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LITIGATION

Alfred J. Landegger
Larry C. Baron
Roxana E. Verano
Christopher L. Moriarty
Oscar E. Rivas
Marie D. Davis
Brian E. Ewing
Jennifer R. Komsky
Sumithra R. Roberts
Timothy E. Simmen

Michael S. Lavenant
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Exclusively Representing Employers

"WAGE AND HOUR LAWS, TRENDS AND CLASS ACTIONS"

What Every Business Owner Needs To Know

October, 2015

Presented by:

Studio City:

Roxana E. Verano, Esq.
Jennifer Raphael Komsky, Esq.

Camarillo:

Christopher L. Moriarty, Esq.
Marie D. Davis, Esq.

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Main Office
15760 Ventura Blvd.
Suite 1200
Encino, CA 91436
(818) 986-7561
Fax (818) 986-5147

Ventura Office
751 Daily Drive
Suite 325
Camarillo, CA 93010
(805) 987-7128
Fax (805) 987-7148

www.landeggeresq.com

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Division of Labor Standards Enforcement (DLSE)

DLSE - Glossary

Exempt

Exempt status deprives an employee of certain protections of the Industrial Welfare Commission Orders.

The exemption has far-reaching ramifications since exempt status deprives the employee not only of the right to overtime compensation, but also to many of the other protections afforded to nonexempt employees by such orders. Some of the protections that do not apply to exempt employees are:

Section 3, overtime premium;

Section 4, minimum wage;

Section 5, reporting time pay;

Section 7, requirement of records under the IWC Orders (but not records required by the Labor Code);

Section 9, requirement that employer furnish uniforms and equipment (except, of course, that any expenditure by an employee is recoverable under Labor Code Section 2802).

Section 10, requirement that meals and lodging amounts be limited;

Section 11, meal period requirement; and

Section 12, rest period requirement.

Division of Labor Standards Enforcement (DLSE)

DLSE - Glossary

Executive Exemption

A person employed in an executive capacity means any employee:

1. 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
2. Who customarily and regularly directs the work of two or more other employees therein; and
3. 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
4. Who customarily and regularly exercises discretion and independent judgment; and
5. Who is primarily engaged in duties, which meet the test of the exemption.
6. An executive employee must also earn a monthly salary equivalent to no less than two times the state minimum wage for full-time employment. Full-time employment means 40 hours per week as defined in Labor Code Section 515(c).

With respect to the requirement that management duties must be exercised over the entire enterprise or a customarily recognized department or subdivision thereof, it is important to note that the phrase "customarily recognized department or subdivision thereof" has a particular meaning. The phrase is intended to distinguish between " a mere collection of employees assigned from time to time to a specific job or series of jobs" and " a unit with permanent status and function." Thus, in order to meet the criteria of a managerial employee, one must be more than merely a supervisor of two or more employees. The managerial exempt employee must be in charge of the unit, not simply participate in the management of the unit.

The IWC Orders require as a basic condition for the executive exemption that the manager must supervise two or more employees. This may be one full-time and two half-time employees. It has been the experience of the DLSE that a managerial employee supervising as few as two employees rarely spends as much as 50% of his or her time primarily engaged in managerial duties.

Regarding the requirement for the exemption to apply that the employee "customarily and regularly exercises discretion and independent judgment," this phrase means the comparison and evaluation of possible courses of conduct and acting or making a decision after the various possibilities have been considered. The employee must have the authority or power to make an independent choice, free from immediate direction or supervision and with respect to matters of significance. With respect to the executive exemption, the most frequent cause of misapplication of the phrase "discretion and independent judgment" is the failure to distinguish discretion and independent judgment from the use of independent managerial skills. An employee who merely applies his or her memory in following prescribed procedures or determining which required procedure out of the company manual to follow, is not exercising discretion and independent judgment.

Division of Labor Standards Enforcement (DLSE)

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Professional Exemption

A person employed in a professional capacity means any employee who meets all of the following requirements:

1. 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
2. Who is primarily engaged in an occupation commonly recognized as a learned or artistic profession. "Learned or artistic profession" means an employee who is primarily engaged in the performance of:
3.

a. Work requiring knowledge of an advance 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

b. 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

c. 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.

4. Who customarily and regularly exercised discretion an independent judgment in the performance of duties set forth above.
5. Who earns a monthly salary equivalent to no less than two times the state minimum wage for full-time employment. Full-time employment means 40 hours per week as defined in Labor Code Section 515(c).

Regarding the requirement for the exemption to apply that the employee "customarily and regularly exercises discretion and independent judgment," this phrase means the comparison and evaluation of possible courses of conduct and acting or making a decision after the various possibilities have been considered. The employee must have the authority or power to make an independent choice, free from immediate direction or supervision and with respect to matters of significance.

For the learned professions, an advanced academic degree (above the bachelor level) is a standard prerequisite.

For the artistic professions, work in a "recognized field of artistic endeavor" includes such fields as music, writing, the theater, and the plastic and graphic arts.

Division of Labor Standards Enforcement (DLSE)

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Administrative Exemption

A person employed in an administrative capacity means any employee:

1. 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 his or her employer or his or her 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
1. Who customarily and regularly exercised discretion and independent judgment; and
2. Who regularly and directly assists a proprietor, or an employee employed in a bona fide executive or administrative capacity, or
3. Who performs, under only general supervision, work along specialized or technical lines requiring special training, experience, or knowledge, or
4. Who executes, under only general supervision, special assignments and tasks, and
5. Who is primarily engaged in duties which meet the test for the exemption.
6. An administrative employee must also earn a monthly salary equivalent to no less than two times the state minimum wage for full-time employment. Full-time employment means 40 hours per week as defined in Labor Code Section 515(c).

Following are examples of employees who might qualify for the exemption if, and only if, they meet the criteria set forth above:

1. Employees who regularly and directly assist a proprietor or exempt executive or administrator. Included in this category are those executive assistants and administrative assistants to whom executives or high-level administrators have delegated part of their discretionary powers. Generally, such assistants are found in large establishments where the official assisted has duties of such scope and which require so much attention that the work of personal scrutiny, correspondence and interviews must be delegated.

2. Employees who perform, only under general supervision, work along specialized or technical lines requiring special training, experience or knowledge. Such employees are often described as "staff employees," or functional, rather than department heads. They include employees who act as advisory specialists to management, or to the employer's customers. Typical examples are tax experts, insurance experts, sales research experts, wage rate analysts, foreign exchange consultants, and statisticians. Such experts may or may not be exempt, depending on the extent to which they exercise discretionary powers. Also included in this category would be persons in charge of a functional department, which may even be a one-person department, such as credit managers,

purchasing agents, buyers, personnel directors, safety directors, and labor relations directors.

3. Employees who perform special assignments under only general supervision. Often, such employees perform their work away from the employer's place of business. Typical titles of such persons are buyers, field representatives, and location managers for motion picture companies. This category also includes employees whose special assignments are performed entirely or mostly on the employer's premises, such as customers' brokers in stock exchange firms and so-called "account executives" in advertising firms.

Regarding the requirement for the exemption to apply that the employee "customarily and regularly exercises discretion and independent judgment," this phrase means the comparison and evaluation of possible courses of conduct and acting or making a decision after the various possibilities have been considered. The employee must have the authority or power to make an independent choice, free from immediate direction or supervision and with respect to matters of significance. With respect to the administrative exemption, this phrase has been most frequently misunderstood and misapplied by employers and employees alike in cases involving the following:

1. Confusion between the exercise of discretion and independent judgment, and the use of skill in applying techniques, procedures, or specific standards.
2. Misapplication of the phrase to employees making decisions relating to matters of little consequence.
3. Perhaps the most common misapplication is the application of the exemption to employees engaged in production aspects of the employer's business as opposed to administrative functions.

Caveat. As with any of the exemptions, job titles reflecting administrative classifications alone may not reflect actual job duties and therefore, are of no assistance in determining exempt or nonexempt status. The fact that an employee may have one of the job titles listed above is, in and of itself, of no consequence. The actual determination of exempt or nonexempt status must be based on the nature of the actual work performed by the individual employee.

Adverse Action

An act or action taken by an employer against an employee that works to the employee's detriment in some aspect of his or her employment, including a poor evaluation, surveillance, an unfavorable recommendation for a promotion, less desirable duties, a transfer, demotion, a cut in pay, or a discharge.

Affinity

Used in the context of "victim of domestic violence" signifies the connection existing in consequence of marriage between each of the married persons and the blood relatives of the other. Family Code Section 6205

Alternative Workweek Schedule

Any regularly scheduled workweek requiring an employee to work more than eight hours in a 24-hour period.

The Domestic Worker Bill of Rights – Frequently Asked Questions

Read a general summary of the Domestic Worker Bill of Rights.

General Questions

Who is a domestic worker under the Domestic Worker Bill of Rights?
You are a domestic worker if you provide services related to the care of people in the home, or maintain private households or their premises. Domestic workers include nannies, childcare providers, caregivers and personal attendants, housekeepers, cooks, and other household workers.
Who is a personal attendant under this law?
A personal attendant is someone employed by a private householder or any third party employer recognized in the health care industry to work in a private household. Duties of a personal attendant include supervising, feeding, and dressing a child or person who needs assistance due to advanced age, physical disability, or mental deficiency.

If a domestic worker spends more than 20 percent of his or her time performing work other than supervising, feeding, and dressing a child or person who needs supervision, he or she is not considered a personal attendant. Domestic workers who are NOT personal attendants are entitled to overtime under Wage Order No. 15 (seeQuestion 4 below: "What overtime protections apply to domestic workers who are NOT personal attendants?").

- **Personal attendant duties** include feeding, bathing, dressing, and direct supervision of any person under care.
- **Non-attendant duties** include making beds, housecleaning, cooking, laundry, or other duties related to the maintenance of a private household or the premises.

What overtime protections apply to personal attendants?

Personal attendants are entitled to overtime (1.5 x regular rate of pay) for any hours worked over nine (9) hours per day or over 45 hours per week, unless they are excluded employees or the employer is excluded under the Domestic Worker Bill of Rights.

Which employees and employers are excluded under this law?

- **Excluded Employees** consist of

1. family members (parent, grandparent, spouse, sibling, or child of the employer)
2. someone under the age of 18 employed as a babysitter to a minor
3. anyone who is a "casual babysitter" (meaning someone who babysits on an irregular or intermittent basis and is not a babysitter by vocation)
4. anyone who provides services to the developmentally disabled through a state or regional center voucher program
5. anyone who provides child care pursuant to certain child care acts (the Child Care and Development Services Act of the Education Code or the California Work Opportunity and Responsibility to Kids Act of the Welfare and Institutions Code)

- **Excluded Employers** consist of

1. domestic worker registry or referral agencies that satisfy the requirements of Civil Code section 1812.5095 and Unemployment Insurance Code section 687.2 (specifically, such a referral agency must meet all the requirements of the Civil Code as solely a referral agency)
2. licensed health care facilities
3. clients overseeing or receiving services under the In-Home Supportive Services (IHSS) program

The Domestic Worker Bill of Rights defines "domestic work employer" as any person, including corporate officers and executives, who directly or through an agent (such as temp services, staffing agencies, and the like), employs or controls wages, hours, and working conditions of domestic workers.

What overtime protections apply to domestic workers who are NOT personal attendants?
If you work in the home but you are NOT a personal attendant, then you are not covered by the Domestic Worker Bill of Rights. However, regular overtime protections apply under Wage Order No. 15, which sets overtime protections for domestic workers who are not personal attendants. There are different overtime protections depending on the type of work performed:

- **Non-live-in** domestic workers who are not personal attendants are entitled to overtime (1.5 x the regular rate of pay) for hours worked over eight (8) in a day or 40 regular hours in a workweek; overtime for the first eight (8) hours on the seventh consecutive day of the workweek; double time (2 x the regular rate of pay) for hours worked over 12 in a day; and double time for hours worked over eight (8) on the seventh consecutive day of the workweek.
- **Live-in** domestic workers who are not personal attendants are entitled to overtime for hours worked over nine (9) in a day and for the first nine (9) hours worked on the sixth and seventh consecutive day of the workweek. Live-in employees are entitled to double time (2 x the regular rate of pay) for hours worked over nine (9) hours on the sixth and seventh consecutive day of workweek.

Summary table: overtime for domestic workers

IF YOU ARE…	THEN YOU ARE ENTITLED TO…		UNDER THIS LAW…
	Overtime (1.5 x regular rate of pay)	**Double time (2 x regular rate of pay)**	
A personal attendant employed in a private household	> 9 hours/day or > 45 hours/week	n/a	Domestic Worker Bill of Rights (Labor Code sections 1450–1454)
Other type of domestic worker (not a personal attendant)			
Not live-in	> 8 hours/day or > 40 hours/week	> 12 hours/day or > 8 hours on the 7th consecutive day of work	Wage Order No. 15 (normal overtime requirements)
Live-in	> 9 hours/day or Up to 9 hours worked on the 6th or 7th day of the week	> 9 hours on the 6th or 7th day of the week	Wage Order No. 15 (special overtime requirements)

What overtime protections apply to personal attendants NOT working in a home?

Personal attendants who do not work in the home are not covered under the Domestic Worker Bill of Rights. Their employment may be governed under Wage Order No. 5, which governs the public housekeeping industry, including hospitals, sanitariums, rest homes, child nurseries and care institutions, homes for the aged, and similar establishments offering board or lodging in addition to medical, surgical, nursing, convalescent, aged, or child care.

Under Wage Order No. 5, a personal attendant is an employee hired by a non-profit organization to supervise, dress, or feed a child or an adult with disability or advanced age.

Personal attendants employed by non-profit institutions under Wage Order No. 5 are only entitled to overtime for hours worked in excess of 40 in a week or for any hours worked on the 7th consecutive day of the workweek. Personal attendants under Wage Order No. 5 are not entitled to double-time compensation.

Note that workers in the public housekeeping industry who devote more than 20% of their time to duties other than the work of a personal attendant are *not* considered personal attendants under this wage order. This specific subcategory of domestic workers is entitled to normal overtime protections (as specified in the Wage Order No. 5): overtime pay (1.5 x the regular rate of pay) for hours worked in excess of eight (8) hours in a day or 40 regular hours in a week. They are also entitled to double time (2 x the regular rate of pay) for hours worked over 12 in a day or for hours worked over eight (8) on the seventh consecutive day of the workweek (in addition to regular overtime for the first eight (8) hours worked on the seventh consecutive day).

Calculating overtime pay rates

Are domestic workers entitled to the minimum wage?

Yes. Domestic workers are entitled to the minimum wage, with the exception of babysitters under the age of 18 and the employer's parent, spouse, or child. The Labor Commissioner enforces the California minimum wage.The Labor Commissioner may enforce local minimum wage laws if the work is performed in a city and/or county that has a higher minimum wage ordinance.

Can meal and lodging credits be applied by an employer against a domestic worker's wages?

Yes. Meal and lodging credits can be applied. However, an employer must abide by the limits specified in Wage Order No. 15. That is, meals or lodging may only be credited against the minimum wage if the employer and the employee enter into a voluntary written agreement *before the work is performed.* (This requirement applies to all types of domestic workers.)

LODGING	**July 1, 2014**	**Effective Jan. 1, 2016**
Room occupied alone	$42.33 per week	$47.03 per week
Room shared	$34.94 per week	$38.82 per week
Apartment – two thirds (2/3) of ordinary rental value, and no more than:		
Apartment for single employee:	$508.38 per month	$564.81 per month
Apartment for couple employed by same employer:	$752.02 per month	$835.49 per month

MEALS (must be bona fide meals consistent with employee's work shift)		
Breakfast	$3.26	$3.62
Lunch	$4.47	$4.97
Dinner	$6.01	$6.68

Procedure for filing a wage claim

What can I do if my employer doesn't pay me my overtime wages?

You can either file a wage claim with the Division of Labor Standards Enforcement (also known as the Labor Commissioner's Office), or you can file a lawsuit in court against your employer to recover the lost wages. Additionally, if you no longer work for this employer, you can make a claim for waiting time penalties according to Labor Code section 203.

What happens after I file a wage claim?

After you complete and file your wage claim with a local office of the Labor Commissioner's Office, your case will be assigned to a Deputy Labor Commissioner, who will determine how best to proceed based upon the circumstances. Initial action may be referral to a conference or to a hearing.

If the decision is to hold a conference, the parties will be notified by mail of the date, time, and place of the conference. The purpose of the conference is to determine the full amount being claimed and whether the matter can be resolved. If the claim is not resolved at the conference, the next step usually is to refer the matter to a hearing.

At a hearing, the parties and witnesses testify under oath, and the proceeding is recorded. After the hearing, an Order, Decision, or Award (ODA) will be provided by the Labor Commissioner.

Either party may appeal the ODA to a civil court. The court will set the matter for trial, with each party having the opportunity to present evidence and witnesses. If the employer appeals the Labor Commissioner's decision, the Labor Commissioner's Office may represent an employee who is financially unable to afford counsel in the court proceeding.

See the Policies and Procedures of Wage Claim Processing pamphlet for more detail on the wage claim process.

What can I do if I prevail at the hearing and the employer neither pays nor appeals the Order, Decision, or Award?
When the Order, Decision, or Award (ODA) is in the employee's favor and there is no appeal, but the employer does not pay the ODA, the Labor Commissioner's Office will have the court enter the ODA as a judgment against the employer. This ruling has the same force and effect as any other money judgment entered by the court. After the judgment is entered, the Labor Commissioner's Office will provide you with a letter explaining your collection options.

What can I do if my employer retaliates against me because I told him I was going to file a wage claim for unpaid overtime?

If your employer discriminates or retaliates against you in any manner whatsoever (for example by terminating you or giving you fewer hours), you can file a discrimination/retaliation complaint with the Labor Commissioner's Office. Alternatively, you can file a lawsuit against your employer in court.

Fact Sheet: Application of the Fair Labor Standards Act to Domestic Service, Final Rule

Major Provisions of the Final Rule

The Department's Final Rule concerning domestic service workers under the Fair Labor Standards Act (FLSA) brings important minimum wage and overtime protection to the many workers who, by their service, enable individuals with disabilities and the elderly to continue to live independently in their homes and participate in their communities. The Final Rule, effective January 1, 2015[1], contains several significant changes from the prior regulations, including: (1) the tasks that comprise "companionship services" are more clearly defined; and (2) the exemptions for companionship services and live-in domestic service employees are limited to the individual, family, or household using the services; and (3) the recordkeeping requirements for employers of live-in domestic service employees are revised. The major provisions affected by the Final Rule are summarized below.

Minimum Wage and Overtime Protections. This Final Rule revises the Department's 1975 regulations to better reflect Congressional intent given the changes to the home care industry and workforce since that time. Most significantly, the Department is revising the definition of "companionship services" to clarify and narrow the duties that fall within the term and is prohibiting third party employers, such as home care agencies, from claiming the companionship or live-in exemptions. The major effect of this Final Rule is that more domestic service workers will be protected by the FLSA's minimum wage and overtime provisions.

Companionship Services. The term "companionship services" means the provision of fellowship and protection for an elderly person or person with an illness, injury, or disability who requires assistance in caring for himself or herself. Under the Final Rule, "companionship services" also includes the provision of "care" if the care is provided attendant to and in conjunction with the provision of fellowship and protection and if it does not exceed 20 percent of the total hours worked per person and per workweek. The Department believes it is appropriate for "companionship services" to be primarily focused on the provision of fellowship and protection, with an allowance for certain care services in order to support consumers in living independently in their homes. For additional information, see Fact Sheet #79A: Companionship Services Under the Fair Labor Standards Act (FLSA).

Fellowship and Protection. Under the Final Rule, "fellowship" means to engage the person in social, physical, and mental activities. "Protection" means to be present with the person in their home or to accompany the person when outside of the home to monitor the person's safety and well-being. Examples of fellowship and protection may include: conversation; reading; games; crafts; accompanying the person on walks; and going on errands, to appointments, or to social events with the person.

Care. The definition of companionship services allows for the performance of "care" services if those services are performed attendant to and in conjunction with the provision of fellowship and protection and if they do not exceed 20 percent of the employee's total hours worked in a workweek per consumer. The companionship

[1] See Fact Sheet #25: The Home Health Care Industry Under the Fair Labor Standards Act (FLSA) for information on the current "companionship services" exemption applicable until January 1, 2015.

services exemption is not applicable when the employee spends more than 20 percent of his or her workweek performing care; in such workweeks, the employee is entitled to minimum wage and overtime.

In the Final Rule, "care" is defined as assistance with *activities of daily living* (such as dressing, grooming, feeding, bathing, toileting, and transferring) and *instrumental activities of daily living*, which are tasks that enable a person to live independently at home (such as meal preparation, driving, light housework, managing finances, assistance with the physical taking of medications, and arranging medical care).

Household Work. The Final Rule limits household work to that benefitting the elderly person or person with an illness, injury, or disability. Household work that primarily benefits other members of the household, such as making dinner for another household member or doing laundry for everyone in the household, results in loss of the companionship exemption and thus the employee would be entitled to minimum wage and overtime pay for that workweek.

Medically Related Services. The definition of companionship services does not include the provision of medically related services which are typically performed by trained personnel. Under the Final Rule, the determination of whether a task is medically related is based on whether the services typically require (and are performed by) trained personnel, such as registered nurses, licensed practical nurses, or certified nursing assistants. The determination is not based on the actual training or occupational title of the worker performing the services. Performance of medically related tasks during the workweek results in loss of the exemption and the employee is entitled to minimum wage and overtime pay for that workweek.

Live-In Domestic Service Employees. Live-in domestic service workers who reside in the employer's home permanently or for an extended period of time and are employed by an individual, family, or household are exempt from overtime pay, although they must be paid at least the federal minimum wage for all hours worked. Live-in domestic service workers who are solely or jointly employed by a third party must be paid at least the federal minimum wage and overtime pay for all hours worked by that third party employer. See Fact Sheet 79B: Live-In Domestic Service Employment Under the Fair Labor Standards Act (FLSA) for additional information. Employers of live-in domestic service workers may enter into agreements to exclude certain time from compensable hours worked, such as sleep time, meal time, and other periods of complete freedom from work duties. (If the sleep time, meal periods, or other periods of free time are interrupted by a call to duty, the interruption must be counted as hours worked.) Under the Final Rule, these employers must also maintain an accurate record of hours worked by live-in domestic service workers. The employer may require the live-in domestic service employee to record his or her hours worked and to submit the record to the employer. See Fact Sheet 79C: Recordkeeping Requirements for Individuals, Families, or Households Who Employ Domestic Service Workers Under the Fair Labor Standards Act (FLSA) for additional information.

Third Party Employers. Under the Final Rule, third party employers of direct care workers (such as home care staffing agencies) are not permitted to claim either the exemption for companionship services or the exemption for live-in domestic service employees. Third party employers may not claim either exemption even when the employee is jointly employed by the third party employer and the individual, family, or household using the services. However, the individual, family, or household may claim any applicable exemption. Therefore, even if there is another third party employer, the individual, family, or household will not be liable for unpaid wages under the FLSA provided the requirements of an applicable exemption are met..

Paid Family or Household Members in Certain Medicaid-funded and Certain Other Publicly Funded Programs Offering Home Care Services. In recognition of the significant and unique nature of paid family and household caregiving in certain Medicaid-funded and certain other publicly funded programs, the Department has determined that the FLSA does not necessarily require that once a family or household member is paid to provide some home care services that all care provided by that family or household member is part of the employment relationship. Where applicable, the Department will not consider a family or household member

with a pre-existing close personal relationship with the consumer to be employed beyond a written agreement developed with the involvement and approval of the program and the consumer (or the consumer's representative), usually called a plan of care, that reasonably defines and limits the hours for which paid home care services will be provided. The preamble of the rule contains a discussion of the analysis to be used. See Fact Sheet 79F: Paid Family or Household Members in Certain Medicaid-Funded and Certain Other Publicly Funded Programs Offering Home Care Services Under the Fair Labor Standards Act (FLSA) for additional information.

Provisions Not Affected by this Rulemaking

Hours Worked. This rule makes no changes to the Department's longstanding regulations concerning hours worked which are contained in 29 CFR 785.10-.45. See Fact Sheet 79D: Hours Worked Applicable to Domestic Service Employment Under the Fair Labor Standards Act (FLSA) for information on when the employee must be paid for time spent waiting, sleeping, and traveling.
Also unaffected by this rulemaking are the definition of private home and the application of FLSA "joint employment" principles. See Fact Sheet #79: Private Homes and Domestic Service Employment Under the Fair Labor Standards Act (FLSA) for information about what is a private home for the purpose of domestic service employment under the FLSA. See Fact Sheet #79E: Joint Employment in Domestic Service Under the Fair Labor Standards Act (FLSA) for information about the FLSA joint employment principles.

Further Background on the Fair Labor Standards Act Provisions Governing Domestic Service Employment

The Fair Labor Standards Act (FLSA or Act) was passed in 1938 to provide minimum wage and overtime protections for workers, to prevent unfair competition among businesses based on subminimum wages, and to spread employment by requiring employers whose employees work excessive hours to compensate employees at one-and-one-half times the regular rate of pay for all hours worked over 40.

The FLSA did not initially protect workers employed directly by households in domestic service, such as cooks, housekeepers, maids, and gardeners. However, the FLSA's minimum wage and overtime compensation provisions did extend to domestic service workers employed by enterprises covered by the Act, such as gardeners employed by covered landscaping companies or a cook employed by a covered caterer, even if their work was in or about a private household.

Congress explicitly extended FLSA coverage to "domestic service" workers in 1974, amending the Act to apply to employees performing household services in a private home, including those domestic service workers employed directly by households or by companies too small to be covered as enterprises under the Act.

While Congress expanded protections to "domestic service" workers, the 1974 amendments also exempted certain domestic service workers from the FLSA's minimum wage and overtime provisions. Under this exemption, casual babysitters and domestic service workers employed to provide "companionship services" (such as companions for elderly persons or persons with an illness, injury, or disability) are not required to be paid the minimum wage or overtime pay. Congress also created an exemption only from the overtime pay requirement for live-in domestic service workers.

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: http://www.wagehour.dol.gov and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the Department's regulations.

U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

1-866-4-USWAGE
TTY: 1-866-487-9243
Contact Us

NOTICE TO EMPLOYEE

Labor Code section 2810.5

EMPLOYEE

Employee Name: _____

Start Date: _____

EMPLOYER

Legal Name of Hiring Employer: _____

Is hiring employer a staffing agency/business (e.g., Temporary Services Agency; Employee Leasing Company; or Professional Employer Organization [PEO])? □ Yes □ No

Other Names Hiring Employer is "doing business as" (if applicable):

_____

Physical Address of Hiring Employer's Main Office:

_____

Hiring Employer's Mailing Address (if different than above):

_____

Hiring Employer's Telephone Number: _____

If the hiring employer is a staffing agency/business (above box checked "Yes"), the following is the other entity for whom this employee will perform work:

Name: _____

Physical Address of Main Office: _____

Mailing Address: _____

Telephone Number: _____

WAGE INFORMATION

Rate(s) of Pay: _____ Overtime Rate(s) of Pay: _____

Rate by (check box): □ Hour □ Shift □ Day □ Week □ Salary □ Piece rate □ Commission

□ Other (provide specifics): _____

Does a written agreement exist providing the rate(s) of pay? (check box) □ Yes □ No

If yes, are all rate(s) of pay and bases thereof contained in that written agreement? □ Yes □ No

Allowances, if any, claimed as part of minimum wage (including meal or lodging allowances):

_____

(If the employee has signed the acknowledgment of receipt below, it does not constitute a "voluntary written agreement" as required under the law between the employer and employee in order to credit any meals or lodging against the minimum wage. Any such voluntary written agreement must be evidenced by a separate document.)

Regular Payday: _____

WORKERS' COMPENSATION

Insurance Carrier's Name: _____
Address: _____
Telephone Number: _____
Policy No.: _____
□ Self-Insured (Labor Code 3700) and Certificate Number for Consent to Self-Insure: _____

PAID SICK LEAVE

Unless exempt, the employee identified on this notice is entitled to minimum requirements for paid sick leave under state law which provides that an employee:

a. May accrue paid sick leave and may request and use up to 3 days or 24 hours of accrued paid sick leave per year;
b. May not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and
c. Has the right to file a complaint against an employer who retaliates or discriminates against an employee for
   1. requesting or using accrued sick days;
   2. attempting to exercise the right to use accrued paid sick days;
   3. filing a complaint or alleging a violation of Article 1.5 section 245 et seq. of the California Labor Code;
   4. cooperating in an investigation or prosecution of an alleged violation of this Article or opposing any policy or practice or act that is prohibited by Article 1.5 section 245 et seq. of the California Labor Code.

The following applies to the employee identified on this notice: *(Check one box)*

□ 1. Accrues paid sick leave only pursuant to the minimum requirements stated in Labor Code §245 et seq. with no other employer policy providing additional or different terms for accrual and use of paid sick leave.
□ 2. Accrues paid sick leave pursuant to the employer's policy which satisfies or exceeds the accrual, carryover, and use requirements of Labor Code §246.
□ 3. Employer provides no less than 24 hours (or 3 days) of paid sick leave at the beginning of each 12-month period.
□ 4. The employee is exempt from paid sick leave protection by Labor Code §245.5. (State exemption and specific subsection for exemption):_____

ACKNOWLEDGEMENT OF RECEIPT

(*Optional*)

_____	_____
(PRINT NAME of Employer representative)	(PRINT NAME of Employee)
_____	_____
(SIGNATURE of Employer Representative)	(SIGNATURE of Employee)
_____	_____
(Date)	(Date)

The employee's signature on this notice merely constitutes acknowledgement of receipt.

Labor Code section 2810.5(b) requires that the employer notify you in writing of any changes to the information set forth in this Notice within seven calendar days after the time of the changes, unless one of the following applies: (a) All changes are reflected on a timely wage statement furnished in accordance with Labor Code section 226; (b) Notice of all changes is provided in another writing required by law within seven days of the changes.

Labor Commissioner's Office

Meal Periods

Revised 7/11/2012

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 a 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. A second meal period of not less than thirty minutes is required if an employee works more than ten hours per day, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and employee only if the first meal period was not waived. Labor Code Section 512. There is an exception for employees in the motion picture industry, however, as they may work no longer than six hours without a meal period of not less than 30 minutes, nor more than one hour. And a subsequent meal period must be called not later than six hours after the termination of the preceding meal period. IWC Order 12-2001, Section 11(A)

Unless the employee is relieved of all duty during his or her thirty minute meal period, the meal period shall be considered an "on duty" meal period that is counted as hours worked which must be compensated at the employee's regular rate of pay. 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 employer and employee an on-the-job paid meal period is agreed to. The written agreement must state that the employee may, in writing, revoke the agreement at any time. IWC Orders 1 ¬15, Section 11, Order 16, Section 10. The test of whether the nature of the work prevents an employee from being relieved of all duty is an objective one. An employer and employee may not agree to an on-duty meal period unless, based on objective criteria, any employee would be prevented from being relieved of all duty based on the necessary job duties. Some examples of jobs that fit this category are a sole worker in a coffee kiosk, a sole worker in an all-night convenience store, and a security guard stationed alone at a remote site.

If the employer requires the employee to remain at the work site or facility during the meal period, the meal period must be paid. This is true even where the employee is relieved of all work duties during the meal period. Bono Enterprises, In. v. Bradshaw (1995) 32 Cal.App.4th 968.

If an employer fails to provide an employee a meal period in accordance with an applicable IWC Order, the employer must pay one additional hour of pay at the employee's regular rate of pay for each workday that the meal period is not provided. IWC Orders and Labor Code Section 226.7 This additional hour is not counted as hours worked for purposes of overtime calculations.

In all places where employees are required to eat on the premises, a suitable place for that purpose must be designated. This requirement does not, however, apply to employees covered by IWC Order 16¬2001, on-site occupations in the construction, drilling, logging and mining industries.. For employees

covered by IWC Order 16-2001, the employer must provide an adequate supply of potable water, soap, or other suitable cleansing agent and single use towels for hand washing.

Under all of the IWC Orders except Orders 12, 14, 15, and 16-2001, 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 must be available for securing hot food and drink or for heating food or drink, and a suitable sheltered place must be provided in which to consume such food or drink. Under IWC Order 12¬2001 for employees in the motion picture industry, hot meals and hot drinks must be provided for employees who are required to work after 12 o'clock midnight, except off-production employees regularly scheduled to work after midnight.

1. Q.

What are the basic requirements for meal periods under California law?

A.

Under California law (IWC Orders and Labor Code Section 512), employees must be provided with no less than a thirty-minute meal period when the work period is more than five hours (more than six hours for employees in the motion picture industry covered by IWC Order 12-2001).Unless the employee is relieved of all duty during the entire thirty-minute meal period and is free to leave the employer's premises, the meal period shall be considered "on duty," counted as hours worked, and paid for at the employee's regular rate of pay. An "on duty" meal period will be permitted only when the nature of the work prevents the employee from being relieved of all duty and when by written agreement between the employer and employee an on¬the-job meal period is agreed to. The test of whether the nature of the work prevents an employee from being relieved of all duty is an objective one. An employer and employee may not agree to an on-duty meal period unless, based on objective criteria, any employee would be prevented from being relieved of all duty based on the necessary job duties. Some examples of jobs that fit this category are a sole worker in a coffee kiosk, a sole worker in an all-night convenience store, and a security guard stationed alone at a remote site.

2. Q.

How does an employer satisfy its obligation to provide a meal period according to the law?

A.

An employer is not required to ensure that no work is performed. However, an employer must do more than simply make a meal period “available.” In general, to satisfy its obligation to provide a meal period, an employer must actually relieve employees of all duty, relinquish control over their activities, permit them a reasonable opportunity to take an uninterrupted 30-minute break (in which they are free to come and go as they please), and must not impede or discourage employees from taking their meal period. (For employees in the health care industry covered by IWC Orders 4 or 5, however, minor exceptions exist as to the employee’s right to leave the employment premises during an off-duty meal period.) Employers may not undermine a formal policy of providing meal periods by pressuring employees to perform their duties in ways that omit breaks (e.g., through a scheduling policy that makes taking breaks extremely difficult). As the California Supreme Court has noted, “The wage orders and governing statute do not countenance an employer's exerting coercion against the taking of, creating incentives to forego, or otherwise encouraging the skipping of legally protected breaks.” Which particular facts in any given case will satisfy the employer’s obligation to provide bona relief from all

duty may vary from industry to industry. See *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004.

3. Q.

What are the timing requirements for when any required first or second meal period must be provided during the workday?

A.

In general, when an employee works for a work period of more than five hours, a meal period must be provided no later than the end of the employee's fifth hour of work (in other words, no later than the start of the employee's sixth hour of work). When an employee works for a period of more than 10 hours, a second meal period must be provided no later than the end of the employee's tenth hour of work (in other words, no later than the start of the employee's eleventh hour of work). The foregoing rules are subject to certain waivers by mutual consent (as explained above), and different rules apply to employees in the motion picture industry. See Brinker Restaurant Corp. v. Superior Court (2012) 53 Cal.4th 1004.

4. Q.

My employer is not allowing me to take a meal period. Is there anything I can do about this situation?

A.

Yes, there is something you can do if you are covered by the meal period requirements of the law. If your employer fails to provide the required meal period, you are to be paid one hour of pay at your regular rate of compensation (this is referred to as meal period premium pay) for each workday that the meal period is not provided. If your employer fails to pay the additional one-hour's pay, you may file a wage claim with the Division of Labor Standards Enforcement.

5. Q.

If there is bona fide relief from all duty during a meal period and the employer relinquishes all control over the employee's activities, but the employee then freely chooses to continue working, is the employer liable for meal period premium pay?

A.

No, the employer would not be liable for meal period premium pay where there is bona fide relief from duty and relinquishment of employer control (and no discouragement or coercion from the employer against taking the meal period). However, in this circumstance, an employer that knows or has reason to know an employee is performing work during the meal period owes compensation to the employee for the time worked (including any overtime hours that have accrued as a result of working through the meal period). See Brinker Restaurant Corp. v. Superior Court (2012) 53 Cal.4th 1004.

6. Q.

Is it permissible if I choose to work through my meal period so that I can leave my job 30 minutes early?

A.

No, working through your meal period does not entitle you to leave work early prior to your scheduled quitting time. In order for an "on duty" meal period to be permitted under the Industrial Welfare Commission Wage Orders, the nature of the work must actually prevent the employee from being relieved of all duty, and there must be a written agreement that an on¬the-job paid meal period is agreed to. Additionally, the written agreement must also state that the employee may, in writing, revoke the agreement at any time.

7. Q.

Can my employer require that I stay on its premises during my meal period?

A.

Yes, your employer can require that you remain on its premises during your meal period, even if you are relieved of all work duties. However if that occurs, you are being denied your time for your own purposes and in effect remain under the employer's control and thus, the meal period must be paid. Minor exceptions to this general rule exist under IWC Order 5¬2001 regarding healthcare workers. Pursuant to the Industrial Welfare Commission Wage Orders, if you are required to eat on the premises, a suitable place for that purpose must be designated. "Suitable" means a sheltered place with facilities available for securing hot food and drink or for heating food or drink, and for consuming such food and drink.

8. Q.

I regularly work an eight-hour shift. What can I do if my employer doesn't provide me with a meal period?

A. You can either file a wage claim with the Division of Labor Standards Enforcement (the Labor Commissioner's Office), or you can file a lawsuit in court against your employer to recover the premium of one additional hour of pay at your regular rate of compensation for each workday that the meal period is not provided.

9. Q.

What is the applicable statute of limitations on filing a meal period claim?

A. In the case of Murphy v. Cole, the California Supreme Court held that the remedy for meal and rest period violations of "one additional hour of pay" under Labor Code section 226.7 is a wage subject to a three-year statute of limitations. Accordingly, a claim must be filed within three (3) years of the alleged meal period violation. See attached Division memoranda regarding the Court's decision.

10. Q.

What is the procedure that is followed after I file a wage claim?

A.

After your claim is completed and filed with a local office of the Division of Labor Standards Enforcement (DLSE), it will be assigned to a Deputy Labor Commissioner who will determine, based upon the

circumstances of the claim and information presented, how best to proceed. Initial action taken regarding the claim can be referral to a conference or hearing, or dismissal of the claim.

If the decision is to hold a conference, the parties will be notified by mail of the date, time and place of the conference. The purpose of the conference is to determine the validity of the claim, and to see if the claim can be resolved without a hearing. If the claim is not resolved at the conference, the next step usually is to refer the matter to a hearing or dismiss it for lack of evidence.

At the hearing the parties and witnesses testify under oath, and the proceeding is recorded. After the hearing, an Order, Decision, or Award (ODA) of the Labor Commissioner will be served on the parties.

Either party may appeal the ODA to a civil court of competent jurisdiction. The court will set the matter for trial, with each party having the opportunity to present evidence and witnesses. The evidence and testimony presented at the Labor Commissioner's hearing will not be the basis for the court's decision. In the case of an appeal by the employer, DLSE may represent an employee who is financially unable to afford counsel in the court proceeding.

See the Policies and Procedures of Wage Claim Processing pamphlet for more detail on the wage claim procedure.

11. Q.

What can I do if I prevail at the hearing and the employer doesn't pay or appeal the Order, Decision, or Award?

A.

When the Order, Decision, or Award (ODA) is in the employee's favor and there is no appeal, and the employer does not pay the ODA, the Division of Labor Standards Enforcement (DLSE) will have the court enter the ODA as a judgment against the employer. This judgment has the same force and effect as any other money judgment entered by the court. Consequently, you may either try to collect the judgment yourself or you can assign it to DLSE.

12. Q.

What can I do if my employer retaliates against me because I asked him why we don't get a meal period?

A.

If your employer discriminates or retaliates against you in any manner whatsoever, for example, he discharges you because you ask about not getting a meal period, object to what you believe to be an illegal practice, or because you file a claim or threaten to file a claim with the Labor Commissioner, you can file a discrimination/retaliation complaint with the Labor Commissioner's Office. In the alternative, you can file a lawsuit in court against your employer.

Labor Commissioner's Office

Rest Periods/Lactation Accommodation

Revised 3/04/11

In California, the Industrial Welfare Commission Wage Orders require that employers must authorize and permit nonexempt employees to take a rest period that must, insofar as practicable, be taken in the middle of each work period. The rest period is based on the total hours worked daily and must be at the minimum rate of a net ten consecutive minutes for each four hour work period, or major fraction thereof. The Division of Labor Standards Enforcement (DLSE) considers anything more than two hours to be a "major fraction" of four." A rest period is not required for employees whose total daily work time is less than three and one-half hours. The rest period is counted as time worked and therefore, the employer must pay for such periods. Since employees are paid for their rest periods, they can be required to remain on the employer's premises during such periods. With respect to the taking of rest periods, an exception exists under IWC Order 5-2001, Section 12(C) for certain employees of 24-hour residential care facilities who may have their rest period limited under certain circumstances. Another exception to the general rest period requirement is for swimmers, dancers, skaters, and other performers engaged in strenuous physical activities who shall have additional interim rest periods during periods of actual rehearsal or shooting. IWC Order 12-2001, Section 12 (C).

For employees in certain on-site occupations in the construction, drilling, logging and mining industries, the employer may stagger the rest periods to avoid interruption in the flow of work and to maintain continuous operations, or schedule rest periods to coincide with breaks in the flow of work that occur in the course of the workday. IWC Order 16-2001, Section 11(A) Additionally, for these employees rest periods need not be authorized in limited circumstances when the disruption of continuous operations would jeopardize the product or process of the work. However, under such circumstances, the employer must make-up the missed rest period within the same workday or compensate the employee for the missed ten minutes of rest time at his or her regular rate of pay within the same pay period. IWC Order 16-2001, Section 11(B) Under Order 16-2001, rest periods must take place at employer designated areas which may include or be limited to the employees immediate work area. See Question No. 9, below, for information on how to file a claim to require your employer to provide time and a place to express milk.

Under IWC Order 10-2001, Section12(C), a crew member employed on a commercial passenger fishing boat who is on an overnight trip shall receive no less than eight hours off-duty time during each 24-hour period. This eight-hour period is in addition to the meal and rest periods required under the Wage Order.

Pursuant to Labor Code Section 1030 every employer, including the state and any political subdivision, must provide a reasonable amount of break time to accommodate an employee desiring to express breast milk for the employee's infant child. The break time shall, if possible, run concurrently with any break time already provided to the employee**.** Break time

for an employee that does not run concurrently with the rest time authorized for the employee by the applicable wage order of the Industrial Welfare Commission need not be paid. 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. The room or location may include the place where the employee normally works if it otherwise meets the requirements of this section. An employer is not required to provide an employee break time for purposes of lactating if to do so would seriously disrupt the operations of the employer. Lactation Accommodation-Labor Code translation-Spanish

If an employer fails to provide an employee a rest period in accordance with an applicable IWC Order, the employer shall pay the employee one additional hour of pay at the employee's regular rate of pay for each workday that the rest period is not provided. Labor Code Section 226.7 Thus, if an employer does not provide all of the rest periods required in a workday, the employee is entitled to one additional hour of pay for that workday, not one additional hour of pay for each rest period that was not provided during that workday.
The rest period is defined as a "net" ten minutes, which means that the rest period begins when the employee reaches an area away from the work area that is appropriate for rest. Employers are required to provide suitable resting facilities that shall be available for employees during working hours in an area separate from the toilet rooms.

1. Q. What are the basic requirements for rest periods under California law?

A. Employers of California employees covered by the rest period provisions of the Industrial Welfare Commission Wage Orders must authorize and permit a net 10-minute paid rest period for every four hours worked or major fraction thereof. Insofar as is practicable, the rest period should be in the middle of the work period. If an employer does not authorize or permit a rest period, the employer shall pay the employee one hour of pay at the employee's regular rate of pay for each workday that the rest period is not provided.

2. Q. Must the rest periods always be in the middle of each four-hour work period?

A. Rest breaks must be given as close to the middle of the four-hour work period as is practicable. If the nature or circumstances of the work prevent the employer from giving the break at the preferred time, the employee must still receive the required break, but may take it at another point in the work period.

3. Q. My employer is not allowing me to take a rest period. Is there anything I can do about this situation?

A. Yes, there is something you can do if you are an employee covered by the rest period requirements of the Industrial Welfare Commission Wage Orders. If your employer fails to authorize and permit the required rest period(s), you are to be paid one hour of pay at your regular rate of compensation for each workday that the rest period is not authorized or permitted. If your employer fails to pay the additional one-hour's pay, you may file a wage claim with the Division of Labor Standards Enforcement.

4. Q. Is it permissible if I choose to work through both of my rest periods so that I can leave my job 20 minutes early?

A. No, working through your rest period does not entitle you to leave work early or arrive late.

5. Q. Can my employer require that I stay on the work premises during my rest period?

A. Yes, your employer can require that you stay on the premises during your rest break. Since you are being compensated for the time during your rest period, your employer can require that you remain on its premises. And under most situations, the employer is required to provide suitable resting facilities that shall be available for employees during working hours in an area separate from the toilet rooms.

6. Q. Can I have additional rest breaks if I am a smoker?

A. No, under California law rest period time is based on the total hours worked daily, and only one ten-minute rest period need be authorized for every four hours of work or major fraction thereof.

7. Q. When I need to use the toilet facilities during my work period does that count as my ten minute rest break?

A. No, the 10-minute rest period is not designed to be exclusively for use of toilet facilities as evidenced by the fact that the Industrial Welfare Commission requires suitable resting facilities be in an area "separate from toilet rooms." The intent of the Industrial Welfare Commission regarding rest periods is clear: the rest period is not to be confused with or limited to breaks taken by employees to use toilet facilities. This conclusion is required by a reading of the provisions of IWC Orders, Section 12, Rest Periods, in conjunction with the provisions of Section 13(B), Change Rooms And Resting Facilities, which requires that "Suitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours."

Allowing employees to use toilet facilities during working hours does not meet the employer's obligation to provide rest periods as required by the IWC Orders. This is not to say, of course, that employers do not have the right to reasonably limit the amount of time an employee may be absent from his or her work station; and, it does not indicate that an employee who chooses to use the toilet facilities while on an authorized break may extend the break time by doing so. DLSE policy simply prohibits an employer from requiring that employees count any separate use of toilet facilities as a rest period.

8. Q. I am regularly scheduled to work an eight-hour shift. What can I do if my employer doesn't allow me to take a rest break?

A. You can either file a wage claim (the Labor Commissioner's Office), or you can file a lawsuit in court against your employer to recover the premium of one additional hour of pay at your regular rate of compensation for each workday that the rest period is not provided.

9. Q. What happens if my employer does not provide me with the opportunity to take a break for lactation purposes?

A. If you feel your employer is not providing you with adequate break time and/or a place to express milk as provided for in Labor Code section 1030, you may file a report/claim with the DLSE Bureau of Field Enforcement (BOFE) at the BOFE office nearest your place of employment. Seehttp://www.dir.ca.gov/dlse/HowToReportViolationtoBOFE.htm.

The DLSE may, after an inspection, issue to an employer who violates any provision of this chapter, a civil citation ($100.00 for each violation) that may be contested in accordance with the procedure outlined in Labor Code Section 1197.1 (Labor Code Section 1033).

In addition, any employee who is a victim of retaliation for either asserting a right to lactation accommodation or for complaining to the DLSE about the failure of an employer to provide this accommodation may file a retaliation claim with DLSE pursuant to Labor Code Section 98.7.

10. Q. What is the applicable statute of limitations on filing a rest period claim?

A. In the case of Murphy v. Cole, the California Supreme Court held that the remedy for meal and rest period violations of “one additional hour of pay” under Labor Code section 226.7 is a wage subject to a three-year statute of limitations. Accordingly, a claim must be filed within three (3) years of the alleged rest period violation. See attached Division memoranda regarding the Court's decision.

11. Q. What is the procedure that is followed after I file a wage claim?

A. After your claim is completed and filed with a local office of the Division of Labor Standards Enforcement (DLSE), it will be assigned to a Deputy Labor Commissioner who will determine, based upon the circumstances of the claim and information presented, how best to proceed. Initial action taken regarding the claim can be referral to a conference or hearing, or dismissal of the claim.

If the decision is to hold a conference, the parties will be notified by mail of the date, time and place of the conference. The purpose of the conference is to determine the validity of the claim, and to see if the claim can be resolved without a hearing. If the claim is not resolved at the conference, the next step usually is to refer the matter to a hearing or dismiss it for lack of evidence.

At the hearing the parties and witnesses testify under oath, and the proceeding is recorded. After the hearing, an Order, Decision, or Award (ODA) of the Labor Commissioner will be served on the parties.

Either party may appeal the ODA to a civil court of competent jurisdiction. The court will set the matter for trial, with each party having the opportunity to present evidence and witnesses. The evidence and testimony presented at the Labor Commissioner's hearing will not be the basis for the court's decision. In the case of an appeal by the

employer, DLSE may represent an employee who is financially unable to afford counsel in the court proceeding.

See the Policies and Procedures of Wage Claim Processing pamphlet for more detail on the wage claim procedure.

12. Q. What can I do if I prevail at the hearing and the employer doesn't pay or appeal the Order, Decision, or Award?

A. When the Order, Decision, or Award (ODA) is in the employee's favor and there is no appeal, and the employer does not pay the ODA, the Division of Labor Standards Enforcement (DLSE) will have the court enter the ODA as a judgment against the employer. This judgment has the same force and effect as any other money judgment entered by the court. Consequently, you may either try to collect the judgment yourself or you can assign it to DLSE.

13. Q. What can I do if my employer retaliates against me because I objected to the fact that he doesn't provide employees with rest breaks?

A. If your employer discriminates or retaliates against you in any manner whatsoever, for example, he discharges you because you object to the fact that he's not providing employees with rest breaks, or because you file a claim or threaten to file a claim with the Labor Commissioner, you can file a discrimination/retaliation complaint with the Labor Commissioner's Office. In the alternative, you can file a lawsuit in court against your employer.

MEAL AND REST PERIOD POLICY

Employees that are scheduled to work more than five (5) hours must take a thirty (30) minute uninterrupted meal period, off the clock, no later than the end of the fifth hour of work. Employees are entitled to be relieved of all their duties and free to take care of personal matters during that time. Employees that have a six (6) hour shift may voluntarily waive the meal period if they execute a Six Hour Shift Waiver Form. Please see the Human Resource Department.

The Company provides a paid ten (10) minute rest period for every four (4) hours of work or major fraction thereof. An employee who works between three and a half (3 1/2) to six (6) hours is entitled to one (1) ten minute break, an employee who works between six (6) to ten (10) hours is entitled to a second ten minute break, and an employee who works between ten (10) and fourteen (14) hours is entitled to a third ten minute break. An employee that works less than three and a half (3 ½) hours is not entitled to receive a paid ten (10) minute rest period. Please check with your supervisor for the appropriate time to take meal and rest breaks.

Meal periods and rest periods may not be waived to leave early nor may they be consolidated for a longer break or meal period.

It is against Company policy for any employee to perform work during meal or rest periods. It is against Company policy to return to work before the end of a 30 minute meal period or ten minute rest break. It is also against Company policy for employees to work "off the clock," that is, perform work without recording it as time worked on their timesheets.

Employees working more than ten (10) hours are entitled to a second meal period before end of the tenth hour of work, unless the employee voluntarily executes a Twelve Hour Shift Waiver Agreement and has taken the first meal period.

The undersigned acknowledges that he or she has read and understands the foregoing Meal and Rest Period Policy.

_____ _____

Employee Signature Date

Revised October 22, 2015

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.

Option One:

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 throughout 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.

Option Two:

I, _____, do not wish to waive my meal period. I understand that my employer may schedule me for six and a half hours (6.5) in order to meet the business needs of the Company.

Dated:_____ _____

Employee

_____

Employer

Revised 4/17/2014

MEAL PERIOD WAIVER (10/12 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.

Option One:

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.

Option Two:

I, _____, do not wish to waive my second meal period.

Dated:_____

_____
Employee

_____
Employer

Revised 4/17/2014

ON DUTY MEAL AGREEMENT

I understand that to ensure the safety and needs of our clients, it is sometimes necessary for me, as the assigned staff person, to maintain supervision throughout the meal period. I have the right to agree or not agree to remain on duty and to have an "on duty" meal period when assigned. I understand that I will be paid my regular hourly rate for on duty meal periods.

Option One:

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. I understand that I will be paid my regular hourly rate for any on duty meal agreement.

Option Two:

I, _____, do not wish to have an on duty meal. I understand that this may result in a change in my hours and schedule so that the organization can meet the needs of its clients.

Print Staff Name: _____

Staff Signature: _____ Date: _____

HR Signature: _____ Date: _____

Revised 4/15/2014

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)		**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. I further certify that I have had the opportunity to take my required rest period(s) according to company policy and have taken the required meal period(s) according to company policy.	**Regular/OT Hours**		
	Vacation Hours		
	Holiday Hours		
	Sick Pay Hours		
_____ Signature _____ Date	**TOTAL**		