ADVICE
SOLUTIONS
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
Rebecca L. Gombos
Patrick E. White III

LANDEGGER BARON LAW GROUP, ALC

Exclusively Representing Employers

"Demystifying California's Wage Orders, Labor Codes and Other Employment Law Mysteries"

June, 2016

Presented By:

San Fernando Valley Location:	***Ventura County Location:***
Roxana E. Verano, Esq.	Roxana E. Verano, Esq.
Christopher L. Moriarty, Esq.	Christopher L. Moriarty, Esq.
Marie D. Davis, Esq.	Marie D. Davis, Esq.

This program has been approved for 1.75 hours (California) recertification credit hours toward PHR, SPHR & GPHR through the HR Certification Institute.

"The use of this seal is not an endorsement by the HR Certification Institute of the quality of the program. It means that this program has met the HR Certification Institute's criteria to be pre-approved for recertification credit."

The attached material must not be considered legal advice. The sample forms and policies are for educational purposes only. We strongly recommend that you consult with legal counsel before adopting or implementing any of the attached sample forms and policies to avoid potential liability.

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

TABLE OF CONTENTS

Department of Industrial Relations

Industrial Welfare Commission wage orders

The 2014 minimum wage order and all current industry wage orders are listed below. The pdf files require Adobe Acrobat Reader or other software for viewing or printing.

The minimum wage order may be printed from this website on 8.5" x 14" paper and posted.

The industry wage orders are formatted to print on 8.5" x 11" paper.

Printed versions of the industry wage orders for workplace posting can be obtained by ordering fromhttp://www.dir.ca.gov/wp.asp or by contacting your local DLSE district office.

Pursuant to AB 1835, Chapter 230, Statutes of 2006, the Department of Industrial Relations amends and republishes Industrial Welfare Commission orders as set forth below, amending sections 4(A) and 10(C) in orders #1 through #15 and sections 4(A) and 9(C) in order #16.

Also available is a history of the industry wage orders, including Statement of Basis and Summaries.

Wage order	PDF version
Minimum wage order	MW-2014 (English) MW-2014 (Spanish)
Wage order #1 Manufacturing Industry	#1-2001 (English) #1-2001 (Chinese) #1-2001 (Spanish)
Wage order #2 Personal Services Industry	#2-2001 #2-2001 (Chinese) Section 2(E): Definition: Employee(English/Vietnamese) #2-2001 (Spanish)
Wage order #3 Canning, Freezing, and Preserving Industry	#3-2001 #3-2001 (Chinese) #3-2001 (Spanish)
Wage order #4 Professional, Technical, Clerical, Mechanical and Similar Occupations	#4-2001 #4-2001 (Chinese) #4-2001 (Spanish)
Wage order #5 Public Housekeeping Industry	#5-2001 (English) #5-2001 (Chinese) #5-2001 (Spanish)
Wage order #6 Laundry, Linen Supply, Dry Cleaning and Dyeing Industry	#6-2001 #6-2001 (Chinese) #6-2001 (Spanish)
Wage order #7 Mercantile Industry	#7-2001 #7-2001 (Chinese) #7-2001 (Spanish)
Wage order #8 Industries Handling Products After Harvest	#8-2001 (English) #8-2001 (Chinese) #8-2001 (Spanish)

Industrial Welfare Commission wage orders (Page 2)

Wage order #9 **Transportation Industry**	#9-2001 (English) #9-2001 (Chinese) #9-2001 (Spanish)
Wage order #10 **Amusement and Recreation Industry**	#10-2001 (English) #10-2001 (Chinese) #10-2001 (Spanish)
Wage order #11 **Broadcasting Industry**	#11-2001
Wage order #12 **Motion Picture Industry**	#12-2001 (English) #12-2001 (Chinese) #12-2001 (Spanish)
Wage order #13 **Industries Preparing Agricultural Products for Market, on the Farm**	#13-2001 (English) #13-2001 (Chinese) #13-2001 (Spanish)
Wage order #14 **Agricultural Occupations**	#14-2001 (English) #14-2001 (Chinese) #14-2001 (Spanish)
Wage order #15 **Household Occupation**	#15-2001 (English) #15-2001 (Chinese) #15-2001 (Spanish)
Wage order #16 **Certain On-Site Occupations in the Construction, Drilling, Logging and Mining Industries**	#16-2001 (English) #16-2001 (Chinese) #16-2001 (Spanish)
Wage order #17 **Miscellaneous Employees**	#17-2001(English) #17-2001 (Chinese) #17-2001 (Spanish)

http://www.dir.ca.gov/iwc/wageorderindustries.htm

WHICH IWC ORDER?

Classifications

This pamphlet is intended as a guide in determining the classifications of businesses and occupations under the Industrial Welfare Commission Orders.

These guidelines and classifications of employees are general in nature and the existence of specific facts and circumstances of the employment relationship and operations of a particular employer may require a different determination of proper classification that the general one set forth herein.

As new types of businesses and occupations are constantly coming into existence, there undoubtedly are businesses and occupations that have not been included herein. Additionally, as industry practices and business structures evolve, circumstances may dictate the change in classification of a particular occupation from one wage order to another wage order.

Employers are advised that while courts may find this pamphlet to be useful in determining the classification of business and occupations under the Industrial Welfare Commission Orders, courts are not required to follow the classifications of occupations listed herein and that compliance with the guidelines suggested herein do not establish a "safe harbor" for classifying an employee within a particular wage order.

CLASSIFICATION OF EMPLOYEES: INDUSTRY OR OCCUPATION ORDER?

In order to determine which Industrial Welfare Commission (IWC) Order applies to an employer or a business, it is first necessary to determine if a business is covered by an industry order. An industry order (IWC Orders 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, and 13) regulates wages, hours and working conditions in specific industries. An order is an industry order if the title of the order contains the word "industry." Otherwise, the order is an occupational order (IWC Orders 4, 14, 15, 16 and 17). Wage, hour and working condition regulations contained in an occupational order only apply when a business is not covered by an industry order.

Examples of IWC Orders, industry or occupational?

1. IWC Order 1 (manufacturing industry) applies to an office assistant employed by a company that builds automobiles because the company is covered by an industry order.

2. IWC Order 4 (an occupational order) applies to an office assistant employed in a law firm because a law firm is not covered by an industry order.

3. IWC Order 5 (public housekeeping industry) applies to a nurse employed by a hospital because a hospital is covered by an industry order.

4. IWC Order 4 (an occupational order) applies to a nurse employed by a doctor's office because a doctor's office is not covered by an industry order.

5. IWC Order 7 (mercantile industry) applies to a bookkeeper in a retail store operation because retail stores are covered by an industry order.

6. IWC Order 4 (an occupational order) applies to a bookkeeper in an accounting firm because and accounting firm is not covered by an industry order.

Note: It is very important that you first determine if a business is covered by any industry order. If not, you must look to one of the occupational orders for coverage. Please refer to the index of businesses and occupations for examples of proper application.

A business is classified according to the main purpose of the business except in IWC Order 5 (see section below on Incidental Housekeeping Activities). Large businesses may conduct a variety of operations and it may appear initially that different industry orders could apply. However, when those operations are part of the main business, only one order will apply.

Example:

A business's main purpose is operating a warehouse and incidental thereto employs a separate sales staff to sell goods. IWC Order 9 covers this operation even though sales are covered under IWC Order 7 because the main purpose of the business is to operate a warehouse.

SEPARATE UNITS OF MULTI-PURPOSE COMPANIES

Distinct operations in multi-purpose businesses may be covered by different industry orders if they are operated for different business purposes, and the management is separately organized at all levels.

Example:

A retail department store (IWC Order 7) owns a restaurant (IWC Order 5) that is located on the department store premises but is operated as a separate corporate entity. These businesses are covered by different industry orders because they are operated for different business purposes, and the management is separately organized at all levels.

Please note that problems in determining correct order coverage occur when businesses are of a mixed nature. They are best resolved by making a broad assessment of the principal purpose of the business. This does not mean auditing receipts to compare income from sales and service, but determining the nature of the business by simple observation and common sense.

INCIDENTAL HOUSEKEEPING ACTIVITIES

IWC Order 5 does not limit coverage to businesses whose main purpose is providing 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.

Examples:

IWC Order 1 covers a factory that operates a cafeteria. IWC Order 5 does not cover it.

IWC Order 5 covers a private school which is not covered by an industry order and which provides dormitories or dining facilities.

Where a concessionaire contracts to operate lodging or dining facilities, IWC Order 5 covers the concessionaire's business, but the rest of the enterprise (school or factory) is classified otherwise.

IWC ORDER COVERAGE

Order 1 – MANUFACTURING INDUSTRY

Definition, Section 2 (H)

> "Manufacturing Industry" means any industry, business, or establishment operated for the purpose of preparing, producing, making, altering, repairing, finishing, processing, inspecting, handling, assembling, wrapping, bottling, or packaging goods, articles, or commodities, in whole or in part; EXCEPT when such activities are covered by Order in the : Canning, Preserving, and Freezing Industry; Industries Handling Products After Harvest; Industries Preparing Agricultural Products for Market, on the Farm; or Motion Picture Industry.

Aircraft and aircraft parts, manufacturing
Apparel products, manufacturing
Assembly (any manufacturing)
Automobile manufacturing
Auto-wrecking (non-retail)
Blueprinting
Book and magazine publishers
Cement
Ceramics
Coating lumber products
Communications equipment, manufacturing
Concrete
Copy making services
Dental laboratories
Developing, printing or editing of film (except in motion picture industry, see Order 12)
Electronic products, manufacturing
Film processing (except in motion picture industry, see Order 12)
Food manufacture (secondary processing)
Food processing
- Baby formulas (except canned fruits, etc., see Order 3)
- Bakeries (non-retail)
- Bottling (soft drinks)
- Breweries
- Candy
- Cane sugar refining (of purchased raw sugar or syrup)
- Citrus by-products
- Cottonseed oil
- Dehydrated soups and mixes
- Ice cream (beyond first processing)
- Margarine
- Meat
- Pet foods, dry
- Pizza manufacturing
- Potato and corn chip manufacturing
- Preparing fruit and vegetables for restaurants, bakeries, etc.
- Salad oil
- Soft drinks, bottling
- Tortilla manufacturing
- Yeast

Food products, manufacturing

Galvanizing
Garment manufacturing
Iron works
Laboratories, dental and optical
Lumber products
Machinery, metal products
Magazine and book publishers
Meat processing
Metal fabrication
Metal products, machinery
Microfilm services
Needle trades
Oil refining
Optical laboratories
Paper products
Photocopy services
Plastic products
Pre-fabricated housing (except on-site installation, see Order 16)
Public/private utilities, electrical only (for telephone, natural gas and water, utilities see Order 4)
Publishing
Records, tapes and compact disks (reproduction for wholesale)
Recycling processing plants that alter/transform material (for non-processing recycling centers, see Order 4)
Refineries, Oil
Refineries, sugar
Repacking bulk products
Reweaving (except by laundries/dry cleaners, see Order 6)
Rubber manufacturing
Sawmills
Sheet metal shops
Shipbuilding (except repair, see Order 9)
Shoe manufacturing and repair
Steel smelters/plants
Sugar refineries
Taxidermy
Textile products, manufacturing
Utilities, public/private, electrical only (for telephone, natural gas and water, utilities see Order 4)
Wastewater treatment facilities

Order 2 – PERSONAL SERVICE INDUSTRY

Definition, Section 2 (J)

> "Personal Service Industry" means any industry, business or establishment operated for the purpose of rendering, directly or indirectly, any service, operation or process used or useful in the care, cleansing or beautification of the body, skin, nails, or hair, or in the enhancement of personal appearance or health, including but not limited to, beauty salons, schools of beauty culture offering beauty care to the public for a fee, barber shops, bath and massage parlors, physical conditioning, weight control salons, health clubs, and mortuaries.

Barbershops
Bath parlors
Beauty shops
Body building gymnasium, facility
Funeral parlors
Gymnasiums, body building
Health clubs
Massage parlors
Mortuaries
Physical conditioning centers
Schools of beauty culture offering beauty care to the public for a fee (students are exempt)
Sun tanning parlors
Weight control salons

Order 3 – CANNING, FREEZING, AND PRESERVING INDUSTRY

Definition, Section 2(B)

> "Canning, Freezing, and Preserving Industry" means any industry, business or establishment operated for the purpose of canning soups, or of cooking, canning, curing, freezing, pickling, salting, bottling, preserving, or otherwise processing any fruits or vegetables, seafood, meat, poultry, or rabbit product, when the purpose of such processing is the preservation of the product and includes all operations incidental thereto.

Canned pet food
Canned soups, stews, hash, etc.
Canning: fish, fruit, meat, poultry, rabbit, vegetables
Fish; canning, freezing
Freezing: fish, fruit, meat, poultry, rabbit, vegetables
Fruit; canning, freezing
Fruit jellies and preserves
Hash, canned
Juice concentrates
Meat: canning, freezing
Pet foods, canned
Poultry: canning, freezing
Rabbit: canning, freezing
Vegetables: canning, freezing

Order 4 – PROFESSIONAL, TECHNICAL, CLERICAL, MECHANICAL and SIMILAR OCCUPATIONS

Definition, Section 2(O)

> "Professional, Technical, Clerical, Mechanical and Similar Occupations" includes professional, semiprofessional, managerial, supervisory, laboratory, research, technical, clerical, office work, and mechanical occupations. Said occupations shall include, but not be limited to, the following: accountants; agents; appraisers; artists; attendants; audio-visual technicians; bookkeepers; bundlers; billposters; canvassers; carriers; cashiers; checkers; clerks; collectors; communications and sound technicians; compilers; copy holders; copy readers; copy writers; computer programmers and operators; demonstrators and display representatives; dispatchers; distributors; door-keepers; drafters; elevator operators; estimators; editors; graphic arts technicians; guards; guides; hosts; inspectors; installers; instructors; interviewers; investigators; librarians; laboratory workers; machine operators; mechanics; mailers; messengers; medical and dental technicians and technologists; models; nurses; packagers; photographers; porters and cleaners; process servers; printers; proof readers; sales persons and sales agents; secretaries; sign erectors; sign painters; social workers; solicitors; statisticians; stenographers; teachers; telephone, radio-telephone, telegraph and call-out operators; tellers; ticket agents; tracers; typists; vehicle operators; x-ray technicians; their assistants and other related occupations listed as professional, semiprofessional, technical, clerical, mechanical, and kindred occupations.

Use of the asterisk (*) in the following list indicates Order 4, an occupational order, covers the named and related occupations *only* when they are not covered by an industry order. They type of business determines the industry order.

*Accountants
Accounting firms
Advertising agencies
*Agents
*Agronomist
Animal care services, no overnight shelter or feeding provided (see Order 5, when overnight shelter or feeding are provided)
*Appraisers
Architectural offices
*Artists
Associations, business (Chamber of Commerce, retailers' associations, etc.)
Athletic agents
*Attendants
Attorney offices
*Audio-visual technicians
Banks
*Billposters
Boats, office and support personnel
*Bookkeeper
*Bundlers
Business Associations (Chamber of Commerce, retailers' associations, etc.)
Business services
Cable TV service and installation
*Call-out operators
*Canvassers
*Carriers
*Cashiers

Cemeteries
Charitable agencies (non-profit)
*Checkers
Checkrooms
Churches
*Cleaners and porters
*Clerks
Collection agencies
*Collectors
Colleges, private, no board or lodging
Commercial fishing boats, office and support personnel
Commercial photography (except in motion picture industry, see Order 12)
Communications firms
*Communications technicians
*Compilers
*Computer operators, programmers
Construction, office and support personnel
Contractors, office and support personnel
*Copyholders
*Copyreaders
*Copywriters
Credit agencies
Credit unions
Crop dusting, office and support personnel
Dance schools, studios
Day care centers, no board or lodging provided
*Demonstrators
Dental offices
*Dental technicians and technologists
Detective agencies, protective and investigative
Direct mail advertising and service
*Display representatives
*Dispatchers
Doctors' offices
*Drafters
*Drivers (vehicle)
Dumps/landfills
*Editors
*Elevator operators
Employment agencies
Engineering firms
*Estimators
Farm clerical and technical personnel when not covered by Order 14 or industry order
Farm labor contractors
Finance companies
Fishing boats (commercial) office and support personnel
Geophysical exploration
*Graphic arts technicians
*Guards
*Guides
Hazardous materials cleanup and handling when contractor's license not required (when contractor's license required, see Order 16)
*Horticulturist
*Hosts, hostesses
*Inspectors
*Installers when contractor's license not required (when contractor's license required, see Order 16)
*Instructors
Insurance companies
Internet service providers
*Interviewers
*Investigators
Investment houses

Laboratories (independent research, testing, etc.)
*Laboratory workers
Labor contractors (office and support personnel)
Labor unions
Landfills/dumps
Legal firms
*Librarians
Libraries
Loan offices
Logging, office and support personnel
*Machine operator
*Mailers
*Mechanics
Medical clinics (apart from hospitals)
*Medical technicians and technologists
Mining, office and support personnel
*Models
Nonprofit organizations (charitable, social agencies)
*Nurses
Oculist offices
*Packagers
Painting contractors, office and support personnel
*Photographers
Photography, commercial
*Porters and cleaners
Portrait studios
*Printers
Private schools, universities, colleges, no board or lodging provided (when board or lodging are provided, see Order 5)
*Process servers
Professional offices (architects, attorneys, doctors, dentists, engineers)
*Programmers, computer
*Proofreaders
Protective agencies
Public/private utilities, water, natural gas, telephone (for electrical utilities, see Order 1)
Public works, office and support personnel
*Radiotelephone operators
Real estate offices (brokerage only; see also Order 5)
Recycling centers, non-processing
Repossession agencies
Research and development
*Sales agents
*Salespersons
Savings and loan
Schools, private, no board or lodging provided (when board or lodging are provided, see Order 5)
*Secretaries
*Security guards
Security guard service
Shopping services
*Sign erectors
*Sign painters
Social agencies
*Social workers
*Solicitors
*Sound technicians
*Statisticians
*Stenographers
Stock brokerage firms
Talent agents
Tax Consultants
*Teachers
*Telegraph operators
Telephone/Telegraph companies (includes cell/wireless phone service)
Telephone answering service

*Telephone operators
*Tellers
Temporary employment agencies
*Ticket agents
*Tracers
Travel agencies
*Truck drivers
*Typists
Universities, private, no board or lodging provided (when board or lodging are provided, see Order 5)
*Vehicle operators
Veterinary service, no overnight shelter or feeding provided (when overnight shelter or feeding are provided, see Order 5)
Water and oil well drilling and servicing firms, office and support personnel
*X-ray technicians

Use of the asterisk (*) in the following list indicates Order 4, an occupational order, covers the named and related occupations *only* when they are not covered by an industry order. They type of business determines the industry order.

Order 5 – PUBLIC HOUSEKEEPING INDUSTRY

Definition, Section 2(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, nightclubs, 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) Hotel, 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 additional 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.

Animal care services with overnight shelter or feeding (when no overnight shelter or feeding are provided, see Order 4)

Animal sanctuaries/shelters with overnight shelter or feeding (when no overnight shelter or Feeding are provided, see Order 4)
Apartment houses
Bakeries, with tables for patrons' use
Banquet service
Bars
Boarding and care homes for the aged
Boarding houses
Box lunch services
Cafeterias
Camps, day
Camps, organized
Catering service
Childcare institutions
Child nurseries
Cleaning of facilities, grounds, commercial units, living units
Cocktail lounges
Colleges, private with board or lodging
Commissaries
Convalescent hospitals
Cookhouses in lumber camps
Day camps
Day care centers that provide board or lodging
Development of grounds
Donut shops, with tables for patrons' use (if no tables are provided for patrons' use, see Order 7)
Drinking places
Dude ranch
Eating-places
Farm labor camps with board or lodging
Fraternity houses
Homes for the aged
Hospitals, including convalescent
Hotels
Ice cream store, with tables for patrons' use
Janitorial service
Landscaping (except initial earth moving and cement work, see Order 16)
Loft or office buildings
Logging camps with board or lodging
Lunch counters
Lunch wagons
Maintenance of grounds, facilities, quarters of commercial units and living units
Mini-storage not connected with transportation firm (if connected with a transportation firm, see Order 9)
Motels
Nightclubs, if food or drink is served incidental to main business of offering entertainment (if main business is serving food or drink, See Order 10)
Nurseries, child
Office and loft buildings
Organized camps
Pest control
Pre-schools
Property management
Real estate offices, if business includes property management
Restaurants
Rest homes
Sanitariums
School, private, with board or lodging
Sewer/septic cleaning

Sorority houses
Stables, with board and care
Storage, mini, not connected with transportation firm (if connected with a transportation firm, see Order 9)
Taverns
Termite control
Trailer parks
Tree service firms
Universities, private, with board or lodging
Veterinary service that provides overnight shelter or feeding

Note: Order 5 covers all classifications of employees in an Order 5 business, such as a hospital, whether they assist patients, clean rooms, do laundry, drive, keep books, etc. This is also true of other industry orders.

Order 6 – LAUNDRY, LINEN SUPPLY, DRY CLEANING AND DYEING INDUSTRY

Definition, Section 2(H)

> "Laundry, Linen Supply, Dry Cleaning and Dyeing Industry" means any industry, business or establishment operated for the purpose of washing, ironing, cleaning, refreshing, restoring, pressing, dyeing, storing, fumigating, mothproofing, or other processes incidental thereto, on articles of fabrics of any kind, including but not limited to clothing, hats, drapery, rugs, curtains, linens, household furnishings, textiles, furs, or leather goods; and includes self-service laundries, self-service dry cleaning establishments, and the collection, distribution, storage, sale or resale at retail or wholesale of the foregoing services.

Carpet cleaning service, including in-home
Diaper service, if laundering included (if laundered elsewhere, see Order 7)
Drapery cleaning service, including in-home
Dry cleaning, including self-service
Dyeing plants
Laundries, including self-service
Laundromats
Linen supply, if laundering included
Rental of uniforms, if laundering/cleaning included (if laundering/cleaning not included, see Order 7)
Self-service laundries/dry cleaners
Uniform rentals, if laundering/cleaning included (if laundering/cleaning not included, see Order 7)

Order 7 – MERCANTILE INDUSTRY

Definition, Section 2(H)

> "Mercantile Industry" means any industry, business, or establishment operated for the purpose of purchasing, selling or distributing goods or commodities at wholesale or retail; or for the purpose of renting goods or commodities.

Antique Stores, retail/wholesale
Auction houses
Bakeries, retail, if no tables for patrons' use (if bakery has tables for patrons' use, see Order 5)
Building materials, retail/wholesale
Commodity agents and brokers
Commodity rentals
Costume rental
Diaper service, if laundered elsewhere (if laundering included, see Order 6)
Donut shops, if no tables for patrons' use (if shop has tables for patrons' use, see Order 5)
Equipment rentals (except vehicles, see Order 9)
Flea markets
Florists, retail/wholesale
Gas stations (with or without car washes or garages)
Hardware stores, retail/wholesale
Ice cream stores, if no tables are provided for patrons' use
Import-export, retail/wholesale
Irrigation systems (sales)
Linen supply, if laundering not included (if laundering included, see Order 6)
Mail order houses, retail/wholesale
Nurseries, horticultural (main purpose selling)
Optician (except manufacturer, see Order 1)
Rental of commodities and goods
Rental of equipment (except vehicles, see Order 9)
Rental of uniforms, if laundering/cleaning not included (if laundering included, see Order 6)
Retail stores
Rummage sales
Solar equipment (sales)
Telephone soliciting
Thrift shops
Uniform rentals, if laundering/cleaning not included (if laundering included, see Order 6)
Wholesale houses

Note: A retail store operating incidentally as part of another business; such as a gift shop operated by a hotel or hospital, is covered by the industry order applicable to the main business, i.e., the hotel or hospital (Order 5). A retail store operating on the premises of another business where the retail store is neither owned nor operated by the other business is covered y the industry order applicable to its type of business, which in this example, a retail store, is Order 7. A separate establishment under a distinctly separate organization, such as a telephone equipment store under the sales division of a telephone company, would be under Order 7, and not under Order 4, the order applicable to the telephone company. Each such situation must be analyzed on a case-by-case basis, as it depends upon the particular facts of the situation.

Order 9 – TRANSPORTATION INDUSTRY

Definition, Section 2(N)

> "Transportation Industry" means any industry, business or establishment operated for the purpose of conveying persons or property from one place to another whether by rail, highway, air or water, and all operations and services in connection therewith; and also includes storing or warehousing of goods or property, and the repairing, parking, rental, maintenance, or cleaning of vehicles.

Airlines
Ambulance service
Armored car service
Boat rentals
Boats, cruise, ferry
Bus lines
Buses, tour
Car loading
Car rentals
Car washes, when not in retail business
Courier service
Cruise boats
Express and parcel delivery companies
Ferryboats
Garages, repair (except when operated by vehicle dealer or gas station, see Order 7)
Garages, storage
Garbage collectors
Limousine service
Logging trucks, commercial (for on-site logging, see Order 16)
Maintenance of vehicles, e.g., garages, car washes, etc., if not connected with gas station or vehicle dealer (if connected with gas station or vehicle dealer, See Order 7)
Mini-storage connected with a transportation firm (if not connected with a transportation firm, see Order 5)
Moving and storage warehousing (of commodities moved)
Parcel delivery service
Parking lots
Railways
Rental of vehicles (cars, trucks, boats, ships, airplanes)
Repairs to vehicles (except when operated by vehicle dealer or gas station, see Order 7)
Ship rental
Ship repair
Stevedoring
Storage and moving warehouse (of commodities moved)
Storage garages
Taxi service, including water taxis
Tire aligning and balancing companies
Tour buses, companies
Tow companies
Transportation companies
Trucking, including commercial trucking of farm products
Truck rental
Vehicle rental, including boats and ships
Vehicle repairs (except when operated by vehicle dealer or gas station, see Order 7)
Warehousing and storage (of commodities moved)
Water taxi service

Note: Many kinds of industries employ people to operate and maintain vehicles and warehouses; transportation companies under Order 9 have that as their main purpose. A hotel employee who drives a van is under Order 5; a mechanic employed by a retail chain is under Order 7; a mini-storage facility not connected with a transportation firm is under Order 5; the building of vehicles, including ships, is under Order 1; a farm employee who delivers farm products to the first point of distribution is under Order 14, but a trucking company which is in the business of trucking mostly farm products is under Order 9; employees who balance and align tires are under Order 9, if their employer is in the business of providing that service but under Order 7 if their employer is basically in the business of selling tires.

Order 10 – AMUSEMENT AND RECREATION INDUSTRY

Definition, Section 2(A)

> "Amusement and Recreation Industry" means any industry, business or establishment operated for the purpose of furnishing entertainment or recreation to the public, including but not limited to theaters, dance halls, bowling alleys, billiard parlors, skating rinks, riding academies, race tracks, amusement parks, athletic fields, swimming pools, gymnasiums, gold courses, tennis courts, carnivals, and wired music studios.

Academies, riding
Amusement parks
Arena/auditoriums (multipurpose)
Aquariums
Athletic fields
Ballooning
Billiard parlors
Bingo parlors, games
Boating, golf, tennis, etc., clubs
Boats, charter fishing
Botanical Gardens
Bowling alleys
Card rooms
Carnivals
Casinos
Charter fishing boats
Clubs; golf, tennis, boating, etc. (also see Order 5)
Dance halls
Fishing: charter boats, party boats, recreational fishing lakes
Game rooms
Golf courses
Golf, tennis, boating, etc., clubs
Gymnasiums, spectator or participatory sports
Ice skating rinks
Music festival, opera and symphony organizations
Music groups and orchestras
Nightclubs, entertainment is primary purpose (if food or drink is served other than incidentally, see Order 5)
Opera, symphony and music festival organizations
Orchestras and other music groups
Penny arcades
Racetracks
Racing stables
Riding academies, stables
Rodeos
Roller skating rinks

Ski facilities
Ski lifts
Stables, riding academies (primarily recreational), racing
Swimming pools
Symphony, music festival and opera organizations
Tennis courts
Theaters
Theatrical companies
Wired music studios
Zoos

Note: The gymnasiums under Order 10 are those used primarily for spectator or participatory sports and are different from the establishments offering bodybuilding or weight control facilities under Order 2. Musicians may be employed directly by restaurants or hotels under Order 5; by symphony or opera organizations under Order 10; or, in a group which shares receipts, by a leader who can hire or fire them and command more than an equal share of the fees paid for the group's services under Order 10. Food service may be provided incidentally by a firm whose main business is offering entertainment, as in a theater, bowling alley, nightclub or golf club without affecting the classification under Order 10. But a golf club with a public dining room not operated by the golf club (separate ownership or leased from the golf club) is operating a restaurant, and the restaurant employees are covered under the provisions of Order 5.

Order 11 – BROADCASTING INDUSTRY

Definition, Section 2(B)

> "Broadcasting Industry" means any industry, business or establishment operated for the purpose of broadcasting or taping and broadcasting programs through the medium of radio or television.

Broadcasting and taping (sound or video)
Radio broadcasting
TV broadcasting

Note: The production of motion pictures on videotapes for a purpose other than broadcasting usually falls under Order 12 (see note following Order 12). If the company both tapes and broadcasts, as in a TV news show, the taping is under Order 11, but if the broadcaster contracts with another firm for the production of a video tape, the taping is an Order 12 operation. Most cable TV companies are in the business primarily for the purpose of selling and providing a communications service and are under Order 4.

Order 14 – AGRICULTURAL OCCUPATIONS

Definition, Section 2(D)

"Employed in an agricultural occupation", means any of the following described occupations:

(1) The preparation, care, and treatment of farm land, pipeline, or ditches, including leveling for agricultural purposes, plowing, disking, and fertilizing the soil;

(2) The sowing and planting of any agricultural or horticultural commodity;

(3) The care of any agricultural or horticultural commodity, as used in this subdivision, "care" includes, but is not limited to, cultivation, irrigation, weed control, thinning, heating, pruning, or tying, fumigating, spraying, and dusting;

(4) The harvesting of any agricultural or horticultural commodity, including but not limited to, picking, threshing, mowing, knocking off, field chopping, bunching, baling, balling, field packing, and placing in field containers or in the vehicle in which the commodity will be hauled, and transportation on the farm or to a place of first processing or distribution;

(5) The assembly and storage of any agricultural or horticultural commodity, including but not limited to, loading, road siding, banking, stacking, binding, and piling;

(6) The raising, feeding and management of livestock, fur bearing animals, poultry, fish, mollusks, and insects, including but not limited to herding, housing, hatching, milking, shearing, handling eggs, and extracting honey;

(7) The harvesting of fish, as defined by Section 45 of the Fish and Game Code, for commercial sale;

(8) The conservation, improvement or maintenance of such farm and its tools and equipment;

Agricultural workers
Agronomist
Apiary
Bee hives
Chemical application (on-site agriculture)
Chicken debeaking
Cowboy/Cowgirl
Crop dusting (on-site activities)
Dairies (no processing except cooling)
Egg handling (if no candling is done)
Farm laborers
Fish hatcheries
Harvesting machines, tomato and grain

Hatcheries, commercial
Hatcheries, fish
Hives, bee
Irrigation districts
Irrigators
Milk tester (employed by agricultural employer)
Nurseries, horticultural (primarily a growing operation)
Oyster farms
Ranch hands
Shepherds
Tomato and grain harvesting machines
Tree farms (growing but not logging)
Trout farms, hatcheries
Wranglers

Note: Order 14 occupations generally include all growing occupations up through harvesting, including field packing, loading on trucks, and delivery by farm employees to the point of first processing or distribution (if a farmer has a packing plant, employees who transport products to any point off the farm are under Order 13). Employees directly engaged in the on-farm application of chemicals by a commercial agricultural service are under Order 14, but other employees of a company which is also in the business of selling chemicals are under Order 7; if the firm only contracts to apply the grower's materials or facilitates obtaining chemicals only incidentally, its non-farm employees are under the applicable occupation or industry order.

If during a workday/workweek an employee is working under both Order 13 *and* 14, the applicable order for overtime purposes would relate to the activity in which the person was engaged at the time the overtime was worked.

If the nature of the farm is the growing of timber, including Christmas trees, for commercial purposes and the harvesting requires a timber operator's license pursuant to California Public Resources Code §§4571, 4586, the logging is covered under Order 16.

Order 15 – HOUSEHOLD OCCUPATIONS

Definition, Section 2(I)

> "Household Occupations" means all services related to the care of persons or maintenance of a private household or its premises by an employee of a private householder. Said occupations shall include, but not be limited to, the following: butlers, chauffeurs, companions, cooks, day workers, gardeners, graduate nurses, grooms, house cleaners, housekeepers, maids, practical nurses, tutors, valets, and other similar occupations.

Persons employed in such occupations by any employer other than the private householder are covered by some other order.

Note: Personal attendants are only covered by Sections 1, 2, 4, 10 and 15 or Order 15. A personal attendant includes babysitters and means "any person employed by a private householder or by any third party employer recognized in the health care industry to work in a private household, 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 not apply when no significant amount of work other than the foregoing is required. The phrase "no significant amount of work other than the foregoing" in the definition means not more than twenty percent (20%) of the work time. Usually, such "other work" involves housekeeping duties such as making beds, preparing meals, washing clothes, and other similar services. It should be noted that practical nurses and companions are explicitly covered by Order 15 and may not be exempted as personal attendants even though many of their duties are the same. Any worker who regularly gives medication or takes temperatures or pulse or respiratory rate, regardless of the amount of time such duties take, falls within some classification of nurse, licensed or unlicensed.

Order 16 - OCCUPATIONS IN THE CONSTRUCTION, DRILLING, LOGGING AND MINING INDUSTRIES

Definition, Section 2(C)

> "Construction occupations" mean all job classifications associated with construction, including, but not limited to, work involving alteration, demolition, building, excavation, renovation, remodeling, maintenance, improvement and repair work by the California Business and Professions Code, Division 3, Chapter 9, §§7025 *et seq*., and any other similar, or related occupations or trades.

Bricklayers/tenders
Carpenters
Carpet installers
Cement masons
Drywall installer/finisher
Electricians
Flag person
Framers
Glaziers
Hazardous material cleanup and handling (when contractor's license required)
Hod carriers
Iron workers
Laborers, construction

Landscape installers
Marble/granite/slate installer/finisher (natural or synthetic)
Mechanics (equipment)
Operating engineers
Painters
Plasterers
Plumbers
Roofers
Sheet metal workers
Slurry seal workers
Steel erectors
Stonemason and tenders
Surveyors
Teamsters (when working on-site)
Telecommunication workers
Tile setters and finishers
Welders

Order 16 covers the preceding listed crafts when the worker is participating in on-site construction activities. However, there may be situations where a worker is covered under another industry order if he or she is involved in fabrication (manufacturing industry).

Definition, Section 2(E)

> "Drilling occupations" mean all job classifications associated with the exploration or extraction of oil, gas, or water resources work, including but not limited to, the installation, establishment, reworking, maintenance or repair of wells and pumps by boring, drilling, excavating, casting, cementing and cleaning for the extraction or conveyance of fluids such as water, steam, gases, or petroleum.

Derrickman (Derrick person)
Driller
Electrician
Field mechanic
Floor hand – motorman
Floor hand (roughneck)
Lubeman (Lube person)
Mechanic
Operator
Pipe racker
Reservoir engineer
Reliability specialist
Rig operator (sometimes referred to as "head well puller")
Rig supervisor
Roughneck (Floor hand)
Tool-pusher
Welder
Well puller

Definition, Section 2(K)

> "Logging occupations" mean any work for which a timber operator's license is required pursuant to California Public Resources Code §§4571, 4586, including the cutting or

removal, or both, of timber or other solid wood forest products, including Christmas trees from timerlands for commercial purposes, together with all the work that is incidental thereto, including but not limited to, construction and maintenance of roads, fuel breaks, firebreaks, stream crossings, landings, skid trails, beds for the falling of trees, and fire hazard abatement.

Choker setters
Equipment operators
Fallers
Forester
Skidders
Water truck drivers

Definition, Section 2(L)

"Mining occupations" mean miners, and other associated and related occupations (not covered by Labor Code Section *et seq*.) required to engage in excavation or operations above or below ground including work in mines, quarries, or open pits used for the purposes of exploration or extraction of non-metallic minerals and ores, coal, and building materials, such as stone, gravel and rock, or other materials intended for manufacture or sale, whether paid on a time, piece rate, commission, or other basis.

Batch plant laborer
Blaster
Bull gang mucker
Cable tender
Change houseman
Chemical grout operator
Cherry picker operator
Chuck tender
Coal worker
Dredge operator
Driller
Dump person
Flume maker
Grout gun operator
Grout mix operator
Grout pump operator
Jackleg miner
Jumbo person
Kemper
Miner
Nozzle person
Nipper
Pneumatic vibrator operator
Pot tender
Powderman
Primer person
Raiser/Setter
Rodders (concrete crew)
Sandblaster
Shotcrete operator
Spiral runner

Spreaders (concrete crew)
Stone grinder
Swamper (Brakeman and Switchman on tunnel work)
Timber person
Tool person
Track person
Tunnel concrete finisher
Tunnel materials handler

Order 17 – MISCELLANEOUS EMPLOYEES

Applicability of Order.

Section 1(A) Any industry or occupation not previously covered by, and all employees not specifically exempted in, the Commission's Wage Orders in effect in 1997, or otherwise exempted by law, are covered by this order.

Currently the Division of Labor Standards Enforcement has not identified any occupations that meet the definition of "miscellaneous employees" in Industrial Welfare Commission Order 17-2001.

OFFICIAL NOTICE

INDUSTRIAL WELFARE COMMISSION
ORDER NO. 4-2001
REGULATING
WAGES, HOURS AND WORKING CONDITIONS IN THE

PROFESSIONAL, TECHNICAL, CLERICAL, MECHANICAL AND SIMILAR OCCUPATIONS

Effective January 1, 2002 as amended

Sections 4(A) and 10(C) amended and republished by the Department of Industrial Relations, effective July 1, 2014, pursuant to AB 10, Chapter 351, Statutes of 2013 and AB 1835, Chapter 230, Statutes of 2006

This Order Must Be Posted Where Employees Can Read It Easily

● **Please Post With This Side Showing** ●

OFFICIAL NOTICE

Effective January 1, 2001 as amended

Sections 4(A) and 10(C) amended and republished by the Department of Industrial Relations, effective July 1, 2014, pursuant to AB 10, Chapter 351, Statutes of 2013 and AB 1835, Chapter 230, Statutes of 2006

INDUSTRIAL WELFARE COMMISSION
ORDER NO. 4-2001
REGULATING
WAGES, HOURS AND WORKING CONDITIONS IN THE

PROFESSIONAL, TECHNICAL, CLERICAL, MECHANICAL AND SIMILAR OCCUPATIONS

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 10, Ch. 351, Stats of 2013, amending section 1182.12 of the California Labor Code, and 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 professional, technical, clerical, mechanical, and similar occupations whether paid on a time, piece rate, commission, or other basis, except that:

(A) 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 from 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/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 workweek 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/her employer or his/her 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 or 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 that 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 workweek 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 subparagraphs (a) and (b).

(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 subparagraph 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(A)(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 that 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 Office of Policy, Research and Legislation 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.

* Pursuant to Labor Code section 515.5, subdivision (a)(4), the Office of Policy, Research and Legislation, 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.

(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 on screen 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.

(B) 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.

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

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

(E) 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 Section 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.

(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.

(G) "Employees in the health care industry" means any of the following:

(1) Employees in the health care industry providing patient care; or

(2) Employees in the health care industry working in a clinical or medical department, including pharmacists dispensing prescriptions in any practice setting; or

(3) Employees in the health care industry working primarily or regularly as a member of a patient care delivery team; or

(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) "Health care emergency" consists of an unpredictable or unavoidable occurrence at unscheduled intervals relating to health care delivery, requiring immediate action.

(J) "Health care industry" is defined as hospitals, skilled nursing facilities, intermediate care and residential care facilities, convalescent care institutions, home health agencies, clinics operating 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. 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) "Primarily" as used in Section 1, Applicability, means more than one-half the employee's work time.

(O) "Professional, Technical, Clerical, Mechanical, and Similar Occupations" includes professional, semiprofessional, managerial, supervisorial, laboratory, research, technical, clerical, office work, and mechanical occupations. Said occupations shall include, but not be limited to, the following: accountants; agents; appraisers; artists; attendants; audio-visual technicians; bookkeepers; bundlers; billposters; canvassers; carriers; cashiers; checkers; clerks; collectors; communications and sound technicians; compilers; copy holders; copy readers; copy writers; computer programmers and operators; demonstrators and display representatives; dispatchers; distributors; door-keepers; drafters; elevator operators; estimators; editors; graphic arts technicians; guards; guides; hosts; inspectors; installers; instructors; interviewers; investigators; librarians; laboratory workers; machine operators; mechanics; mailers; messengers; medical and dental technicians and technologists; models; nurses; packagers; photographers; porters and cleaners; process servers; printers; proof readers; salespersons and sales agents; secretaries; sign erectors; sign painters; social workers; solicitors; statisticians; stenographers; teachers; telephone, radio-telephone, telegraph and call-out operators; tellers; ticket agents; tracers; typists; vehicle operators; x-ray technicians; their assistants and other related occupations listed as professional, semiprofessional, technical, clerical, mechanical, and kindred occupations.

(P) "Shift" means designated hours of work by an employee, with a designated beginning time and quitting time.

(Q) "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.

(R) "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.

(S) "Wages" includes all amounts for 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.

(T) "Workday" and "day" mean any consecutive 24-hour period beginning at the same time each calendar day.

(U) 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 ($1^1/_2$) 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 ($1^1/_2$) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7^{th}) 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 (7^{th}) 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.

(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 12 hours a day or beyond 40 hours per week shall be paid at one and one-half ($1^1/_2$) times the employee's regular rate of pay. All work performed in excess of 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 ($1^1/_2$) 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 ($1^1/_2$) 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 Office of Policy, Research and Legislation by January 1, 2001, in accordance with the requirements of subsection (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 schedule 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. The employee may revoke his/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 reimplement 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 health care 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 workdays 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 ($1^1/_2$) 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 "health care emergency", as defined above, 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 the 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 are 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 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 the 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 Office of Policy, Research and Legislation 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 paragraph shall be subject to Labor Code Section 98 *et seq.*

(D) The provisions of subsections (A), (B) and (C) above shall not apply to any employee whose earnings exceed one and one-half ($1^1/_2$) times the minimum wage if more than half of that employee's compensation represents commissions.

(E) One and one-half ($1^1/_2$) times a minor's regular rate of pay shall be paid for all work over 40 hours in any workweek except minors16 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) or (B) and (C) 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.)

(F) An employee may be employed on seven (7) workdays in one 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).

(G) 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.

(H) 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).

(I) Except as provided in subsections (E), (H) and (L), 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.

(J) Notwithstanding subsection (I) 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 (H) above) shall apply, unless the agreement expressly provides otherwise.

(K) 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 of drivers.

(L) No employee shall be terminated or otherwise disciplined for refusing to work more than 72 hours in any workweek, except in an emergency as defined in Section 2(D).

(M) 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 makeup 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/she will be requesting makeup 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 makeup 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 subsection. While an employer may inform an employee of this makeup 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 subsection.

4. MINIMUM WAGES

(A) Every employer shall pay to each employee wages not less than nine dollars ($9.00) per hour for all hours worked, effective July 1, 2014, and not less than ten dollars ($10.00) per hour for all hours worked, effective January 1, 2016, except:

LEARNERS. Employees during their first 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 (1) 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 (2) hours of work on the second reporting, said employee shall be paid for two (2) 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. 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 July 1, 2014	**Effective January 1, 2016**
LODGING		
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 the ordinary rental value, and in no event more than:……	$508.38 per month	$564.81 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:	$752.02 per month	$835.49 per month
MEALS		
Breakfast……..	$3.26	$3.62
Lunch……...	$4.47	$4.97
Dinner……...	$6.01	$6.68

(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 or 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 the 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 workday 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 (1) 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.

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 ($3^1/_2$) 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 workday that the rest period is not provided.

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 California 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 California Labor Code Section 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, 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)

BAKERSFIELD
Division of Labor Standards Enforcement
7718 Meany Ave.
Bakersfield, CA 93308
661-587-3060

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

FRESNO
Division of Labor Standards Enforcement
770 E. Shaw Ave., Suite 222
Fresno, CA 93710
559-244-5340

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

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

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

REDDING
Division of Labor Standards Enforcement
250 Hemsted Drive, 2nd Floor, Suite A
Redding, CA 96002
530-225-2655

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

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

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

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

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

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

SANTA ANA
Division of Labor Standards Enforcement
605 West Santa Ana Blvd., Bldg. 28, Room 625
Santa Ana, CA 92701
714-558-4910

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

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

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

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

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
Office of Policy, Research and Legislation
P.O. Box 420603
San Francisco, CA 94142-0603
(415) 703-4780

Prevailing Wage Hotline (415) 703-4774

Labor Commissioner's Office

Overtime

In California, the general overtime provisions are that a nonexempt employee 18 years of age or older, or any minor employee 16 or 17 years of age who is not required by law to attend school and is not otherwise prohibited by law from engaging in the subject work, shall not be employed more than eight hours in any workday or more than 40 hours in any workweek unless he or she receives one and one-half times his or her regular rate of pay for all hours worked over eight hours in any workday and over 40 hours in the workweek. Eight hours of labor constitutes a day's work, and employment beyond eight hours in any workday or more than six days in any workweek is permissible provided the employee is compensated for the overtime at not less than:

1. One and one-half times the employee's regular rate of pay for all hours worked in excess of eight hours up to and including 12 hours in any workday, and for the first eight hours worked on the seventh consecutive day of work in a workweek; and
2. 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 on the seventh consecutive day of work in a workweek.

There are, however, a number of exemptions from the overtime law. An "exemption" means that the overtime law does not apply to a particular classification of employees. There are also a number of exceptions to the general overtime law stated above. An "exception" means that overtime is paid to a certain classification of employees on a basis that differs from that stated above.

1. Q. What is the "regular rate of pay," and how is it determined?

A. Overtime is based on the regular rate of pay, which is the compensation you normally earn for the work you perform. The regular rate of pay includes a number of different kinds of remuneration, such as hourly earnings, salary, piecework earnings, and commissions. In no case may the regular rate of pay be less than the applicable minimum wage.

Ordinarily, the hours to be used in computing the regular rate of pay may not exceed the legal maximum regular hours which, in most cases, is 8 hours per workday, 40 hours per workweek. This maximum may also be affected by the number of days one works in a workweek. It is important to determine what maximum is legal in each case. The alternate method of scheduling and computing overtime under most Industrial Welfare Commission Wage Orders, based on an alternative workweek schedule of four 10-hour days or three 12-hour days does not affect the regular rate of pay, which in this case also would be computed on the basis of 40 hours per workweek.

The agreed upon regular hours must be used if they are *less than* the legal maximum regular hours. For example, if you work 32 to 38 hours each week, there is an agreed workweek of 35 hours, and thirty-five hours is the figure used to determine the regular rate of pay. However, in circumstances where the workweek is less than 40 hours, the law does not require payment of the overtime premium unless the employee works more than eight hours in a workday or more than 40 hours in a workweek. In other words, assuming you are employed under a policy that provides for a 35-hour workweek, the law does not require the employer to pay the overtime premium until after 40 hours in a workweek. If you work more than 35 but fewer than 40 hours in a workweek, you will be entitled to be paid for the extra hours at your regular rate of pay, as overtime premium pay is only required after 40 hours in a workweek.

The following are examples of how to calculate the regular rate of pay:

1. If you are paid on an **hourly basis**, that amount is the regular rate of pay.

2. If you are paid a **salary**, the regular rate is determined as follows:
   1. Multiply the monthly remuneration by 12 (months) to get the annual salary.

   2. Divide the annual salary by 52 (weeks) to get the weekly salary.

   3. Divide the weekly salary by the number of legal maximum regular hours (40) to get the regular hourly rate.

3. If you are paid by the piece or commission, either of the following methods may be used to determine the regular rate of pay for purposes of computing overtime:

- The piece or commission rate is used as the regular rate and you are paid one and one-half this rate for production during the first four overtime hours in a workday, and double time for all hours worked beyond 12 in a workday; or

- Divide your total earnings for the workweek, including earnings during overtime hours, by the total hours worked during the workweek, including the overtime hours. For each overtime hour worked you are entitled to an additional one-half the regular rate for hours requiring time and one-half, and to the full rate for hours requiring double time.

A group rate for piece workers is an acceptable method for computing the regular rate of pay. In using this method, the total number of pieces produced by the group is divided by the number of people in the group, with each person being paid accordingly. The regular rate for each worker is determined by dividing the pay received by the number of hours worked. The regular rate cannot be less than the minimum wage.

If you are paid **two or more rates** by the same employer during the workweek**,** the regular rate is the "weighted average" which is determined by dividing your total earnings for the workweek, including earnings during overtime hours, by the total hours worked during the workweek, including the overtime hours. For example, if you work 32 hours at $11.00 an hour and 10 hours during the same workweek at $9.00 an hour, your weighted average (and thus the regular rate for that workweek) is $10.52. This is calculated by adding your $442 straight time pay for the workweek [(32hours x $11.00/hour) + (10 hours x $9.00/hour) = $442] and dividing it by the 42 hours you worked.

Q. If an employee works unauthorized overtime is the employer obligated to pay for it?

2.

A. Yes, California law requires that employers pay overtime, whether authorized or not, at the rate of one and one-half times the employee's regular rate of pay for all hours worked in excess of eight up to and including 12 hours in any workday, and for the first eight hours of work on the seventh consecutive day of work in a workweek, and double the employee's regular rate of pay for all hours worked in excess of 12 in any workday and for all hours worked in excess of eight on the seventh consecutive day of work in a workweek.

An employer can discipline an employee if he or she violates the employer's policy of working overtime without the required authorization. However, California's wage and hour laws require that the employee be compensated for any hours he or she is "suffered or permitted to work, whether or not required to do so." California case law holds that "suffer or permit" means work the employer knew or should have known about. Thus, an employee cannot deliberately prevent the employer from obtaining knowledge of the unauthorized overtime worked, and come back later to claim recovery. The employer must have the opportunity to obey the law.

Q. Is a bonus included in the regular rate of pay for purposes of calculating overtime?

3.

A. Yes, if it is a nondiscretionary bonus. A nondiscretionary bonus is included in determining the regular rate of pay for computing overtime when it is based upon hours worked, production or proficiency.

Discretionary bonuses or sums paid as gifts at a holiday or other special occasions, such as a reward for good service, which are not measured by or dependent upon hours worked, production or efficiency, are not included for purposes of determining the regular rate of pay.

Q. Are any amounts excluded from the regular rate of pay?

4.

A. Yes, there are certain types of payments that are excluded from the regular rate of pay. Examples of some of the more common exclusions are sums paid as gifts for special occasions, expense reimbursements, payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, premium pay for Saturday, Sunday, or holiday work, and discretionary bonuses.

Q. Are salaried employees entitled to overtime?

5.

A. It depends. A salaried employee must be paid overtime unless they meet the test for exempt status as defined by federal and state laws, or unless they are specifically exempted from overtime by the provisions of one of the Industrial Welfare Commission Wage Orders regulating wages, hours and working conditions.

Q. How is overtime calculated if I work at different rates of pay in the same workweek?

6.

A. If you are paid two or more rates by the same employer during the workweek**,** the regular rate is the "weighted average" which is determined by dividing your total earnings for the workweek, including earnings during overtime hours, by the total hours worked during the workweek, including the overtime hours. For example, if you work 32 hours at $11.00 an hour and 10 hours during the same workweek at $9.00 an hour, the weighted average (and thus the regular rate for that workweek) is $10.52. This is calculated by adding your $442 straight time pay for the workweek [(32hours x $11.00/hour) + (10 hours x $9.00/hour) = $442] and dividing it by the 42 hours you worked.

Q. Can an employer require an employee to work overtime?

7.

A. Yes, an employer may dictate the employee's work schedule and hours. Additionally, under most circumstances the employer may discipline an employee, up to and including termination, if the employee refuses to work scheduled overtime.

Q. Last week I worked Monday, Tuesday, Wednesday, Thursday and Saturday, eight hours each day. I was out ill all day Friday. For the workweek I was paid 48 hours at my regular hourly rate. Am I entitled to eight hours of overtime pay?

8.

A. No, you are not entitled to any overtime pay. Overtime is calculated based on hours actually worked, and you worked only 40 hours during the workweek. Another example of where you get paid your regular wages but the time is not counted towards overtime is if you get paid for a holiday but do not work that day. In such a case, the time upon which the holiday pay is based does not count as hours worked for purposes of determining overtime because no work was performed.

Q. When must I be paid for the overtime hours I work?

9.

A. Overtime wages must be paid no later than the payday for the next regular payroll period after which the overtime wages were earned. Labor Code Section 204 Only the payment of overtime wages may be delayed to the payday of the next following payroll period as the straight time wages must still be paid within the time set forth in the applicable Labor Code section in the pay period in which they were earned; or, in the case of employees who are paid on a weekly, biweekly, or semimonthly basis, not more than seven calendar days following the close of the payroll period.

Q. Can an employee waive his or her right to overtime compensation?

10.

A. No, California law requires that an employee be paid all overtime compensation notwithstanding any agreement to work for a lesser wage. Consequently, such an agreement or "waiver" will not prevent an employee from recovering the difference between the wages paid the employee and the overtime compensation he or she is entitled to receive. Labor Code Section 1194

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

11.

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 in to recover the lost wages. Additionally, if you no longer work for this employer, you can make a claim for the waiting time penalty pursuant to Labor Code Section 203.

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

12.

A. After your claim is completed and filed with a local office of the Division of Labor StandardsEnforcement (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 (i) referral to a conference, (ii) referral to a hearing, or (iii) 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 process procedure.

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

13.

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 to 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.

Q. 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?

14.

A. If your employer discriminates or retaliates against you in any manner whatsoever, for example, he discharges you because you file a wage claim or threaten to file a wage 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.

http://www.dir.ca.gov/dlse/FAQ_Overtime.htm

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 (DISE), 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.

http://www.dir.ca.gov/dlse/faq_mealperiods.htm

Division of Labor Standards Enforcement (DLSE)

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. 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.

6. 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.

7. 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.

See Labor Code Section 1197.1 Labor Code Section 1033).

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.

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.

http://www.dir.ca.gov/dlse/FAQ_RestPeriods.htm

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 over six (6) hours is entitled to a second 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 April 18, 2014

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

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

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: _____

California Labor Code Section 2751

Search California Codes

(a) Whenever an employer enters into a contract of employment with an employee for services to be rendered within this state and the contemplated method of payment of the employee involves commissions, the contract shall be in writing and shall set forth the method by which the commissions shall be computed and paid.

(b) The employer shall give a signed copy of the contract to every employee who is a party thereto and shall obtain a signed receipt for the contract from each employee. In the case of a contract that expires and where the parties nevertheless continue to work under the terms of the expired contract, the contract terms are presumed to remain in full force and effect until the contract is superseded or employment is terminated by either party.

(c) As used in this section, "commissions" has the meaning set forth in Section 204.1. For purposes of this section only, "commission" does not include any of the following:

(1) Short-term productivity bonuses such as are paid to retail clerks.

(2) Temporary, variable incentive payments that increase, but do not decrease, payment under the written contract.

(3) Bonus and profit-sharing plans, unless there has been an offer by the employer to pay a fixed percentage of sales or profits as compensation for work to be performed.

(a) A person who, for money or other valuable consideration, knowingly advises an employer to treat an individual as an independent contractor to avoid employee status for that individual shall be jointly and severally liable with the employer if the individual is found not to be an independent contractor.

(b) This section does not apply to the following persons:

(1) A person who provides advice to his or her employer.

(2) An attorney authorized to practice law in California or another United States jurisdiction who provides legal advice in the course of the practice of law.

(3) Bonus and profit-sharing plans, unless there has been an offer by the employer to pay a fixed percentage of sales or profits as compensation for work to be performed.

http://codes.findlaw.com/ca/labor-code/lab-sect-2751.html

State of California

LABOR CODE

Section 226

---

226. (a) Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. For purposes of this subdivision, "copy" includes a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately shows all of the information required by this subdivision.

(b) An employer that is required by this code or any regulation adopted pursuant to this code to keep the information required by subdivision (a) shall afford current and former employees the right to inspect or copy records pertaining to their employment, upon reasonable request to the employer. The employer may take reasonable steps to ensure the identity of a current or former employee. If the employer provides copies of the records, the actual cost of reproduction may be charged to the current or former employee.

(c) An employer who receives a written or oral request to inspect or copy records pursuant to subdivision (b) pertaining to a current or former employee shall comply

with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction. Impossibility of performance, not caused by or a result of a violation of law, shall be an affirmative defense for an employer in any action alleging a violation of this subdivision. An employer may designate the person to whom a request under this subdivision will be made.

(d) This section does not apply to any employer of any person employed by the owner or occupant of a residential dwelling whose duties are incidental to the ownership, maintenance, or use of the dwelling, including the care and supervision of children, or whose duties are personal and not in the course of the trade, business, profession, or occupation of the owner or occupant.

(e) (1) An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars ($4,000), and is entitled to an award of costs and reasonable attorney's fees.

(2) (A) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement.

(B) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone one or more of the following:

(i) The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a).

(ii) Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period. Nothing in this subdivision alters the ability of the employer to aggregate deductions consistent with the requirements of item (4) of subdivision (a).

(iii) The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer during the pay period.

(iv) The name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number.

(C) For purposes of this paragraph, "promptly and easily determine" means a reasonable person would be able to readily ascertain the information without reference to other documents or information.

(3) For purposes of this subdivision, a "knowing and intentional failure" does not include an isolated and unintentional payroll error due to a clerical or inadvertent mistake. In reviewing for compliance with this section, the factfinder may consider as a relevant factor whether the employer, prior to an alleged violation, has adopted

and is in compliance with a set of policies, procedures, and practices that fully comply with this section.

(f) A failure by an employer to permit a current or former employee to inspect or copy records within the time set forth in subdivision (c) entitles the current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar ($750) penalty from the employer.

(g) The listing by an employer of the name and address of the legal entity that secured the services of the employer in the itemized statement required by subdivision (a) shall not create any liability on the part of that legal entity.

(h) An employee may also bring an action for injunctive relief to ensure compliance with this section, and is entitled to an award of costs and reasonable attorney's fees.

(i) This section does not apply to the state, to any city, county, city and county, district, or to any other governmental entity, except that if the state or a city, county, city and county, district, or other governmental entity furnishes its employees with a check, draft, or voucher paying the employee's wages, the state or a city, county, city and county, district, or other governmental entity shall use no more than the last four digits of the employee's social security number or shall use an employee identification number other than the social security number on the itemized statement provided with the check, draft, or voucher.

(Amended by Stats. 2012, Ch. 844, Sec. 1.7. (AB 1744) Effective January 1, 2013.)