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WAGE & HOUR LAWS IN CALIFORNIA

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B. Industry Wage Order - Wage Order 1-3, 5-13 are "industry" wage orders.

1. These wage orders cover ALL employees of companies that conduct business within a particular industry - even office or administrative staff.

2. If the business is comprised of several industries, more than one wage order may be applicable to the different portions of the integrated business.

3. If a business is not covered by a particular "industry" as defined in the wage order, then an occupational order may apply.

C. Occupation Wage Order - Wage Order 4, 14-17 are occupational wage orders.

1. These wage orders cover only particular jobs.

2. Wage Order 16 and 17 are new to California and cover industry that previously may have been exempted from the wage orders.

3. Businesses that are not subject to an "industry" wage order may be covered by more than one occupational wage order.

IV. Overtime Pay Requirements

A. "Workday" and "Workweek"

1. "Work day" is defined as "any consecutive 24-hour period commencing at the same time each calendar day."

2. A "workweek" is "any 7 consecutive days, starting with the same calendar day each week." A "workweek" is a "fixed and regularly recurring period of 168 hours, 7 consecutive 24-hour periods."

3. If the employer fails to designate a work day or workweek, the DLSE will assume that each work day starts at midnight and that each workweek starts at midnight on Sunday (Sunday being the first day of the workweek). Federal law follows the same format. Employers are free to set up their own work day and workweek, which could have ramifications for overtime. (9/80) example = 36 one week and 44 the next. Start the workweek at noon on Friday and no overtime will occur.)

4. "Shift" is defined as "designated hours of work by an employee, with a designated beginning time and quitting time." This has ramifications, particularly with respect to alternative workweeks.

B. Once the workweek is established, it cannot be changed unless the change is intended to be permanent and not designed to evade overtime requirements. Each workweek stands alone, and simply having a 2-week pay period does not allow the employer to average the 2 weeks' hours.

C. In California, overtime is provided to non-exempt employees in the following circumstances:

1. Over 8 hours of work in a work day (time and one-half) (private employers only).

2. Over 40 hours of work in a workweek (also consistent with federal law) (time and one-half) (public and private).

3. The first 8 hours of work on the 7th consecutive day of work in a workweek (time and one-half) (note that the employee must work all 7 days in the workweek: merely working 7 consecutive days, if the days cross over into another workweek, will not qualify the employee for the 7th day premium) (private employers only).

4. Over 12 hours of work in a work day (double time) (private employers only).

5. Over 8 hours of work on a 7th consecutive day in a workweek (double time) (private employers only).

6. Federal law only has a 40-hour week.

7. "Anti-pyramiding" rules provide that employers need not combine more than one rate of overtime compensation (example: employee works 42 hours in a week, including 10 hours on one day). The 41st and 42nd hour must be compensated, but they will be deemed equivalent to the 9th and 10th hour on the one day of overtime worked, so only one set of overtime need be paid.

D. Exempt Employees - Exempt employees may work overtime and not be compensated for it. Employers may designate the "regular workweek" for exempt employees as 40 hours, but doing so does not create an overtime obligation for hours worked in excess of 40 by exempt employees. Employers may provide a bonus or otherwise compensate exempt employees for overtime, but doing so on a regular basis or at a fixed hourly rate could jeopardize exempt status (but not automatically).

E. Piece rate - The total of the piece rate pay shall be divided by the number of hours worked to determine the overtime rate, if overtime is worked. Then half-time shall be paid for the overtime hours up to 12.

V. Overtime Exemptions

A. State Rules - The wage orders contain a number of exemptions for overtime. All wage orders contain some exemptions. Some exemptions are the same in all wage orders while other exemptions relate to specific industries or occupations.

B. Executive, Administrative or Professional Exemptions: Wage Orders 1 through 13 and 15 through 17 contain almost identical tests for determining these exemptions. These exemptions are summarized below:

1. Executive - To meet the criteria of the executive exemption, an employee must be employed in an executive capacity. This means:

   a. The duties and responsibilities must involve management of the enterprise or of a customarily recognized department or subdivision of the enterprise, and

   b. The employee must customarily and regularly direct the work of two (2) or more other employees, and

   c. The employee must have the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight, and

   d. Who customarily and regularly exercises discretion and independent judgment; and

   e. Must be primarily engaged in duties which meet the test of the exemption. The word "primarily" has been defined by the wage orders to mean more than one half of the employee's work time, and is directly and closely related to exempt work and work which is properly viewed as a means for carrying out exempt functions.

   f. Must be paid a "salary" equivalent to at least twice the minimum wage for full-time employment, i.e., $33,280 per year effective Jan. 1, 2008.

2. Administrative - A person employed in an administrative capacity means an employee whose duties and responsibilities involve either:

   a. The performance of office or non-manual work directly related to management policies or general business operations of the employer or his employer's customers, or

b. The performance of functions in the administration of a school system or educational establishment or institution, or of a department or subdivision thereof, in work directly related to the academic instruction or training carried on therein, and

c. Who customarily and regularly exercises discretion and independent judgment, and

d. Who regularly and directly assists a proprietor or an employee employed in a bonafide executive or administrative capacity, or

e. Who performs under only general supervision work along specialized or technical lines requiring special training, experience and knowledge, or

f. Who executes under only general supervision, special assignments and tasks, and

g. The employee must primarily be engaged in duties which meet the test of the exemption, and

h. They must be paid a salary, which is equal to at least twice the minimum wage for full-time employment.

3. Professional

a. An employee is exempt from overtime pursuant to this exemption when they meet the following requirements:

(1) They are licensed or certified by the State of California and primarily engaged in the practice of one of the following recognized professions: law, medicine, dentistry, optometry, architecture, engineering, teaching, or accounting, or

(2) Who is primarily engaged in an occupation commonly recognized as a learned or artistic profession.

(3) Who customarily and regularly exercises discretion and independent judgment in the performance of the duties described in paragraphs (1) and (2) above, and

(4) Who receives a salary of at least twice the minimum wage for full-time employment.

(5) For other than the licensed or certified professionals set forth in Section (1) above, employers are directed to the following regulations of the Department of Labor to interpret this provision. (29 CFR §§ 541.207, 541.301(a) - (d), 541.302, 541.306, 541.307, 541.308 and 541.310.)

4. Pharmacists and registered nurses are not considered exempt professional employees unless they meet the criteria for the executive or administrative exemption.

5. Advanced practice nurses may meet the test of the exemption if they are a:

a. Certified nurse or midwife for which certification is required under the Business and Professions Code;

b. Certified nurse or anesthesiologist who is certified pursuant to the Business and Professions Code;

c. Certified nurse practitioner who is certified pursuant to the Business and Professions Code.

6. Outside Sales Exemption: Persons employed as outside salespersons are exempt from minimum wage and overtime requirements under state law. The following are the requirements for the exemption to apply:

a. The employee must be 18 years of age or over, and

b. The employee must customarily and regularly work more than one-half of their working time away from the employer's place of business, and

c. The employee must during one-half of their working time away from the employer's place of business sell tangible or intangible items or obtain orders or contracts for products, services, or use of facilities.

d. The state exemption is different from the federal exemption because it has the requirement that the employee actually work one-half of their working time away from the employer's business selling. Thus, in order to determine whether a person is exempt as an outside salesperson, the Labor Commissioner looks to the actual hours spent on sales activity away from the employer's premises to determine if they are primarily an outside salesperson.

e. The outside sales exemption does not have a salary requirement. They can be paid by commission, by salary or by the hour.

7. Special exemptions

a. *Employees Covered by Collective Bargaining Agreements:* Employees covered under a collective bargaining agreement (CBA) are exempt from the overtime provisions of the wage orders, if the CBA expressly provides for premium pay for all overtime hours worked and the employees regular rate of pay is 30% more than minimum wage ($9.75 per hour).

b. *Ambulance Drivers & Attendants:* Ambulance drivers and attendants on 24-hour duty. This exemption is available for ambulance drivers who have agreed in writing to 24-hour shift schedules, in which case three (3) one (1) hour meal periods and one (1) eight (8) hour uninterrupted sleep period may be deducted from the total of 24-hour shifts. The exemption does not apply to employees on less than 24-hour shifts.

c. *Licensed Physicians:* Labor Code, Section 515.6 exempts licensed physicians or surgeons who receive an hourly rate of pay of at least $65.59 (eff. 1/1/08; previously $64.18, and orig. $55.00). The DLSE has recently advised that if a physician receives this hourly rate for all hours worked, they are exempt. Normally, professional employees must be paid a minimum salary that is not subject to deduction to qualify as exempt under state law. This exemption does not require this minimum salary.

d. *Truck Drivers:* Truck drivers whose hours of service are regulated by the United States Department of Transportation, Code of Federal Regulations, Title 49, Sections 395.1 to 395.13. Hours of service of drivers, or Title 13 of the California Code of Regulations, Subchapter 6.5, Section 1200 and following sections regulating hours of drivers are exempt from the overtime provisions of the wage order.

e. *Commissioned Employees:* The overtime provisions of the wage order are not applicable to employees whose earnings exceed one and one-half times the minimum wage if more than half of the employee's compensation represents commissions.

(1) This exemption is only applicable to employees covered under Wage Orders 4 and 7.

f. *Other Exemptions:*

(1) Employees who are the parents, spouses, or children of the employer.

(2) Student nurses in a school accredited by the California Board of Registered Nursing or by the Board of Vocational Nurse and Psychiatric Technician Examiners are exempt by provisions of Section 2789 or 2284 of the Business and Professions Code.

(3) Taxi drivers are exempt under Wage Order 9 from the overtime provisions.

(4) Full-time ride operators employed by a traveling carnival are exempt under Wage Order 10.

(5) Motion picture projectionists are exempt under Wage Order 10.

(6) Announcers, news editors, chief engineers of radio or television stations in a city with a population of 25,000 or less are exempt under Wage Order 11.

(7) Actors are exempt under Wage Orders 11 and 12.

(8) Irrigators and sheep herders are exempt under Wage Order 14.

(9) Employees engaged in commercial fishing activities are exempt under Wage Orders 10 and 14.

8. Computer Employees: In 2000, the legislature created an additional overtime exemption for certain employees in computer-related occupations. At that time, in order to be exempt the individual had to earn at least $41.00 per hour. The original law required that the hourly rate had to be increased every year in a percentage equivalent to the Consumer Price Index. Last year, the employee had to earn an hourly rate of at least $49.77 per hour. This resulted in an annualized salary of $103,521.60, difficult for most employers to pay. In a rare move, the legislature amended the law to get the compensation for the position in a more realistic pay range. Effective January 1, 2008, the required hourly rate for those classified under this exemption must earn an hourly rate of $36.00 per hour for all hours worked. The following also has to occur for the employee to be exempt:

a. The employee is primarily engaged in work that is intellectual or creative and that requires the exercise of discretion and independent judgment, and the employee is primarily engaged in duties that consist of one or more of the following:

(1) including consulting with users, to determine hardware, software, or system functional specifications.

(2) The design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to, user or system design specification.

(3) The documentation, testing, creation, or modification of computer programs related to the design of software or hardware for computer operating systems.

b. The employee is highly skilled and is proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming, and software engineering. A job title shall not be determinative of the applicability of this exemption.

VI. Minimum Wage Increase

A. ***California Minimum Wage (AB 1835)*** Increases California's minimum hourly wage and exempt salary standards for all California employers. This law increases the minimum wage to $8.00 per hour, effective on and after January 1, 2008. This is the second year of the two-step wage increase that brought the minimum up from $6.75 to $8.00 in a fifteen-month period.

B. In addition to the direct financial impact that the increase in minimum wage will have on business employing individuals at or near the minimum wage, the increase will have significant impact on other areas.

1. Most importantly, after January 1, 2008, employees who are classified as exempt employees must earn twice the minimum wage rate to satisfy the "salary test" of the exempt status analysis for the three major exemptions. This amounts to a minimum annual salary of $33,280, or $2,773.34 per month/$640 per week.

2. In certain industries, commissioned salespersons may be exempt from overtime if they receive at least one and one-half times the minimum wage for all hours worked and one-half of the total compensation is paid through commissions. Accordingly, commissioned salespeople must earn no less than $12.00 per hour in addition to satisfying the other terms and conditions of the exemption.

3. Some employers require that an employee maintain their own hand tools and equipment required by the job. Most employers do not know that if the employee does not earn twice the minimum wage, the employer must pay for the costs of the tools and equipment and cannot shift the burden to the employee. Thus, in order for an employee to be entitled to be reimbursed for the tools and equipment, the employee must earn at least $16.00 per hour after January 1st.

C. ***Federal Minimum Wage*** On May 25, President Bush signed a spending bill that amended the FLSA to increase the federal minimum wage in three steps: to $5.85 per hour effective July 24, 2007; to $6.55 per hour effective July 24, 2008; and to $7.25 per hour effective July 24, 2009.

D. Since most California employers are subject to the higher state minimum wage discussed above, the federal increase has little impact. However, since there is a poster that must be displayed advising all employees of the federal minimum wage, employers should have the new poster displayed in the work area.

VII. Recent Labor Commissioner Interpretations on Wage and Hour Issues

A. Meal Period Requirements for Employees Working Alone - There is no exception from the meal and rest period requirements for small employers, or for employees who work alone without other employees at a work site. However, there is a provision in the wage order that allows for an exemption from the rest period requirements. This exemption is only available upon a request to the DLSE for a waiver due to a hardship.

B. Kin Care Leave & PTO Policies - A paid time off program (or any like program by whatever name) is reviewed for compliance with Labor Code § 227.3. Any paid time off promised which is not directly tied to an event or chain of events is considered to be subject to the provisions of Labor Code § 227.3. In addition, any plan or program which an employer offers promising time off without designating the time off either as vacation or designating a specific event or chain of events to which the time off is tied, is considered to be a form of a sick leave policy unless time off in the event of illness is specifically excluded in the policy or program.

C. Post-termination Commissions - Commissions found to have been earned upon the completion of a sale are wages earned (vested) and must be paid within the pay period. Withholding payment of earned commissions until the end of a three-month period is a violation of the Labor Code. Any earned commissions may not be forfeited. Reasonable conditions may be placed on the vesting of commissions.

D. Exempt Status - The Labor Commissioner opined that an employee's exempt status (with some caveats) is not lost if the employer:

1. Keeps track of the employee's time;

2. Requests an employee to be in the office during specified office hours; and

3. Gives the employee guidance regarding when certain work should be done.

VIII. Meal and Rest Period Requirements for California Employers

A. Meal Periods

1. Employees are entitled to a minimum of a thirty (30) minute duty-free meal period for every five (5) hours worked.

2. If an employee's total work period is no more than six (6) hours, the employer and employee may mutually agree to waive the meal period requirement.

3. A second meal period is required if an employee works more than ten (10) hours per day unless the work period is less than twelve (12) hours, then the second meal period may be waived by mutual consent, if the first meal period has not been waived.

4. Meal periods are unpaid - if truly "duty-free."

   a. For a meal period to be "duty-free" the employer cannot require that an employee perform any duties while on a meal break.

   b. An "on-duty" meal period is only permitted when the nature of the work prevents an employee from being relieved of all duties and when the employer and employee have a written agreement.

   c. If an employer requires an employee to remain at the work site or facility during the meal period, the meal period must be compensated.

5. If an employer fails to provide a meal period, the employer must pay one (1) additional hour of pay at the employee's regular rate of pay.

6. This additional hour is not counted for purposes of overtime calculations.

B. Rest Periods

1. Employers are required to "permit and authorize" each employee to take at least a ten (10) minute **paid** break for each four (4) hours worked (or major fraction thereof).

2. If an employee works three and one-half (3 ½) hours or less, it is not required that a break be given to that employee.

3. Breaks should be given to employees as near to the middle of the four (4) hours segment of time as is practical.

4. If an employer fails to provide a rest period, the employer must pay one (1) additional hour of pay at the employee's regular rate.

5. This additional hour is not counted for purposes of overtime calculations.

C. *Recent Developments In Meal & Rest Periods Issues*

1. This area of Wage & Hour law has been one of the most attractive claims for plaintiffs' attorneys to file against unwary employers. The California Labor Code and the Industrial Welfare Commission Wage Orders are so confusing that a large majority of employers are not in 100% compliance. A minor technical violation can result in hundreds of thousands of dollars in potential exposure just for small to medium size employers.

2. Employees in California are entitled to a minimum of a thirty (30) minute duty-free meal if they work for a period of five (5) hours or more. If an employee's total work period is no more than six (6) hours, the employer and employee may mutually agree to waive the meal period requirement. A second meal period is required if an employee works more than ten (10) hours per day unless the work period is less than twelve (12) hours, then the second meal period may be waived by mutual consent, if the first meal period has not been waived.

3. The Labor Commissioner has been interpreting the above meal period rules to provide that an employer who does not **force** an employee to take a lunch, does not provide a lunch by the end of the fifth hour or does not provide a lunch for every five hour work period violates the law, even if the employee subsequently gets a meal period of thirty (30) minutes or more. The Labor Commissioner goes so far as to impose a penalty if the meal period started 1 minute after the end of the fifth hour – an unduly harsh approach. In addition, if an employee clocked in after taking a meal period that was recorded as 29 minutes or less on the time card, the employer violated the law and was required to pay a penalty of one hour of additional compensation. In essence, the Labor Commissioner's policy forces employers to have to babysit an employee. This one (1) additional hour of pay must be paid at the employee's regular rate of pay. This additional hour is not counted for purposes of overtime calculations.

4. A more lenient standard has been required by the California Labor Commissioner. Pursuant to this agency's interpretation, an employer is only required to "permit and authorize" each employee to take at least a ten (10) minute **paid** break for each four (4) hours worked (or major fraction thereof). If an employee works three and one-half (3 ½) hours or

less in a workday, it is not required that a break be given to that employee. Again, if an employer fails to provide a rest period, the employer must pay one (1) additional hour of pay at the employee's regular rate.

5. Due to the difficulty in controlling the exact time that an employee took a meal period, or that a rest period was actually observed by the employee, plaintiff's attorneys and aggressive Deputy Labor Commissioners have been seeking out massive penalties against innocent California employers. For attorneys, the incentive for filing a claim is the prospect of earning six-figure attorneys fees for minor violations on a massive scale. As an example, an employer with 50 employees who miss only one week's (5 days) worth of meal breaks can be faced with a claim for as $2500 (50 employees x 5 days x $10.00 hour). While this number is not significantly burdensome, the same employer may face bankruptcy, if the employer does not have the proper documentation to establish that the employer met its obligation for 52 weeks for three years. Now the exposure can jump to a staggering amount of $390,000, exclusive of attorneys fees which can range anywhere from $25,000 for a small claim, to over half a million dollars for a six to seven figure award.

6. Also, since the California Supreme Court decided the *Murphy v. Kenneth Cole* decision in early 2007, an employee who did not receive all of their compensation for meal or rest period violations is entitled to waiting time penalties in an amount equal to thirty (30) days' wages. As an form of example, an employee who failed to record on their time sheet that they took a lunch, and was not provided the "meal period" penalty before they were separated, could be entitled to $2,400 (assuming a $10.00 an hour rate) for a simple $10.00 mistake. Hardly a fair proposition. Some recent cases may stem the tide of frivolous class action litigation for technical violations of the meal and rest period provisions.

7. ***Brinker Restaurant Corporation v. Superior Court*:** In this unpublished decision, an appellate court decided that Chili's, Macaroni Grill, and Little Italy did not violate the state's meal period provisions when the employees were directed to take a meal period early in their shift. The early lunch break resulted in the employee working for approximately five to six hours more, contrary to the Labor Commissioner's interpretation of state law. The Court held that there is no specific requirement that a meal period be taken close to the fifth hour, or for every five (5) hours of work. Thus, employers do retain flexibility in scheduling lunches well before the fifth hour, as well as arguably after the fifth hour. What is left to be decided is whether an employer has to "ensure" that an employee takes a lunch at all. The Court hinted that an employee may only have to permit and authorize an employee to take a meal period, similar to the rest period rules.

8. ***White v. Starbucks:*** In this federal court decision issued in July, 2007 appears to answer the question left open by the *Brinker* decision. In this case, a judge in Northern California ruled that if the question of ensuring that a lunch was taken by an employer were to be decided by the California Supreme Court, the Supreme Court would rule that an employer only has to offer an employee a meal break and not forced to forego his lunch. This decision is binding in the Northern District of California, but only in federal court. Since most California laws are more favorable to employees, and employees' attorneys, most cases are filed in state court, following state precedent.

D. Lactation Accommodation

1. Every employer must provide a reasonable amount of break time to accommodate an employee desiring to express breast milk for the employee's infant child.

2. The break time shall, if possible, run concurrently with any break time already provided to the employee.

3. Break time for an employee that does not run concurrently with the rest time authorized for the employee need not be paid.

4. The employer shall 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.

5. An employer is not required to provide break time under this chapter if to do so would seriously disrupt the operations of the employer.

E. Rest & Meal Period Policies

1. Employers should prepare a policy that identifies that the employees have a right to take a rest and meal breaks required by law and that if the employee perceives that they are not being provided with the required breaks that they can complain.

2. Employers should also require that employees who sign time cards or time sheets sign a certification that they have been allowed the opportunity to take all required breaks during the work week and certify that they have taken such breaks.

F. Penalty for Failure to Provide Rest & Meal Periods

1. On April 16, 2007, the California Supreme Court issued one of its most important decisions affecting the cost of doing business in California for employers. In Murphy v. Kenneth Cole Productions, Inc., the Supreme Court determined that the "one additional hour of pay" for failing to provide a proper meal (30 minute minimum) or rest period (10 minute minimum) was a wage and not a penalty. The distinction is significant when one considers that the statute of limitations for a penalty is only one (1) year, while the limitation period for a wage is three (3) years. Thus, the potential exposure for past meal and rest period violations has just TRIPLED as a result of this decision.

2. As an additional unintended consequence, if an employee is not compensated for all missed meal and rest periods at the time of separation, there is potential exposure for "waiting time" penalties under Labor Code, Section 203.

3. An employer's best defense against rest-period claims is a well-drafted policy authorizing and permitting compliant rest breaks of at least 10 minutes every four hours worked. This policy should also be reiterated through the timekeeping system in place.

4. Managers must be trained not to interfere with employees' meal or rest periods. Employers also may wish to implement an acknowledgment on the time sheet under which the employee certifies that he or she was permitted to take all authorized meal and rest periods. Although not necessarily dispositive, the employee's certification may be evidence of compliance.

5. Finally, employers should undertake a wage-hour audit of their practices to identify potential vulnerabilities and take appropriate corrective action. Because such audits may be evidence in future wage-hour class actions, employers should take steps to ensure documentation created as part of the audit is protected by the attorney-client privilege or work-product doctrine.

6. This case should establish to all California employers that compliance with wage-and-hour laws requires a commitment from the entire organization - from top-level management to human resources professionals to front-line managers, foreman or leads. The time necessary to draft and implement proper procedures will be more than offset by reduced exposure.

7. In Ventura County, approximately four (4) class actions for meal and rest period violations have been filed since the Murphy decision was issued.

8. In addition, the DLSE has taken the position that any claims for meal and rest period violations may be reopened for the expanded period.

IX. Deductions from Employees' Pay

A. An employer can lawfully withhold amounts from an employee's wages in the following situations:

1. When required or empowered to do so by state or federal law;

2. When a deduction is expressly authorized in writing by the employee to cover insurance premiums, benefit plan contributions or other deductions not amounting to a rebate on the employee's wages; or

3. When a deduction to cover health, welfare or pension contributions is expressly authorized by a wage or collective bargaining agreement.

B. Limits On Lawful Deductions -

1. No deduction may be made from an employee's wages which would reduce the employee's earnings below the required minimum wage or overtime compensation.

2. Employers may not avoid minimum wage and overtime requirements by having the employee reimburse the employer in cash for the cost of a deductible item in lieu of deducting the cost from the employee's wages.

C. Wage Garnishments - although a lawful deduction, an employer cannot discharge an employee because a garnishment of wages has been threatened or if the employee's wages have been subjected to **ONE** garnishment for the payment of one judgment.

D. Cash Shortage/Breakage/Loss of Equipment - The ability of employers to deduct amounts from an employee's wages due to cash shortage, breakage, or loss of equipment is specifically regulated by the Industrial Welfare Commission Orders and limited by court decisions.

E. Deductions Upon Termination - Balloon payment on separation of employment to repay employee's debt to employer is an unlawful deduction even where the employee authorized such payment in writing

F. Deductions for Salary Advances In Error - It is unlawful to deduct from current payroll for past salary advances that were in error.

G. Other payroll deductions that are unlawful include:

1. Gratuities: An employer cannot collect, take, or receive any gratuity given or left for an employee, or deduct any amount from wages due an employee on account of a gratuity given or left for an employee.

2. Photographs: If an employer requires a photograph of an applicant or employee, the employer must pay the cost of the photograph.

3. Bond: If an employer requires a bond of an applicant or employee, the employer must pay the cost of the bond.

4. Uniforms: If an employer requires a uniform to be worn by an employee, the employer must pay the cost of the uniform.

5. Expenses: An employee is entitled to be reimbursed by his or her employer for expenses or losses incurred in direct consequence of the discharge of the employee's work duties.

6. Medical Examinations: An employer cannot require an employee or applicant to pay for a medical examination or deduct from an employee's wages the cost of a medical examination taken as a condition of employment or required by any state or federal law.

X. Uniforms

A. Employers are required to purchase any required uniform or tools for employees.

B. The FLSA does not allow uniforms, or other items which are considered to be primarily for the benefit or convenience of the employer, to be included as wages. Thus, an employer may not take credit for such items in meeting his/her obligations toward paying the minimum wage or overtime.

C. If an employer requires an employee to wear clothing and accessories of a distinctive design, or if an employer has a policy that an employee can only wear their label or product, then the California Labor Commissioner will take the position that such clothing is a uniform and the employer will be required to pay for the clothes and their maintenance.

SEMI-MONTHLY TIME SHEET FOR:

Pay Period _____, 20____ through _____, 20____

Soc. Sec. No.: _____

Full Name: _____

Address: _____

_____

Phone No.: _____

	REGULAR TIME (FILL IN TIME IN & OUT)				OVERTIME (FILL IN TIME IN & OUT)		BREAKS (CHECK OFF EACH)		TOTAL HOURS	
Date	**In**	**Out**	**In**	**Out**	**In**	**Out**	✓	✓	**Regular**	**O.T.**

OT Approval:

TOTALS		
I certify that I have provided complete and accurate information in completing this time sheet. I understand that it is against company policy to provide false or incomplete information on time sheets.	**Regular/OT Hours**	
	Vacation Hours	
	Holiday Hours	
	Sick Pay Hours	
	TOTAL	

_____ _____

Signature Date

MEAL PERIOD WAIVER (6 Hour Shift)

I recognize that in California, an employer may not employ an employee for a work period of more than five hours per day without providing the employee with an unpaid meal period of not less than thirty minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. I,_____, do hereby agree to waive the required meal period when my workday is no more than six (6) hours. I understand that I will receive my normal hourly wage rate during the workday. I also understand that this agreement is not applicable to situations where I work more than six (6) hours in a workday. I acknowledge that I may revoke this agreement at any time, in writing.

Dated:_____

_____
Employee

_____
Employer

MEAL PERIOD WAIVER (12 Hour Shift)

I recognize that in California, an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second unpaid meal period of not less than thirty minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of both the employer and employee but only if the first meal period was not waived.

I,_____, do hereby agree to waive the second required meal period when my workday is no more than twelve (12) hours. I understand that this agreement is not applicable to situations where I work more than twelve (12) hours in a workday. I acknowledge that I may revoke this agreement at any time, in writing.

Dated:_____

_____
Employee

_____
Employer

ON DUTY MEAL AGREEMENT

I,_____, do hereby agree that the nature of the work prevents me from being relieved of all duty during my shift to take a thirty (30) minute unpaid meal period. I agree to waive the required meal period and agree to work during the meal period. I understand that I will receive my normal hourly wage rate during the meal period. I understand that I may revoke this agreement at any time, in writing.

Dated:_____

_____
Employee

_____
Employer

MAKE-UP TIME POLICY

The Company recognizes that there may be some occasions when an employee requests time off for personal obligations and such time is granted. Upon approval by the Company, an employee may make up this missed time early or later in the same workweek that the time was missed.

In order to be eligible for make up time, the employee must make a written request to make up time missed on another day in the same workweek. The written request must be made and approved before the employee makes up time missed. Employees are not allowed to work more than eleven (11) hours in any workday or more than forty (40) straight time hours in the same workweek the employee makes up time unless approval is obtained in writing from your supervisor. Employees are not entitled to overtime compensation for the hours of work that are made up unless the employee works more than eleven (11) hours of work in any workday that the time is made up or forty (40) straight time hours of work in the same workweek that the time is made up.

Time may be made up only if the employee's written request is approved in advance by the Company or Director of Human Resources. The Company does not encourage employees to miss work for personal obligations and then make up that work at an earlier or later date, nor will it solicit any employee to make up or request to make up work time that is lost as a result of an absence for personal obligations. Employees must make such written request of their own volition. In all cases, the Company has the discretion to grant or deny such a request.

MAKE-UP TIME REQUEST

Due to personal obligations it is necessary that I, _____, request from [COMPANY NAME] the opportunity to make-up _____ hours of work on _____ at straight time pay for the time that will be or was missed on _____. I understand that [COMPANY NAME]can grant or deny this request. I further understand that I can not work more than eleven (11) hours of work in any workday where I am making up time or more than forty (40) straight time hours of work in the same workweek that I plan to make-up time. I further understand that by law I am not entitled to overtime compensation for the hours of work that I make-up unless I work more than eleven (11) hours of work in any workday where time is made up or forty (40) straight time hours of work in the same workweek that time is made up.

I declare that I have made this request of my own volition and that [COMPANY NAME], or any of its employees or agents, has not encouraged or solicited me to request this personal time off and make-up the missed time.

DATED: _____

_____
Employee's Signature

_____
Employee's Name

Request:

Approved _____ Denied _____

DATED: _____

_____
Supervisor's Signature

_____
Supervisor's Name

46 HOURS WORKED.

46.1 Under the basic definition set out in all of the IWC Orders, "Hours Worked" means the time during which an employee is subject to the control of any employer, and includes all of the time the employee is suffered or permitted to work, whether or not required to do so. (e.g., Order 1-2000, § 2.(H).) Where it is determined that the employee's time is subject to the control of the employer, as in the contexts delineated below, the time constitutes "hours worked".

46.1.1 **The DLSE Interpretation Of Hours Worked** which provides that: "[U]nder California law it is only necessary that the worker be subject to the 'control of the employer' in order to be entitled to compensation" was found by the California Supreme Court to "be consistent with [the Court's] independent analysis of hours worked." *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 583 [citing to DLSE O.L. 1993.03.31].

46.2 **Travel Time**: If an employee is required to report to the employer's business premises before proceeding to an off-premises work site, all of the time from the moment of reporting until the employee is released to proceed directly to his or her home is time subject to the control of the employer, and constitutes hours worked. (O.L. 1994.02.16; *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575.

46.3 **Extended Travel Time**. The California rule requires wages to be paid for all hours the employee is engaged in travel. The state law definition of "hours worked" does not distinguish between hours worked during "normal" working hours or hours worked outside "normal" working hours, nor does it distinguish between hours worked in connection with an overnight out-of-town assignment or hours worked in connection with a one-day out-of-town assignment. These distinctions, and the treatment of some of this time as non-compensable, are purely creatures of the federal regulations, and are inconsistent with state law. (O.L. 2002.02.21).

46.3.1 Under state law, if an employer requires an employee to attend an out-of-town business meeting, training session, or any other event, the employer cannot disclaim an obligation to pay for the employee's time in getting to and from the location of that event. Time spent driving, or as a passenger on an airplane, train, bus, taxi cab or car, or other mode of transport, in traveling to and from this out-of-town event, and time spent waiting to purchase a ticket, check baggage, or get on board, is, under such circumstances, time spent carrying out the employer's directives, and thus, can only be characterized as time in which the employee is subject to the employer's control. Such compelled travel time therefore constitutes compensable "hours worked." On the other hand, time spent taking a break from travel in order to eat a meal, sleep, or engage in purely personal pursuits not connected with traveling or making necessary travel connections (such as, for example, spending an extra day in a city before the start or following the conclusion of a conference in order to sightsee), is not compensable. If the employee's travel from his home to the airport is the same or substantially the same as the distance (and time) between his home and usual place of reporting for work, the

travel time would not begin until the employee reached the airport. The employee must be paid for all hours spent between the time he arrives at the airport and the time he arrives at his hotel. No further "travel" hours are incurred after the employee reaches his hotel and is then free to choose the place where he will go. (O.L. 2002.02.21)

46.3.2 **Different Pay Rate For Travel Time Permissible**. The employer may establish a different pay scale for travel time (not less than minimum wage) as opposed to the regular work time rate. The employee must be informed of the different pay rate for travel before the travel beings. For purposes of determining the regular rate of pay for overtime work under the circumstances where a different rate is applied to travel time, the State of California adopts the "weighted average" method. (See Section 49.2.5 of this Manual; see also O.L. 2002.02.21).

46.4 **Uninterrupted Sleep Time**. DLSE enforcement policy has historically allowed eight hours to be deducted if an employee is scheduled for 24-hour work shifts and is required to remain on the employer's premises during the work shift and, in fact, receives eight hours of uninterrupted sleep. (But see specific exemption for ambulance drivers at Sections 47.3.1., 50.9.8 and 50.9.8.2 of this Manual). In addressing this issue, the Fourth District Court of Appeal in the case of *Aguilar v. Association of Retarded Citizens* (1991) 234 Cal.App.3d 21, upheld the DLSE policy:

> First, the IWC Wage Order clearly distinguishes between employees who work 24-hour shifts and those who work less than 24-hour shifts. The Wage Order expressly provides an exemption from compensation for sleep time only for employees who work 24-hour shifts. The record is clear the employees here do not work 24-hour shifts.
>
> Second, we do not find ARC's characterization of the shifts as being 24-hour shifts with the employees being 'temporar[ily] release[d]...to attend to personal interests' to be persuasive . ARC's characterization would abrogate the distinction between employees working 24-hour shifts and those working less than 24-hour shifts. Under ARC's analysis, all employees in the work force could be characterized as working 24-hour shifts, with the only variation being the length of the 'temporary release...to attend to personal interests.' An accountant who worked 8 hours a day could be viewed as working a 24-hour shift with a 16-hour temporary release period.
>
> ARC's interpretation requires a non-commonsense interpretation of the words; if IWC had intended the interpretation that ARC urges – that employers do not have to compensate employees working 17-hour shifts for sleep time – IWC easily could have so provided. They, however, did not. We conclude the employees here are entitled to compensation for all the hours worked; ARC is not entitled to deduct those hours when it allows the employees to sleep.

46.5 **Meal Periods**: Where an employee – although relieved of all duties – is not free to leave the work place during the time allotted to such employee for eating a meal, the meal period is on duty time subject to the control of the employer, and constitutes hours worked. *Bono Enterprises v. Labor Commissioner* (1995) 32 Cal.App.4th 968.

46.6 **Caveat**: Orders 4 and 5 contain a "Health Care Industry" exception which provides that "hours worked" is to be interpreted in accordance with the provisions of the Fair Labor Standards Act. This means that for *the employees engaged in* the "health care industry" the provisions of 29 CFR § 785.19(b) would apply and the *Bono Enterprises* case would have no applicability.

C

CODE OF FEDERAL REGULATIONS
TITLE 29--LABOR
SUBTITLE B--REGULATIONS RELATING TO LABOR
CHAPTER V--WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR
SUBCHAPTER B--STATEMENTS OF GENERAL POLICY OR INTERPRETATION NOT DIRECTLY RELATED TO REGULATIONS
PART 785--HOURS WORKED
SUBPART C--APPLICATION OF PRINCIPLES
SLEEPING TIME AND CERTAIN OTHER ACTIVITIES

Current through February 9, 2005; 70 FR 6973

§ 785.22 Duty of 24 hours or more.

(a) General. Where an employee is required to be on duty for 24 hours or more, the employer and the employee may agree to exclude bona fide meal periods and a bona fide regularly scheduled sleeping period of not more than 8 hours from hours worked, provided adequate sleeping facilities are furnished by the employer and the employee can usually enjoy an uninterrupted night's sleep. If sleeping period is of more than 8 hours, only 8 hours will be credited. Where no expressed or implied agreement to the contrary is present, the 8 hours of sleeping time and lunch periods constitute hours worked. (Armour v. Wantock, 323 U.S. 126 (1944); Skidmore v. Swift, 323 U.S. 134 (1944); General Electric Co. v. Porter, 208 F. 2d 805 (C.A. 9, 1953), cert. denied, 347 U.S. 951, 975 (1954); Bowers v. Remington Rand, 64 F. Supp. 620 (S.D. Ill, 1946), aff'd 159 F. 2d 114 (C.A. 7, 1946) cert. denied 330 U.S. 843 (1947); Bell v. Porter, 159 F. 2d 117 (C.A. 7, 1946) cert. denied 330 U.S. 813 (1947); Bridgeman v. Ford, Bacon & Davis, 161 F. 2d 962 (C.A. 8, 1947); Rokey v. Day & Zimmerman, 157 F. 2d 736 (C.A. 8, 1946); McLaughlin v. Todd & Brown, Inc., 7 W.H. Cases 1014; 15 Labor Cases para. 64,606 (N.D. Ind. 1948); Campbell v. Jones & Laughlin, 70 F. Supp. 996 (W.D. Pa. 1947).)

(b) Interruptions of sleep. If the sleeping period is interrupted by a call to duty, the interruption must be counted as hours worked. If the period is interrupted to such an extent that the employee cannot get a reasonable night's sleep, the entire period must be counted. For enforcement purposes, the Divisions have adopted the rule that if the employee cannot get at least 5 hours' sleep during the scheduled period the entire time is working time. (See Eustice v. Federal Cartridge Corp., 66 F. Supp. 55 (D. Minn. 1946).)

<General Materials (GM) - References, Annotations, or Tables>

29 C. F. R. § 785.22

29 CFR § 785.22

END OF DOCUMENT

C

CODE OF FEDERAL REGULATIONS
TITLE 29--LABOR
SUBTITLE B--REGULATIONS RELATING TO LABOR
CHAPTER V--WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR
SUBCHAPTER B--STATEMENTS OF GENERAL POLICY OR INTERPRETATION NOT DIRECTLY RELATED TO REGULATIONS
PART 785--HOURS WORKED
SUBPART C--APPLICATION OF PRINCIPLES
SLEEPING TIME AND CERTAIN OTHER ACTIVITIES
Current through February 9, 2005; 70 FR 6973

§ 785.23 Employees residing on employer's premises or working at home.

An employee who resides on his employer's premises on a permanent basis or for extended periods of time is not considered as working all the time he is on the premises. Ordinarily, he may engage in normal private pursuits and thus have enough time for eating, sleeping, entertaining, and other periods of complete freedom from all duties when he may leave the premises for purposes of his own. It is, of course, difficult to determine the exact hours worked under these circumstances and any reasonable agreement of the parties which takes into consideration all of the pertinent facts will be accepted. This rule would apply, for example, to the pumper of a stripper well who resides on the premises of his employer and also to a telephone operator who has the switchboard in her own home. (Skelly Oil Co. v. Jackson, 194 Okla. 183, 148 P. 2d 182 (Okla. Sup. Ct. 1944; Thompson v. Loring Oil Co., 50 F. Supp. 213 (W.D. La. 1943).)

<General Materials (GM) - References, Annotations, or Tables>

29 C. F. R. § 785.23

29 CFR § 785.23

END OF DOCUMENT

● Please Post With This Side Showing ●

OFFICIAL NOTICE

Effective July 1, 2003 as amended

Sections 4(A) and 10(C) amended and republished by the Department of Industrial Relations, effective January 1, 2007, pursuant to AB 1835, Chapter 230, Statutes of 2006

INDUSTRIAL WELFARE COMMISSION
ORDER NO. 5-2001
REGULATING
WAGES, HOURS AND WORKING CONDITIONS IN THE

PUBLIC HOUSEKEEPING INDUSTRY

TAKE NOTICE: To employers and representatives of persons working in industries and occupations in the State of California: The Department of Industrial Relations amends and republishes the minimum wage and meals and lodging credits in the Industrial Welfare Commission's Orders as a result of legislation enacted (AB 1835, Ch. 230, Stats of 2006, adding sections 1182.12 and 1182.13 to the California Labor Code.) The amendments and republishing make no other changes to the IWC's Orders.

1. APPLICABILITY OF ORDER

This order shall apply to all persons employed in the public housekeeping industry whether paid on a time, piece rate, commission, or other basis, except that:

(A) Except as provided in Sections 1,2,4,10, and 20, the provisions of this order shall not apply to student nurses in a school accredited by the California Board of Registered Nursing or by the Board of Vocational Nurse and Psychiatric Technician Examiners are exempted by the provisions of sections 2789 or 2884 of the Business and Professions Code;

(B) Provisions of sections 3 through 12 shall not apply to persons employed in administrative, executive, or professional capacities. The following requirements shall apply in determining whether an employee's duties meet the test to qualify for an exemption to those sections:

(1) Executive Exemption. A person employed in an executive capacity means any employee:

(a) Whose duties and responsibilities involve the management of the enterprise in which he or she is employed or of a customarily recognized department or subdivision thereof; and

(b) Who customarily and regularly directs the work of two or more other employees therein; and

(c) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; and

(d) Who customarily and regularly exercises discretion and independent judgment; and

(e) Who is primarily engaged in duties which meet the test of the exemption. The activities constituting exempt work and non-exempt work shall be construed in the same manner as such items are construed in the following regulations under the Fair Labor Standards Act effective as of the date of this order: 29 C.F.R. Sections 541.102, 541.104-111, and 541.115-116. Exempt work shall include, for example, all work that is directly and closely related to exempt work and work which is properly viewed as a means for carrying out exempt functions. The work actually performed by the employee during the course of the work week must, first and foremost, be examined and the amount of time the employee spends on such work, together with the employer's realistic expectations and the realistic requirements of the job, shall be considered in determining whether the employee satisfies this requirement.

(f) Such an employee must also earn a monthly salary equivalent to no less than two (2) times the state minimum wage for full-time employment. Full-time employment is defined in Labor Code Section 515(c) as 40 hours per week.

(2) Administrative Exemption. A person employed in an administrative capacity means any employee:

(a) Whose duties and responsibilities involve either:

(i) The performance of office or non-manual work directly related to management policies or general business operations of his employer or his employer's customers; or

(ii) The performance of functions in the administration of a school system, or educational establishment or institution, or of a department of subdivision thereof, in work directly related to the academic instruction or training carried on therein; and

(b) Who customarily and regularly exercises discretion and independent judgment; and

(c) Who regularly and directly assists a proprietor, or an employee employed in a bona fide executive or administrative capacity (as such terms are defined for purposes of this section); or

(d) Who performs under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge; or

(e) Who executes under only general supervision special assignments and tasks; and

(f) Who is primarily engaged in duties which meet the test of the exemption. The activities constituting exempt work and non-exempt work shall be construed in the same manner as such terms are construed in the following regulations under the Fair Labor Standards Act effective as of the date of this order: 29 C.F.R. Sections 541.201-205, 541.207-208, 541.210, and 541.215. Exempt work shall include, for example, all work that is directly and closely related to exempt work and work which is properly viewed as a means for carrying out exempt functions. The work actually performed by the employee during the course of the work week must, first and foremost, be examined and the amount of time the employee spends on such work, together with the employer's realistic expectations and the realistic requirements of the job, shall be considered in determining whether the employee satisfies this requirement.

(g) Such employee must also earn a monthly salary equivalent to no less than two (2) times the state minimum wage for full-time employment. Full-time employment is defined in Labor Code Section 515(c) as 40 hours per week.

(3) Professional Exemption. A person employed in a professional capacity means any employee who meets *all* of the following requirements:

(a) Who is licensed or certified by the State of California and is primarily engaged in the practice of one of the following recognized professions: law, medicine, dentistry, optometry, architecture, engineering, teaching, or accounting; or

(b) Who is primarily engaged in an occupation commonly recognized as a learned or artistic profession. For the purposes of this subsection, "learned or artistic profession" means an employee who is primarily engaged in the performance of:

(i) Work requiring knowledge of an advanced type in a field or science or learning customarily acquired by a prolonged

course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes, or work that is an essential part of or necessarily incident to any of the above work; or

(ii) Work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee or work that is an essential part of or necessarily incident to any of the above work; and

(iii) Whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time.

(c) Who customarily and regularly exercises discretion and independent judgment in the performance of duties set forth in paragraph (a).

(d) Who earns a monthly salary equivalent to no less than two (2) times the state minimum wage for full-time employment. Full-time employment is defined in Labor Code Section 515 (c) as 40 hours per week.

(e) Subparagraph (b) above is intended to be construed in accordance with the following provisions of federal law as they existed as of the date of this Wage Order: 29 C.F.R. Sections 541.207, 541.301(a)-(d), 541.302, 541.306, 541.307, 541.308, and 541.310.

(f) Notwithstanding the provisions of this subparagraph, pharmacists employed to engage in the practice of pharmacy, and registered nurses employed to engage in the practice of nursing, shall not be considered exempt professional employees, nor shall they be considered exempt from coverage for the purposes of this subsection unless they individually meet the criteria established for exemption as executive or administrative employees.

(g) Subparagraph (f) above, shall not apply to the following advanced practice nurses:

(i) Certified nurse midwives who are primarily engaged in performing duties for which certification is required pursuant to Article 2.5 (commencing with Section 2746) of Chapter 6 of Division 2 of the Business and Professions Code.

(ii) Certified nurse anesthetists who are primarily engaged in performing duties for which certification is required pursuant to Article 7 (commencing with Section 2825) of Chapter 6 of Division 2 of the Business and Professions Code.

(iii) Certified nurse practitioners who are primarily engaged in performing duties for which certification is required pursuant to Article 8 (commencing with Section 2834) of Chapter 6 of Division 2 of the Business and Professions Code.

(iv) Nothing in this subparagraph shall exempt the occupations set forth in clauses (i), (ii), and (iii) from meeting the requirements of subsection 1(B)(3)(a)-(d), above.

(h) Except as provided in subparagraph (i), an employee in the computer software field who is paid on an hourly basis shall be exempt, if *all* of the following apply:

(i) The employee is primarily engaged in work that is intellectual or creative and requires the exercise of discretion and independent judgment.

(ii) The employee is primarily engaged in duties that consist of one or more of the following:

—The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications.

—The design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to, user or system design specifications.

—The documentation, testing, creation, or modification of computer programs related to the design of software or hardware for computer operating systems.

(iii) The employee is highly skilled and is proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming, and software engineering. A job title shall not be determinative of the applicability of this exemption.

(iv) The employee's hourly rate of pay is not less than forty-one dollars ($41.00). The Division of Labor Statistics and Research shall adjust this pay rate on October 1 of each year to be effective on January 1 of the following year by an amount equal to the percentage increase in the California Consumer Price Index for Urban Wage Earners and Clerical Workers.*

(i) The exemption provided in subparagraph (h) does not apply to an employee if *any* of the following apply:

(i) The employee is a trainee or employee in an entry-level position who is learning to become proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming, and software engineering.

(ii) The employee is in a computer-related occupation but has not attained the level of skill and expertise necessary to work independently and without close supervision.

(iii) The employee is engaged in the operation of computers or in the manufacture, repair, or maintenance of computer hardware and related equipment.

(iv) The employee is an engineer, drafter, machinist, or other professional whose work is highly dependent upon or facilitated by the use of computers and computer software programs and who is skilled in computer-aided design software, including CAD/CAM, but who is not in a computer systems analysis or programming occupation.

(v) The employee is a writer engaged in writing material, including box labels, product descriptions, documentation, promotional material, setup and installation instructions, and other similar written information, either for print or for onscreen media or who writes or provides content material intended to be read by customers, subscribers, or visitors to computer-related media such as the World Wide Web or CD-ROMs.

(vi) The employee is engaged in *any* of the activities set forth in subparagraph (h) for the purpose of creating imagery for effects used in the motion picture, television, or theatrical industry.

(C) Except as provided in Sections 1, 2, 4, 10, and 20, the provisions of this order shall not apply to any employees directly employed by the State or any political subdivision thereof, including any city, county, or special district.

(D) The provisions of this order shall not apply to outside salespersons.

(E) Provisions of this order shall not apply to any individual who is the parent, spouse, child, or legally adopted child of the employer.

(F) The provisions of this order shall not apply to any individual participating in a national service program, such as AmeriCorps, carried out using assistance provided under Section 12571 of Title 42 of the United States Code. (See Stats. 2000, ch. 365, amending Labor Code § 1171.)

2. DEFINITIONS

(A) An "alternative workweek schedule" means any regularly scheduled workweek requiring an employee to work more than eight (8) hours in a 24-hour period.

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*Pursuant to Labor Code section 515.5, subdivision (a)(4), the Division of Labor Statistics and Research, Department of Industrial Relations, has adjusted the minimum hourly rate of pay specified in this subdivision to be $49.77, effective January 1, 2007. This hourly rate of pay is adjusted on October 1 of each year to be effective on January 1, of the following year, and may be obtained at www.dir.ca.gov/IWC or by mail from the Department of Industrial Relations.

(B) "Commission" means the Industrial Welfare Commission of the State of California.
(C) "Division" means the Division of Labor Standards Enforcement of the State of California.
(D) "Emergency" means an unpredictable or unavoidable occurrence at unscheduled intervals requiring immediate action.
(E) "Employ" means to engage, suffer, or permit to work.
(F) "Employee" means any person employed by an employer, and includes any lessee who is charged rent, or who pays rent for a chair, booth, or space and
(1) who does not use his or her own funds to purchase requisite supplies, and
(2) who does not maintain an appointment book separate and distinct from that of the establishment in which the space is located, and
(3) who does not have a business license where applicable.
(G) "Employees in the Healthcare Industry" means any of the following:
(1) Employees in the healthcare industry providing patient care; or
(2) Employees in the healthcare industry working in a clinical or medical department, including pharmacists dispensing prescriptions in any practice setting; or
(3) Employees in the healthcare industry working primarily or regularly as a member of a patient care delivery team
(4) Licensed veterinarians, registered veterinary technicians and unregistered animal health technicians providing patient care.
(H) "Employer" means any person as defined in Section 18 of the Labor Code, who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person.
(I) "Healthcare Emergency" consists of an unpredictable or unavoidable occurrence at unscheduled intervals relating to healthcare delivery, requiring immediate action.
(J) "Healthcare Industry" is defined as hospitals, skilled nursing facilities, intermediate care and residential care facilities, convalescent care institutions, home health agencies, clinics operating twenty-four (24) hours per day, and clinics performing surgery, urgent care, radiology, anesthesiology, pathology, neurology or dialysis.
(K) "Hours worked" means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so, and in the case of an employee who is required to reside on the employment premises, that time spent carrying out assigned duties shall be counted as hours worked. Within the health care industry, the term "hours worked" means the time during which an employee is suffered or permitted to work for the employer, whether or not required to do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act.
(L) "Minor" means, for the purpose of this Order, any person under the age of 18 years.
(M) "Outside Salesperson" means any person, 18 years of age or over, who customarily and regularly works more than half the working time away from the employer's place of business selling tangible or intangible items or obtaining orders or contracts for products, services or use of facilities.
(N) "Personal attendant" includes baby sitters and means any person employed by a non-profit organization covered by this order to supervise, feed or dress a child or person who by reason of advanced age, physical disability or mental deficiency needs supervision. The status of "personal attendant" shall apply when no significant amount of work other than the foregoing is required.
(O) "Primarily" as used in Section 1, Applicability, means more than one-half the employee's work time.
(P) "Public Housekeeping Industry" means any industry, business, or establishment which provides meals, housing, or maintenance services whether operated as a primary business or when incidental to other operations in an establishment not covered by an industry order of the Commission, and includes, but is not limited to the following:
(1) Restaurants, night clubs, taverns, bars, cocktail lounges, lunch counters, cafeterias, boarding houses, clubs, and all similar establishments where food in either solid or liquid form is prepared and served to be consumed on the premises;
(2) Catering, banquet, box lunch service, and similar establishments which prepare food for consumption on or off the premises;
(3) Hotels, motels, apartment houses, rooming houses, camps, clubs, trailer parks, office or loft buildings, and similar establishments offering rental of living, business, or commercial quarters;
(4) Hospitals, sanitariums, rest homes, child nurseries, child care institutions, homes for the aged, and similar establishments offering board or lodging in addition to medical, surgical, nursing, convalescent, aged, or child care;
(5) Private schools, colleges, or universities, and similar establishments which provide board or lodging in addition to educational facilities;
(6) Establishments contracting for development, maintenance or cleaning of grounds; maintenance or cleaning of facilities and/or quarters of commercial units and living units; and
(7) Establishments providing veterinary or other animal care services.
(Q) "Shift" means designated hours of work by an employee, with a designated beginning time and quitting time.
(R) "Split shift" means a work schedule which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods.
(S) "Teaching" means, for the purpose of section 1 of this Order, the profession of teaching under a certificate from the Commission for Teacher Preparation and Licensing or teaching in an accredited college or university.
(T) "Wages" include all amounts of 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.
(U) "Workday" and "day" mean any consecutive 24-hour period beginning at the same time each calendar day.
(V) "Workweek" and "week" mean any seven (7) consecutive days, starting with the same calendar day each week. "Workweek" is a fixed and regularly recurring period of 168 hours, seven (7) consecutive 24-hour periods.

3. HOURS AND DAYS OF WORK

(A) Daily Overtime - General Provisions
(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:
(a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and
(b) 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 (8) hours on the seventh (7th) consecutive day of work in a workweek.
(c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.
(2) Employees with direct responsibility for children who are under 18 years of age or who are not emancipated from the foster care

system and who, in either case, are receiving 24 hour residential care, may, without violating any provision of this section, be compensated as follows:

(a) An employee who works in excess of 40 hours in a workweek shall be compensated at one and one-half (1½) times the employee's regular rate of pay for all hours over 40 hours in the workweek.

(b) An employee shall be compensated at two (2) times the employee's regular rate of pay for all hours in excess of 48 hours in the workweek.

(c) An employee shall be compensated at two (2) times the employee's regular rate of pay for all hours in excess of 16 in a workday.

(d) No employee shall work more than 24 consecutive hours until said employee receives not less than eight (8) consecutive hours off-duty immediately following the 24 consecutive hours of work. Time spent sleeping shall not be included as hours worked.

(e) Section (A)(2) above shall apply to employees of 24 hour non-medical out of home licensed residential facilities of 15 beds or fewer for the developmentally disabled, elderly, and mentally ill adults.

This section, (3)(A)(2)(e), shall sunset on July 1, 2005.

(B) Alternative Workweek Schedules

(1) No employer shall be deemed to have violated the daily overtime provisions by instituting, pursuant to the election procedures set forth in this wage order, a regularly scheduled alternative workweek schedule of not more than ten (10) hours per day within a 40 hour workweek without the payment of an overtime rate of compensation. All work performed in any workday beyond the schedule established by the agreement up to twelve (12) hours a day or beyond 40 hours per week shall be paid at one and one-half (1½) times the employee's regular rate of pay. All work performed in excess of twelve (12) hours per day and any work in excess of eight (8) hours on those days worked beyond the regularly scheduled number of workdays established by the alternative workweek agreement shall be paid at double the employee's regular rate of pay. Any alternative workweek agreement adopted pursuant to this section shall provide for not less than four (4) hours of work in any shift. Nothing in this section shall prohibit an employer, at the request of the employee, to substitute one day of work for another day of the same length in the shift provided by the alternative workweek agreement on an occasional basis to meet the personal needs of the employee without the payment of overtime. No hours paid at either one and one-half (1½) or double the regular rate of pay shall be included in determining when 40 hours have been worked for the purpose of computing overtime compensation.

(2) If an employer, whose employees have adopted an alternative workweek agreement permitted by this order requires an employee to work fewer hours than those that are regularly scheduled by the agreement, the employer shall pay the employee overtime compensation at a rate of one and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours, and double the employee's regular rate of pay for all hours worked in excess of 12 hours for the day the employee is required to work the reduced hours.

(3) An employer shall not reduce an employee's regular rate of hourly pay as a result of the adoption, repeal or nullification of an alternative workweek schedule.

(4) An employer shall explore any available reasonable alternative means of accommodating the religious belief or observance of an affected employee that conflicts with an adopted alternative workweek schedule, in the manner provided by subdivision (j) of Section 12940 of the Government Code.

(5) An employer shall make a reasonable effort to find a work schedule not to exceed eight (8) hours in a workday, in order to accommodate any affected employee who was eligible to vote in an election authorized by this Section and who is unable to work the alternative workweek schedule established as the result of that election.

(6) An employer shall be permitted, but not required, to provide a work schedule not to exceed eight (8) hours in a workday to accommodate any employee who is hired after the date of the election and who is unable to work the alternative workweek schedule established by the election.

(7) Arrangements adopted in a secret ballot election held pursuant to this order prior to 1998, or under the rules in effect prior to 1998, and before the performance of the work, shall remain valid after July 1, 2000 provided that the results of the election are reported by the employer to the Division of Labor Statistics and Research by January 1, 2001, in accordance with the requirements of Section C below (Election Procedures). If an employee was voluntarily working an alternative workweek schedule of not more than ten (10) hours a day as of July 1, 1999, that alternative workweek was based on an individual agreement made after January 1, 1998 between the employee and employer, and the employee submitted, and the employer approved, a written request on or before May 30, 2000 to continue the agreement, the employee may continue to work that alternative workweek schedule without payment of an overtime rate of compensation for the hours provided in the agreement. An employee may revoke his or her voluntary authorization to continue such a schedule with 30 days written notice to the employer. New arrangements can only be entered into pursuant to the provisions of this section. Notwithstanding the foregoing, if a health care industry employer implemented a reduced rate for 12 hour shift employees in the last quarter of 1999 and desires to re-implement a flexible work arrangement that includes 12 hour shifts at straight time for the same work unit, the employer must pay a base rate to each affected employee in the work unit that is no less than that employee's base rate in 1999 immediately prior to the date of the rate reduction.

(8) Notwithstanding the above provisions regarding alternative workweek schedules, no employer of employees in the healthcare industry shall be deemed to have violated the daily overtime provisions by instituting, pursuant to the election procedures set forth in this wage order a regularly scheduled alternative workweek schedule that includes work days exceeding ten (10) hours but not more than 12 hours within a 40-hour workweek without the payment of overtime compensation, provided that:

(a) An employee who works beyond 12 hours in a workday shall be compensated at double the employee's regular rate of pay for all hours in excess of (12);

(b) An employee who works in excess of 40 hours in a workweek shall be compensated at one and one-half (1½) times the employee's regular rate of pay for all hours over 40 hours in the workweek;

(c) Any alternative workweek agreement adopted pursuant to this section shall provide for not less than four (4) hours of work in any shift.

(d) The same overtime standards shall apply to employees who are temporarily assigned to a work unit covered by this subsection;

(e) Any employer who instituted an alternative workweek schedule pursuant to this subsection shall make a reasonable effort to find another work assignment for any employee who participated in a valid election prior to 1998 pursuant to the provisions of Wage Orders 4 and 5 and who is unable to work the alternative workweek schedule established.

(f) An employer engaged in the operation of a licensed hospital or in providing personnel for the operation of a licensed hospital who institutes, pursuant to a valid order of the Commission, a regularly scheduled alternative workweek that includes no more than three (3) 12-hour workdays, shall make a reasonable effort to find another work assignment for any employee who participated in the vote which authorized the schedule and is unable to work the 12-hour shifts. An employer shall not be required to offer a different work assignment to an employee if such a work assignment is not available or if the employee was hired after the adoption of the 12 hour, three (3) day alternative workweek schedule.

(9) No employee assigned to work a 12 hour shift established pursuant to this Order shall be required to work more than 12 hours in any 24 hour period unless the Chief Nursing Officer or authorized executive declares that:

(a) A "healthcare emergency", as defined, exists in this Order, and

(b) All reasonable steps have been taken to provide required staffing, and

(c) Considering overall operational status needs, continued overtime is necessary to provide required staffing.

(10) Provided further that no employee shall be required to work more than 16 hours in a 24-hour period unless by voluntary mutual agreement of the employee and employer, and no employee shall work more than 24 consecutive hours until said employee receives not less than eight (8) consecutive hours off-duty immediately following the 24 consecutive hours of work.

(11) Notwithstanding subsection (B)(9) above, an employee may be required to work up to 13 hours in any 24-hour period if the employee scheduled to relieve the subject employee does not report for duty as scheduled and does not inform the employer more than two (2) hours in advance of that scheduled shift that he/she will not be appearing for duty as scheduled.

(C) Election Procedures

Election procedures for the adoption and repeal of alternative workweek schedules require the following:

(1) Each proposal for an alternative workweek schedule shall be in the form of a written agreement proposed by the employer. The proposed agreement must designate a regularly scheduled alternative workweek in which the specified number of work days and work hours are regularly recurring. The actual days worked within that alternative workweek schedule need not be specified. The employer may propose a single work schedule that would become the standard schedule for workers in the work unit, or a menu of work schedule options, from which each employee in the unit would be entitled to choose. If the employer proposes a menu of work schedule options, the employee may, with the approval of the employer, move from one menu option to another.

(2) In order to be valid, the proposed alternative workweek schedule must be adopted in a secret ballot election, before the performance of work, by at least a two-thirds (2/3) vote of the affected employees in the work unit. The election shall be held during regular working hours at the employees' work site. For purposes of this subsection, "affected employees in the work unit" may include all employees in a readily identifiable work unit, such as a division, a department, a job classification, a shift, a separate physical location, or a recognized subdivision of any such work unit. A work unit may consist of an individual employee as long as the criteria for an identifiable work unit in this subsection is met.

(3) Prior to the secret ballot vote, any employer who proposed to institute an alternative workweek schedule shall have made a disclosure in writing to the affected employees, including the effects of the proposed arrangement on the employees' wages, hours, and benefits. Such a disclosure shall include meeting(s), duly noticed, held at least fourteen (14) days prior to voting, for the specific purpose of discussing the effects of the alternative workweek schedule. An employer shall provide that disclosure in a non-English language, as well as in English, if at least five (5) percent of the affected employees primarily speak that non-English language. The employer shall mail the written disclosure to employees who do not attend the meeting. Failure to comply with this paragraph shall make the election null and void.

(4) Any election to establish or repeal an alternative workweek schedule shall be held at the work site of the affected employees. The employer shall bear the costs of conducting any election held pursuant to this section. Upon a complaint by an affected employee, and after an investigation by the Labor Commissioner, the Labor Commissioner may require the employer to select a neutral third party to conduct the election.

(5) Any type of alternative workweek schedule that is authorized by the Labor Code may be repealed by the affected employees. Upon a petition of one-third (1/3) of the affected employees, a new secret ballot election shall be held and a two-thirds (2/3) vote of the affected employees shall be required to reverse the alternative workweek schedule. The election to repeal the alternative workweek schedule shall be held not more than 30 days after the petition is submitted to the employer, except that the election shall be held not less than 12 months after the date that the same group of employees voted in an election held to adopt or repeal an alternative workweek schedule. However, where an alternative workweek schedule was adopted between October 1, 1999 and October 1, 2000, a new secret ballot election to repeal that alternative workweek schedule shall not be subject to the 12-month interval between elections. The election shall take place during regular working hours at the employees' work site. If the alternative workweek schedule is revoked, the employer shall comply within 60 days. Upon proper showing of undue hardship, the Division of Labor Standards Enforcement may grant an extension of time for compliance.

(6) Only secret ballots may be cast by affected employees in the work unit at any election held pursuant to this section. The results of any election conducted pursuant to this section shall be reported by the employer to the Division of Labor Statistics and Research within 30 days after the results are final, and the report of election results shall be a public document. The report shall include the final tally of the vote, the size of the unit, and the nature of the business of the employer.

(7) Employees affected by a change in the work hours resulting from the adoption of an alternative workweek schedule may not be required to work those new work hours for at least 30 days after the announcement of the final results of the election.

(8) Employers shall not intimidate or coerce employees to vote either in support of or in opposition to a proposed alternative workweek. No employees shall be discharged or discriminated against for expressing opinions concerning the alternative workweek election or for opposing or supporting its adoption or repeal. However, nothing in this section shall prohibit an employer from expressing his/her position concerning that alternative workweek to the affected employees. A violation of this subsection shall be subject to Labor Code section 98 et seq.

(D) No employer engaged in the operation of a hospital or an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises shall be deemed to have violated any provision of this section if, pursuant to an agreement or understanding arrived at between the employer and employee before performance of work, a work period of 14 consecutive days is accepted in lieu of the workweek of seven (7) consecutive days for purposes of overtime computation and if, for any employment in excess of 80 hours in such 14 day period, the employee receives compensation at a rate not less than one and one-half (1½) times the regular rate at which the employee is employed.

(E) This section does not apply to organized camp counselors who are not employed more than 54 hours and not more than six (6) days in any workweek except under the conditions set forth below. This section shall also not apply to personal attendants as defined in Section 2 (N), nor to resident managers of homes for the aged having less than eight (8) beds; provided that persons employed in such occupations shall not be employed more than 40 hours nor more than six (6) days in any workweek, except under the following conditions:

In the case of emergency, employees may be employed in excess of forty (40) hours or six (6) days in any workweek provided the employee is compensated for all hours in excess of 40 hours and days in excess of six (6) days in the workweek at not less than one and one-half (1½) times the employee's regular rate of pay. However, regarding organized camp counselors, in case of emergency they may be employed in excess of 54 hours or six (6) days, provided that they are compensated at not less than one and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of 54 hours and six (6) days in the workweek.

(F) One and one-half (1½) times a minor's regular rate of pay shall be paid for all work over 40 hours in any workweek except minors 16 or 17 years old who are not required by law to attend school and may therefore be employed for the same hours as an adult are subject to subsection (A), (B), (C), or (D) above.

(**VIOLATIONS OF CHILD LABOR LAWS** are subject to civil penalties of from $500 to $10,000 as well as to criminal penalties. Refer to California Labor Code sections 1285 to 1312 and 1390 to 1399 for additional restrictions on the employment of minors and for descriptions of criminal and civil penalties for violation of the child labor laws. Employers should ask school districts about any required work permits.)

(G) An employee may be employed on seven (7) workdays in a workweek when the total hours of employment during such workweek do not exceed 30 and the total hours of employment in any one workday thereof do not exceed six (6).

(H) If a meal period occurs on a shift beginning or ending at or between the hours of 10 p.m. and 6 a.m., facilities shall be available for securing hot food and drink or for heating food or drink, and a suitable sheltered place shall be provided in which to consume such food or drink.

(I) The provisions of this section are not applicable to employees whose hours of service are regulated by:

(1) The United States Department of Transportation Code of Federal Regulations, title 49, sections 395.1 to 395.13, Hours of Service of Drivers, or

(2) Title 13 of the California Code of Regulations, subchapter 6.5, section 1200 and following sections, regulating hours or drivers.

(J) The daily overtime provisions of subsection (A) above shall not apply to ambulance drivers and attendants scheduled for 24 hours shifts of duty who have agreed in writing to exclude from daily time worked not more than three (3) meal periods of not more than one hour each and a regularly scheduled uninterrupted sleeping period of not more than eight (8) hours. The employer shall provide adequate dormitory and kitchen facilities for employees on such a schedule.

(K) The provisions of Labor Code Sections 551 and 552 regarding one (1) day's rest in seven (7) shall not be construed to prevent an accumulation of days of rest when the nature of the employment reasonably requires the employee to work seven (7) or more consecutive days; provided, however, that in each calendar month, the employee shall receive the equivalent of one (1) day's rest in seven (7).

(L) Except as provided in subsections (F) and (K), this section shall not apply to any employee covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work, and working conditions of the employees, and if the agreement provides premium wage rates for all overtime hours worked and a regular hourly rate of pay for those employees of not less than 30 percent more than the state minimum wage.

(M) Notwithstanding subsection (L) above, where the employer and a labor organization representing employees of the employer have entered into a valid collective bargaining agreement pertaining to the hours of work of the employees, the requirement regarding the equivalent of one (1) day's rest in seven (7) (see subsection (K) above) shall apply, unless the agreement expressly provides otherwise.

(N) If an employer approves a written request of an employee to make up work time that is or would be lost as a result of a personal obligation of the employee, the hours of that make up work time, if performed in the same workweek in which the work time was lost, may not be counted toward computing the total number of hours worked in a day for purposes of the overtime requirements, except for hours in excess of 11 hours of work in one (1) day or 40 hours of work in one (1) workweek. If an employee knows in advance that he or she will be requesting make up time for a personal obligation that will recur at a fixed time over a succession of weeks, the employee may request to make up work time for up to four (4) weeks in advance; provided, however, that the make up work must be performed in the same week that the work time was lost. An employee shall provide a signed written request for each occasion that the employee makes a request to make up work time pursuant to this Section. While an employer may inform an employee of this make up time option, the employer is prohibited from encouraging or otherwise soliciting an employee to request the employer's approval to take personal time off and make up the work hours within the same workweek pursuant to this Section.

4. MINIMUM WAGES

(A) Every employer shall pay to each employee wages not less than seven dollars and fifty cents ($7.50) per hour for all hours worked, effective January 1, 2007, and not less than eight dollars ($8.00) per hour for all hours worked, effective January 1, 2008, except:

LEARNERS. Employees during their first one hundred and sixty (160) hours of employment in occupations in which they have no previous similar or related experience, may be paid not less than 85 percent of the minimum wage rounded to the nearest nickel.

(B) Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.

(C) When an employee works a split shift, one hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment.

(D) The provisions of this section shall not apply to apprentices regularly indentured under the State Division of Apprenticeship Standards.

5. REPORTING TIME PAY

(A) Each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.

(B) If an employee is required to report for work a second time in any one workday and is furnished less than two hours of work on the second reporting, said employee shall be paid for two hours at the employee's regular rate of pay, which shall not be less than the minimum wage.

(C) The foregoing reporting time pay provisions are not applicable when:

(1) Operations cannot commence or continue due to threats to employees or property; or when recommended by civil authorities; or

(2) Public utilities fail to supply electricity, water, or gas, or there is a failure in the public utilities, or sewer system; or

(3) The interruption of work is caused by an Act of God or other cause not within the employer's control.

(D) This section shall not apply to an employee on paid standby status who is called to perform assigned work at a time other than the employee's scheduled reporting time.

6. LICENSES FOR DISABLED WORKERS

(A) A license may be issued by the Division authorizing employment of a person whose earning capacity is impaired by physical disability or mental deficiency at less than the minimum wage. Such licenses shall be granted only upon joint application of employer and employee and employee's representative if any.

(B) A special license may be issued to a nonprofit organization such as a sheltered workshop or rehabilitation facility fixing special minimum rates to enable the employment of such persons without requiring individual licenses of such employees.

(C) All such licenses and special licenses shall be renewed on a yearly basis or more frequently at the discretion of the Division. (See California Labor Code, Sections 1191 and 1191.5.)

7. RECORDS

(A) Every employer shall keep accurate information with respect to each employee including the following:

(1) Full name, home address, occupation and social security number.

(2) Birth date, if under 18 years, and designation as a minor.

(3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.

(4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.

(5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.

(6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

(B) Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee's social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.

(C) All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and 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. An employee's records shall be available for inspection by the employee upon reasonable request.

(D) Clocks shall be provided in all major work areas or within reasonable distance thereto insofar as practicable.

8. CASH SHORTAGE AND BREAKAGE

No employer shall make any deduction from the wage or require any reimbursement from an employee for any cash shortage, breakage, or loss of equipment, unless it can be shown that the shortage, breakage, or loss is caused by a dishonest or willful act, or by the gross negligence of the employee.

9. UNIFORMS AND EQUIPMENT

(A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer. The term "uniform" includes wearing apparel and accessories of distinctive design or color.

NOTE: This section shall not apply to protective apparel regulated by the Occupational Safety and Health Standards Board.

(B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft. Notwithstanding any other provision of this section, employees in beauty salons, schools of beauty culture offering beauty care to the public for a fee, and barber shops may be required to furnish their own manicure implements, curling irons, rollers, clips, haircutting scissors, combs, blowers, razors, and eyebrow tweezers. This subsection (B) shall not apply to apprentices regularly indentured under the State Division of Apprenticeship Standards.

NOTE: This section shall not apply to protective equipment and safety devices on tools regulated by the Occupational Safety and Health Standards Board.

(C) A reasonable deposit may be required as security for the return of the items furnished by the employer under provisions of subsections (A) and (B) of this section upon issuance of a receipt to the employee for such deposit. Such deposits shall be made pursuant to Section 400 and following of the Labor Code or an employer with the prior written authorization of the employee may deduct from the employee's last check the cost of an item furnished pursuant to (A) and (B) above in the event said item is not returned. No deduction shall be made at any time for normal wear and tear. All items furnished by the employer shall be returned by the employee upon completion of the job.

10. MEALS AND LODGING

(A) "Meal" means an adequate, well-balanced serving of a variety of wholesome, nutritious foods.

(B) "Lodging" means living accommodations available to the employee for full-time occupancy which are adequate, decent, and sanitary according to usual and customary standards. Employees shall not be required to share a bed.

(C) Meals or lodging may not be credited against the minimum wage without a voluntary written agreement between the employer and the employee. When credit for meals or lodging is used to meet part of the employer's minimum wage obligation, the amounts so credited may not be more than the following:

	Effective January 1, 2007	**Effective January 1, 2008**
Lodging:		
Room occupied alone	$35.27 per week	$37.63 per week
Room shared	$29.11 per week	$31.06 per week
Apartment—two-thirds (2/3) of the ordinary rental value, and in no event more than	$423.51 per month	$451.89 per month
Where a couple are both employed by the employer, two-thirds (2/3) of the ordinary rental value, and in no event more than	$626.49 per month	$668.46 per month
Meals:		
Breakfast	$2.72	$2.90
Lunch	$3.72	$3.97
Dinner	$5.00	$5.34

(D) Meals evaluated, as part of the minimum wage, must be bona fide meals consistent with the employee's work shift. Deductions shall not be made for meals not received nor lodging not used.

(E) If, as a condition of employment, the employee must live at the place of employment or occupy quarters owned or under the control of the employer, then the employer may not charge rent in excess of the values listed herein.

11. MEAL PERIODS

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall

be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

(B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the meal period is not provided.

(C) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

(D) Notwithstanding any other provision of this order, employees in the health care industry who work shifts in excess of eight (8) total hours in a workday may voluntarily waive their right to one of their two meal periods. In order to be valid, any such waiver must be documented in a written agreement that is voluntarily signed by both the employee and the employer. The employee may revoke the waiver at any time by providing the employer at least one day's written notice. The employee shall be fully compensated for all working time, including any on-the-job meal period, while such a waiver is in effect.

(E) Employees with direct responsibility for children who are under 18 years of age or who are not emancipated from the foster care system and who, in either case, are receiving 24 hour residential care, and employees of 24 hour residential care facilities for the elderly, blind or developmentally disabled individuals may be required to work on-duty meal periods without penalty when necessary to meet regulatory or approved program standards and one of the following two conditions is met:

(1) (a) The residential care employees eats with residents during residents' meals and the employer provides the same meal at no charge to the employee; or

(b) The employee is in sole charge of the resident(s) and , on the day shift, the employer provides a meal at no charge to the employee.

(2) An employee, except for the night shift, may exercise the right to have an off-duty meal period upon 30 days' notice to the employer for each instance where an off-duty meal is desired, provided that, there shall be no more than one off-duty meal period every two weeks.

12. REST PERIODS

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3½) hours. Authorized rest period time shall be counted, as hours worked, for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

(C) However, employees with direct responsibility for children who are under 18 years of age or who are not emancipated from the foster care system and who, in either case, are receiving 24 hour residential care and employees of 24 hour residential care facilities for elderly, blind or developmentally disabled individuals may, without penalty, require an employee to remain on the premises and maintain general supervision of residents during rest periods if the employee is in sole charge of residents. Another rest period shall be authorized and permitted by the employer when an employee is affirmatively required to interrupt his/her break to respond to the needs of residents.

13. CHANGE ROOMS AND RESTING FACILITIES

(A) Employers shall provide suitable lockers, closets, or equivalent for the safekeeping of employees' outer clothing during working hours, and when required, for their work clothing during non-working hours. When the occupation requires a change of clothing, change rooms or equivalent space shall be provided in order that employees may change their clothing in reasonable privacy and comfort. These rooms or spaces may be adjacent to but shall be separate from toilet rooms and shall be kept clean.

NOTE: This section shall not apply to change rooms and storage facilities regulated by the Occupational Safety and Health Standards Board.

(B) Suitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours.

14. SEATS

(A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.

(B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

15. TEMPERATURE

(A) The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed.

(B) If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort. Where the nature of the employment requires a temperature of less than 60° F., a heated room shall be provided to which employees may retire for warmth, and such room shall be maintained at not less than 68°.

(C) A temperature of not less than 68° shall be maintained in the toilet rooms, resting rooms, and change rooms during hours of use.

(D) Federal and State energy guidelines shall prevail over any conflicting provision of this section.

16. ELEVATORS

Adequate elevator, escalator or similar service consistent with industry-wide standards for the nature of the process and the work performed shall be provided when employees are employed four floors or more above or below ground level.

17. EXEMPTIONS

If, in the opinion of the Division after due investigation, it is found that the enforcement of any provision contained in Section 7, Records; Section 12, Rest Periods; Section 13, Change Rooms and Resting Facilities; Section 14, Seats; Section 15, Temperature; or Section 16, Elevators, would not materially affect the welfare or comfort of employees and would work an undue hardship on the employer, exemption may be made at the discretion of the Division. Such exemptions shall be in writing to be effective and may be revoked after reasonable notice is given in writing. Application for exemption shall be made by the employer or by the employee and/or the employee's representative to the Division in writing. A copy of the application shall be posted at the place of employment at the time the application is filed with the Division.

18. FILING REPORTS
(See California Labor Code, Section 1174(a))

19. INSPECTION
(See California Labor Code, Section 1174)

20. PENALTIES
(See Labor Code, Section 1199)

(A) In addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty of:

(1) Initial Violation — $50.00 for each underpaid employee for each pay period during which the employee was underpaid in addition to the amount which is sufficient to recover unpaid wages.

(2) Subsequent Violations — $100.00 for each underpaid employee for each pay period during which the employee was underpaid in addition to an amount which is sufficient to recover unpaid wages.

(3) The affected employee shall receive payment of all wages recovered.

(B) The Labor Commissioner may also issue citations pursuant to Labor Code § 1197.1 for non-payment of wages for overtime work in violation of this order.

21. SEPARABILITY
If the application of any provision of this Order, or any section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Order should be held invalid or unconstitutional or unauthorized or prohibited by statute, the remaining provisions thereof shall not be affected thereby, but shall continue to be given full force and effect as if the part so held invalid or unconstitutional had not been included herein.

22. POSTING OF ORDER
Every employer shall keep a copy of this Order posted in an area frequented by employees where it may be easily read during the workday. Where the location of work or other conditions make this impractical, every employer shall keep a copy of this Order and make it available to every employee upon request.

QUESTIONS ABOUT ENFORCEMENT of the Industrial Welfare Commission orders and reports of violations should be directed to the Division of Labor Standards Enforcement. A listing of the DLSE offices is on the back of this wage order. Look in the white pages of your telephone directory under CALIFORNIA, State of, Industrial Relations for the address and telephone number of the office nearest you. The Division has offices in the following cities: Bakersfield, El Centro, Eureka, Fresno, Long Beach, Los Angeles, Oakland, Redding, Sacramento, Salinas, San Bernardino, San Diego, San Francisco, San Jose, Santa Ana, Santa Barbara, Santa Rosa, Stockton, Van Nuys.

SUMMARIES IN OTHER LANGUAGES

The Department of Industrial Relations will make summaries of wage and hour requirements in this Order available in Spanish, Chinese and certain other languages when it is feasible to do so. Mail your request for such summaries to the Department at: P.O. Box 420603, San Francisco, CA 94142-0603.

RESUMEN EN OTROS IDIOMAS

El Departamento de Relaciones Industriales confeccionara un resumen sobre los requisitos de salario y horario de esta Disposicion en español, chino y algunos otros idiomas cuando sea posible hacerlo. Envie por correo su pedido por dichos resumenes al Departamento a: P.O. Box 420603, San Francisco, CA 94142-0603.

其它文字的摘錄

工業關係處將摘錄本規則中有關工資和工時的規定，用西班牙文、中文印出。其它文字如有需要，也將同樣辦理。如果您有需要，可以來信索閱，請寄到：

Department of Industrial Relations
P.O. Box 420603
San Francisco, CA 94142-0603

All complaints are handled confidentially. For further information or to file your complaints, contact the State of California at the following department offices:

Division of Labor Standards Enforcement (DLSE)
For labor law information and assistance for your area call the pre-recorded information lines in **bold** below. If the information you need is not provided in the pre-recorded message, please call the general office number listed.

BAKERSFIELD
Division of Labor Standards Enforcement
5555 California Ave., Suite 200
Bakersfield, CA 93309
661-395-2710
661-859-2462

EL CENTRO
Division of Labor Standards Enforcement
1550 W. Main St.
El Centro, CA 92643
760-353-0607
760-353-2544

EUREKA
Division of Labor Standards Enforcement
619 Second Street, Room 109
Eureka, CA 95501
707-445-6613
707-441-4604

FRESNO
Division of Labor Standards Enforcement
770 E. Shaw Ave., Suite 315
Fresno, CA 93710
559-244-5340
559-248-8398

LONG BEACH
Division of Labor Standards Enforcement
300 Oceangate, 3rd Floor
Long Beach, CA 90802
562-590-5048
562-491-0160

LOS ANGELES
Division of Labor Standards Enforcement
320 W. Fourth St, Suite 450
Los Angeles, CA 90013
213-620-6330
213-576-6227

OAKLAND
Division of Labor Standards Enforcement
1515 Clay Street, Room 801
Oakland, CA 94612
510-622-3273
510-622-2660

REDDING
Division of Labor Standards Enforcement
2115 Civic Center Drive, Room 17
Redding, CA 96001
530-225-2655
530-229-0565

SACRAMENTO
Division of Labor Standards Enforcement
2031 Howe Ave, Suite 100
Sacramento, CA 95825
916-263-1811
916-263-5378

SALINAS
Division of Labor Standards Enforcement
1870 N. Main Street, Suite 150
Salinas, CA 93906
831-443-3041
831-443-3029

SAN BERNARDINO
Division of Labor Standards Enforcement
464 West 4th Street, Room 348
San Bernardino, CA 92401
909-383-4334
909-889-8120

SAN DIEGO
Division of Labor Standards Enforcement
7575 Metropolitan, Room 210
San Diego, CA 92108
619-220-5451
619-682-7221

SAN FRANCISCO
Division of Labor Standards Enforcement
455 Golden Gate Ave. 10th Floor
San Francisco, CA 94102
415-703-5300
415-703-5444

SAN FRANCISCO – HEADQUARTERS
Division of Labor Standards Enforcement
455 Golden Gate Ave. 9th Floor
San Francisco, CA 94102
415-703-4810

SAN JOSE
Division of Labor Standards Enforcement
100 Paseo De San Antonio, Room 120
San Jose, CA 95113
408-277-1266
408-277-3711

SANTA ANA
Division of Labor Standards Enforcement
28 Civic Center Plaza, Room 625
Santa Ana, CA 92701
714-558-4910
714-558-4574

SANTA BARBARA
Division of Labor Standards Enforcement
411 E. Canon Perdido, Room 3
Santa Barbara, CA 93101
805-568-1222
805-965-7214

SANTA ROSA
Division of Labor Standards Enforcement
50 "D" Street, Suite 360
Santa Rosa, CA 95404
707-576-2362
707-576-2459

STOCKTON
Division of Labor Standards Enforcement
31 E. Channel Street, Room 317
Stockton, CA 95202
209-948-7771
209-941-1906

VAN NUYS
Division of Labor Standards Enforcement
6150 Van Nuys Boulevard, Room 206
Van Nuys, CA 91401
818-901-5315
818-908-4556

EMPLOYERS: Do not send copies of your alternative workweek election ballots or election procedures.

Only the results of the alternative workweek election shall be mailed to:

Department of Industrial Relations
Division of Labor Statistics and Research
P.O. Box 420603
San Francisco, CA 94142-0603
(415) 703-4780

Prevailing Wage Hotline (415) 703-4774