the pay period;
- The employee's name and the last four digits of their Social Security or employee identification number;
- The employer's name and address (if the employer is a farm labor contractor, the name and address of the legal entity that secured the employer's services);
- All applicable hourly rates in effect during the pay period and the number of hours worked at each rate;
- The amount of accrued sick leave;
- The pay rate and total hours worked for each temporary assignment (for all temporary service employers except for licensed security services companies); and
- The total hours, compensation rate and gross wages paid for all compensable rest and recovery periods and other nonproductive time for employees compensated on a piece-rate basis.

Wage statements must be provided as a detachable part of a check, draft or voucher or separately when wages are paid by personal check or cash. Employers may also provide wage statements electronically if certain requirements are met.

Employers must keep copies of these records for **at least three years** and must allow current and former employees to inspect or receive a copy of their own statements **within 21 days** of receiving a request. Employers may take reasonable steps to protect the identity of a current or former employee. If employers provide copies of the statements, they may charge current or former employees the actual cost of copying.

Withholdings and Deductions

Employers may only withhold or deduct an employee's wages when:

- The employer is required or empowered to do so by state or federal law;
- A deduction is expressly authorized in writing by the employee to cover insurance premiums, benefit plan contributions or other deductions that do not amount to a rebate on the employee's wages; or
- A deduction to cover health, welfare or pension contributions expressly authorized by a wage or collective bargaining agreement.

All deductions from wage payments must be recorded in ink or other indelible form, properly dated, showing the month, day and year. Employers must provide each employee with an itemized wage statement at the time wages are paid, showing all deductions. Employers must keep a copy of the statement and the record of the deductions for **at least three years** at the place of employment or at a central location in California.

In addition, employers generally cannot deduct from a nonexempt employee's wages or require reimbursement due to a cash shortage, breakage or loss of equipment that is not a result of the employee's dishonest or willful act or gross negligence. Employers are also prohibited from deducting from a terminating employee's final paycheck any money that the employee owes to the employer.

Last Payment of Wages

Employees who are discharged must be paid all their wages, including accrued and unused vacation, immediately upon termination. Employers must pay discharged employees at the place of discharge.

Employers must pay employees without a written employment contract for a definite time period their final wages, including accrued and unused vacation, immediately upon separation if the employee provides at least 72 hours' notice. However, employees without a written employment contract for a definite time period who resign without providing 72 hours' notice must be paid their final wages, including accrued and unused vacation, no later than 72 hours after resignation. Employees who resign without providing notice may request that their final wage payment be mailed to a designated mailing address. The mailing date is considered the payment date for the 72-hour payment requirement. Employees who quit without providing notice and do not request that their final wage be mailed must be paid at the employer's office or agency in the county where the employee worked.

Special requirements apply to the following individuals:

- Laid-off employees engaged in the business of oil drilling;
- Employees laid off because of the termination of seasonal employment in the curing, canning or drying of any variety of perishable fruit, fish or vegetables; and
- Laid-off employees engaged in the production of motion pictures whose unusual or uncertain terms of employment require special computation to ascertain the amount due;
- Employees employed at a venue that hosts live theatrical or concert events who are enrolled in and routinely dispatched to employment through a hiring hall or other system of regular short-term employment established in accordance with a bona fide collective bargaining agreement;
- Terminated print shoot employees.

Recordkeeping

Employers must keep accurate information with respect to each nonexempt employee, including:

- Full name, home address, occupation and Social Security number;
- Birth date, if the individual is under 18 years and designation as a minor;

- Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked must also be recorded. Meal periods during which operations cease and authorized rest periods do not need to be recorded;
- Total wages paid for each payroll period, including the value of board, lodging or other compensation actually provided to the employee;
- Total hours worked in the payroll period and applicable rates of pay. This information must be made readily available to the employee on reasonable request; and
- Piece rates or an explanation of the incentive plan formula when a piece rate or incentive plan is in operation. Employers must maintain accurate production records.

All required records must be in English and in ink or other indelible form, properly dated, showing month, day and year. The records must be kept on file by the employer for **at least three years** at the place of employment or at a central location in California. Employers must make employee records available for inspection on the employee's reasonable request. Employers must also keep records of each employee's job title and wage rate history for the duration of their employment and for three years after the end of their employment. Employers engaged in garment manufacturing must retain certain employee pay information for four years.

Enforcement and Penalties

The DLSE has the authority to investigate and enforce compliance with California's work hours and wage payment laws. The division may investigate complaints, hold administrative hearings, issue citations and civil penalties, and refer cases for criminal prosecution. The California attorney general may also pursue civil and criminal wage enforcement actions. In addition, employees may seek unpaid wages through civil action or by filing a claim with the DLSE for administrative relief. Employees do not need to exhaust administrative remedies before filing a civil action.

Employers that violate California's work hours and wage payment laws may be subject to the following civil and criminal penalties.

Wage Theft

In California, intentional wage theft is treated as grand theft punishable as a felony when the amount taken exceeds $950 for a single employee or $2,350 in the aggregate for two or more employees within any consecutive 12-month period. If the amount taken is less than $950 for a single employee or $2,350 in the aggregate for two or more employees, grand theft is punishable as a misdemeanor. A conviction can result in imprisonment, restitution of the stolen wages and fines, in addition to civil penalties.

Hours and Workday Provisions

Employers that violate hours and workday provisions are subject to the following fines:

- **$50 per underpaid employee** in each pay period, for an initial violation; and
- **$100 per underpaid employee** in each pay period, for each subsequent violation.

These fines are in addition to an amount sufficient to recover unpaid wages.

Required Break Periods

Meal Periods and Rest Breaks

Employers must pay **one additional hour** of pay at the employee's regular rate for each workday that a meal period, rest break or recovery period is not provided. This has been interpreted to mean that an employer can be liable for **up to two hours** of extra pay for each workday in which an employee misses one or more meal periods and one or more rest breaks. The statute of limitations for premium pay for missed breaks is three years.

Break Time for Nursing Mothers

Employers that fail to provide a break for nursing mothers are subject to a **$100** fine for each day an employee is denied reasonable break time or adequate space to express milk.

Day of Rest

Violations of California's day of rest requirements constitute a misdemeanor.

Wage Payment Methods

Employers that violate California's wage payment methods law are guilty of a misdemeanor. Employers are also guilty of a misdemeanor if they:

- Have the ability to pay wages and willfully refuse to pay wages due and payable after a demand has been made; or
- Falsely deny the amount of wages due with intent to secure any discount upon such indebtedness or with intent to annoy, harass, oppress, hinder, delay or defraud the person to whom such indebtedness is due.

Wage and Final Wage Payments

Failure to comply with pay period requirements may result in a penalty of **$100 for each failure** to pay each employee for an initial violation and **$200 for each failure** to pay each employee for each subsequent violation (or any willful or intentional violation), plus 25% of the amount wrongfully withheld. Employees may also bring a civil action to enforce the penalty.

Employers that willfully fail to pay final wages in the time prescribed by law may be subject to a penalty of up to 30 days' wages. However, employees who secrete or absent themselves to avoid payment or refuse to receive the payment when fully tendered are not entitled to the penalty for the time during which they avoid payment. It is a misdemeanor to willfully refuse to pay wages due after a demand has been made.

Piece-rate Compensation

Employers that violate the requirements related to piece-rate compensation may be liable for penalties and damages.

Regular Payday Notice

Employers that fail to post a notice specifying regular paydays and the time and place of payment are guilty of a misdemeanor. In addition, failure to post a notice of regular paydays is prima facie evidence of a wage payment violation.

Wage Statements

Employees who suffer injury as a result of an employer's knowing and intentional failure to comply with California's wage statement requirements are entitled to recover the greater of all actual damages or **$50 for the initial pay period** in which a violation occurs and **$100 per employee for each violation** in a subsequent pay period, up to $4,000, as well as costs and reasonable attorney fees. Employees are deemed to suffer injury if employers fail to provide a wage statement. In addition, employees are deemed to suffer injury if employers fail to provide accurate and complete wage statement information required by law, and employees cannot promptly and easily determine the information from the wage statement. Employers are not subject to these penalties if they had a reasonable and good-faith belief that they complied with the state's wage statement requirements. Employers that violate the state's wage statement requirements may also be subject to a civil penalty in the amount of **$250 per employee per violation** for an initial citation and **$1,000 per employee per violation** for each subsequent citation. However, the DLSE has the discretion to waive this penalty for a first violation when that violation was due to a clerical error or inadvertent mistake. Employees may also bring civil actions for damages, penalties and injunctive relief. Prevailing employees may be entitled to attorney fees and costs.

Employers that fail to permit current or former employees to inspect or receive copies of their wage statements within the required time frame are subject to a **$750** civil penalty.

Withholdings and Deductions

Employers that fail to comply with California's wage deduction requirements are guilty of a misdemeanor, punishable by a **$100** penalty for an initial violation and **$200** for each further violation, plus 25% of the amount wrongfully withheld.

More Information

Contact Employco USA, Inc. for more information on work hours and wage payment laws in California.