



Wage & Hour 101: Nonexempt/ Hourly Employees

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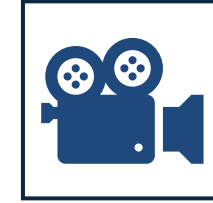
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Agenda

- Wage and Hour Fundamentals.
- Critical Timekeeping Practices.
- Paying Employees.
- Overtime — When and How to Pay It.
- Providing Meal and Rest Breaks.
- Final Pay Requirements.
- Key Takeaways and Best Practices.

Wage And Hour Fundamentals

Basics Of Wage And Hour Compliance

- Understand and follow applicable federal, state and local wage and hour laws.
- Properly classify employees:
 - Treat all employees as nonexempt (“hourly”) unless they meet California’s exemption criteria.
 - Exercise caution if using independent contractors.
- Identify and post the applicable Wage Order in the workplace.
 - Seventeen Wage Orders for different industries/occupations.
- Post California’s Minimum Wage Order.
- Ensure all company policies and practices comply with applicable laws.

Exempt Vs. Nonexempt

- Nonexempt employees:
 - Must record hours worked.
 - Must be paid hourly, including overtime.
 - Must be provided meal and rest breaks.
 - Are subject to other requirements regarding pay, hours worked, etc.
- Exempt employees are:
 - Paid on a salary basis.
 - Not required to track hours worked.
 - Not paid overtime.
 - Not subject to meal and rest break requirements.

Notice To Nonexempt Employees

- Give nonexempt employees the *Notice to Employee (Labor Code Section 2810.5)* at hire.
- Includes wage information such as hourly and overtime rates of pay, paid sick leave and more.
- Changes to the information in the notice?
 - Provide an updated notice within seven calendar days unless changes are reflected on:
 - A timely wage statement; or
 - Another writing required by law within seven days.

Risks And Costs Of Noncompliance

- Noncompliance creates the risk of:
 - California Labor Commissioner audits and investigations.
 - Division of Labor Standards Enforcement (DLSE) administrative complaints filed by current or former employees.
 - Civil actions, including Private Attorneys General Act (PAGA) and class actions.
- Costs of noncompliance can include:
 - Liability for unpaid wages and penalties, including for missed meal/rest periods, inaccurate wage statements and late final pay.
 - PAGA penalties.
 - Attorney's fees in civil lawsuits.
 - Potential settlements or judgments in lawsuits.

Reasonable Steps To Cap PAGA Penalties

- Employers that take “all reasonable steps” to comply with the law may have PAGA penalties capped at 15% before notice or 30% after notice.
- “Reasonable steps” include:
 - Conducting periodic payroll audits and taking action in response.
 - Disseminating lawful written policies.
 - Training supervisors on applicable law.
 - Taking corrective action against supervisors.
- This applies to PAGA notices filed on or after June 19, 2024.

Critical Timekeeping Practices

Maintain Accurate Time Records

- Must maintain accurate timekeeping records showing hours worked by all nonexempt employees, including remote workers.
- Timekeeping must include shift start/end times and meal break start/end times.
- Instruct employees to accurately record their time.
- Use an acknowledgement for employees to verify timekeeping records.
- Keep timekeeping records for at least four years.
- Regularly review timekeeping records and follow up on any issues.

No ‘Off-The-Clock’ Work

- Employees must be clocked in while working.
- Company policy should explicitly prohibit “off-the-clock” work.
- Communicate the policy to employees.
- Train managers to prevent off-the-clock work.
- Avoid communications with employees outside work hours, including by text.
- Limit employees’ access to work email and messaging platforms when not clocked in.

Avoid Rounding Of Time Records

- “Rounding” is only permissible under certain circumstances.
- Generally, rounding must be “fair and neutral” on its face and in practice.
- Rounding cannot:
 - Apply to meal break punches.
 - Result in underpayment to employees.
- Best practice is to record actual hours worked — down to the minute!

Poll — California Retail Co. Payroll Audit

- Calvin, the new HR manager at California Retail Co., is reviewing the company's timekeeping practices during a payroll audit.
- He notices that:
 - Managers complete paper timecards at the end of each week;
 - The timecards are rounded to the top of the hour;
 - Each day includes a note for a 30-minute break but not the time it was taken.

Paying Employees

Define The Workday And Workweek

- Define the workday (24 consecutive hours) and workweek (7 consecutive days).
- If not defined, defaults to:
 - Workday of 12:01 am to 12 midnight.
 - Workweek of Sunday through Saturday.
- Define in writing (e.g., in employee handbook).
- Can have different definitions for classes of employees (e.g., day vs. graveyard shifts).
- Do not define workday or workweek to avoid overtime requirements!

Pay The Applicable Minimum Wage

- California's current minimum wage is \$16.90/hour.
- Increases every year on January 1.
- Local ordinances impose separate minimum wage requirements.
- Based on where employees work, not necessarily where employer is located.
- Certain industries have minimum wage requirements
 - For example, fast food and healthcare workers.
- Must pay highest minimum wage that applies.

Know Your Local Minimum Wage Ordinances

- Alameda
- Belmont
- Berkeley
- Burlingame
- Cupertino
- Daly City
- East Palo Alto
- El Cerrito
- Emeryville
- Foster City
- Fremont
- Half Moon Bay
- Hayward
- Los Altos
- Los Angeles City
- Los Angeles County
(unincorporated areas only)
- Malibu
- Menlo Park
- Milpitas
- Mountain View
- Novato
- Oakland
- Palo Alto
- Pasadena
- Petaluma
- Redwood City
- Richmond
- San Carlos
- San Diego City
- San Francisco
- San Jose
- San Mateo City
- San Mateo County
(unincorporated areas only)
- Santa Clara
- Santa Monica
- Santa Rosa
- Sonoma
- South San Francisco
- Sunnyvale
- West Hollywood

Pay For All “Hours Worked”

- Nonexempt employees must be paid for all hours worked.
- “Hours worked” is any time employees are “suffered or permitted to work” or under the employer’s control.
- Includes time spent:
 - In required trainings and meetings.
 - On activities before or after shift at employer’s direction, such as “donning and doffing” uniforms or protective equipment and waiting for and/or completing security checks.
- Even minimal amounts of time must be paid.

Pay For Travel Time

- Time spent traveling for work is “hours worked” and must be paid, including travel:
 - Between work locations during the workday.
 - To a client site.
 - To a required meeting or conference.
- Time may be paid at a separate travel time rate.
 - Rate must be at least the applicable minimum wage.
 - Notify employees of travel rate at hire.
- Separate travel pay from reimbursement of travel expenses.
- Commute is generally unpaid unless employer exerts control over employee during commute.

Reporting Time Pay

- If an employee reports to work as scheduled and isn't put to work or is given less than half their scheduled hours, they must be paid one-half of their regularly scheduled hours.
 - Minimum of two hours and maximum of four hours.
 - Paid at "regular rate of pay."
- Exceptions:
 - Employees paid on standby status.
 - Operations cannot begin due to threats or when recommended by civil authority.
 - Public utilities go out (i.e., water, gas or electricity).
 - An act of God interrupts work (i.e., earthquake or fire).

Scenario — California Retail Co. Payroll Audit, Cont.

- Calvin next reviews the company's pay practices and finds:
 - Many employees work in multiple cities, including places like West Hollywood and Santa Monica, but are paid only the state minimum wage for all hours worked.
 - Hourly assistant managers sometimes drive to another store during their shift to pick up inventory, and they clock out while driving between stores.
 - On slow days, employees may be sent home after only one to 1.5 hours of work.

Issue Accurate, Itemized Wage Statements

- Provide wage statements when wages are paid.
- Wage statements have strict requirements on what information needs to be included, including amount of available paid sick leave.
- Review wage statements for completeness and accuracy.
 - If using a payroll company or third-party, do not assume the wage statements are accurate.
- Penalties make noncompliance costly!

Required Information

1. Gross wages earned (includes overtime, meal/rest premiums).
2. Total hours worked.
3. All deductions.
4. Net wages earned.
5. Inclusive dates of pay period.
6. Employee's name and last four digits of Social Security number or other identifying number.
7. Full name and address of employing entity.
8. All hourly rates in effect during the pay period and hours worked at each rate.
9. Number of piece-rate units earned and applicable piece rates.
10. Available paid sick leave balance.

Additional requirements may exist for piece-rate workers, temporary service employers and labor contractors.

Review Payroll Deductions

- Ability to make payroll deductions is very limited.
- Permissible deductions:
 - Tax deductions required by state/federal law.
 - Third-party deductions for garnishments, or child or spousal support.
 - Employee benefit deductions authorized by the employee such as health benefit premiums, union dues and 401(k) contributions.
- No “self-help” deductions for loans or debts owed by employees.

Reimburse Business Expenses

- Employees must be reimbursed for all expenses incurred in the performance of their job.
 - If employer requires the expense, then reimburse.
- Examples:
 - Mileage and tolls when using personal vehicles.
 - “Reasonable percentage” of cell phone bill if employees are required to use cell phones.
 - Meals and lodging when traveling.
 - Cost of required uniforms.
- Must reimburse even if submitted late (but can discipline for untimely submission).

Poll — California Retail Co. Payroll Audit, Cont.

- Calvin's audit further determines that:
 - Employees drive their own cars between stores during the workday and receive a reimbursement for any gas they purchased for the drives.
 - Store employees must purchase and wear company-branded shirts with plain black pants and shoes.
 - Managers regularly send texts to nonexempt employees' personal cell phones asking them work-related questions.

Overtime — When And How To Pay It

When Overtime Is Owed

- California requires **daily** and **weekly** overtime.
- Pay **time and one half** for hours worked:
 - Over eight hours in a day;
 - Over 40 hours in a week; and
 - First eight hours on seventh consecutive day in a workweek (“day of rest” rule).
- Pay **double time** for hours worked:
 - Over 12 hours in a day; and
 - Over eight hours on seventh consecutive day in a workweek (“day of rest” rule).
- Must be paid even if not “approved.”

“Regular Rate Of Pay”

- Overtime is paid at the “regular rate of pay.”
- Includes other forms of compensation paid to employees, such as:
 - Piece-rate earnings.
 - Commissions.
 - Non-discretionary bonuses.
- Generally calculated by dividing total compensation earned in the workweek by the total hours worked.
- Also used for payment of meal and rest premiums, reporting time pay and sick leave.
- Different calculation methods required when paying multiple hourly rates or non-discretionary bonuses.

Makeup Time

- Can allow employees to make up time missed for personal reasons provided:
 - Makeup time is worked in the same workweek as time off and is approved before worked.
 - Employee does not work more than 11 hours/day or 40 hours/workweek when using makeup time.
- Makeup time must be voluntary; employer can not require use.
- Paid at straight time.
- Document use of makeup time.

Alternative Workweek Schedule

- Under an alternative workweek schedule (AWS), nonexempt employees can work up to 10 hours/day without overtime being owed.
 - Example: Employees work four 10-hour shifts per week without payment of daily overtime.
- Adoption of an AWS requires specific steps, including election by affected employees and notice to the Department of Industrial Relations.
- Failure to adhere to specific requirements or the alternative schedule can invalidate the AWS.

Poll — When Is Overtime Due?

California Retail Co.'s workweek is Monday to Sunday. In which of the following examples is overtime owed?

- A. Alvin works eight-hour shifts from Monday through Friday and a six-hour shift on Saturday.
- B. Dimitrius works eight-hour shifts from Monday to Friday.
- C. Violet works eight-hour shifts Wednesday through the following Monday.

Providing Meal And Rest Breaks

Meal Break Basics

- Provide nonexempt employees with an unpaid meal break on shifts greater than five hours.
- Break must be timely — start before the end of the fifth hour of work.
- Provide second meal break on 10+ hour shifts.
- Breaks must be duty-free and uninterrupted.
- Employees must be free to leave the premises.
- Don't prevent or discourage employees from taking meal breaks.

Meal Break Timing Is Key

- Provide meal break by the end of the fifth hour of work; i.e., break starts by 4:59 into shift.
- Example:

Time	Hour of Work
8 a.m. to 9 a.m.	1st hour of work
9 a.m. to 10 a.m.	2nd hour of work
10 a.m. to 11 a.m.	3rd hour of work
11 a.m. to 12 p.m.	4th hour of work
12 p.m. to 1 p.m.	5th hour of work (provide meal period no later than end of this 5th hour)

When Meal Breaks Can Be Waived

- Employees can waive meal breaks if their shift:
 - Doesn't exceed six hours; or
 - Is between 10 to 12 hours (and first meal break was taken).
- Waivers must be voluntary and require mutual consent of employee and employer.
- Waivers must be revocable.
- Best practice is to use a written waiver.

On-Duty Meal Breaks — Not A Waiver!

- Employee takes a meal break but remains on duty and is paid.
- Only allowed if nature of work prevents employee from being relieved of all duty.
- Requires written agreement between employee and employer.
- Employee must be allowed to revoke the on-duty meal break agreement at any time.
- Rarely permissible — consult legal counsel.

Rest Break Basics

- Provide employees with “net” 10-minute rest break for every four hours worked or “major fraction thereof” (more than two hours).
- Paid and off duty.
- Employer must relinquish control and relieve employees of all duties.
- Cannot require employees to remain on call.
- Consult with legal counsel if requiring employees to remain on premises.

How Many Breaks?

Duration of Shift in Hours	Number of Rest Breaks	Number of Meal Breaks
0 – 3.5	0	0
3.5 - 5.0	1	0
5.0 - 6.0	1	1 (can be waived)
6.0 - 10.0	2	1
10.0 - 12.0	3	2 (second break can be waived)
12.0 - 14.0	3	2 (no waiver allowed)

Meal And Rest Break Premiums

- Paid to employees for meal and/or rest break violations.
- Meal break violations include:
 - Not providing a break at all;
 - Providing a late break; or
 - Providing a short break.
- Premium is one hour of pay at the employee's "regular rate of pay."
- Separate from, and in addition to, wages paid for hours worked, including overtime.
- Must be reflected on wage statement.

When Premiums Are Owed

- Premium pay is owed if the employer:
 - Doesn't relieve employees of all duties;
 - Doesn't relinquish control over employees' activities;
 - Doesn't permit employees a reasonable opportunity to take an uninterrupted 30-minute meal break or 10-minute rest break; or
 - Prevents or discourages employee from taking meal and rest breaks.
- Maximum of two premiums owed per day:
- One premium for any missed meal break(s) and one premium for any missed rest break(s).

Meal And Rest Break Compliance

- Have a compliant policy that is communicated to employees.
- Train managers and employees on policy.
- Ensure that managers do not prevent or interrupt employee breaks.
- Review timekeeping records for violations and follow up with employees for explanation.
- Pay premiums when breaks are not provided.
- Enforce policy, including by disciplining employees for noncompliance.
- Document both employee and manager noncompliance.

Poll — Meal And Rest Break Premium Pay Questions

- Calvin receives questions from a store manager about whether the company owes meal break premium pay for the following situations:
 - An employee worked an eight-hour shift and couldn't take a meal break because of a lack of coverage.
 - An employee worked a 13-hour shift, took their first meal break and waived their second.
 - An employee is scheduled for a five-hour shift and waived their meal break but then ended up working 6.25 hours.
 - An employee chose not to take a meal break, even though they were able to do so.

Final Pay Requirements

All Wages Payable At Termination

- When employment ends, employees must be paid for:
 - All hours worked to date; and
 - All accrued and unused vacation or paid time off (PTO).
- Vacation/PTO is paid out at the employee's final rate of pay.
- When final pay is due varies depending on whether it is a termination or resignation.
- Delay in payment = waiting time penalties.
- Expense reimbursements can be made per usual schedule.

Timing For Final Pay

- Employer terminates:
 - Final pay is due at the time of termination.
- Employee resigns:
 - Timing depends on notice given.
 - If employee gives at least 72 hours' notice, final pay is due on the employee's last day of work.
 - If employee gives less than 72 hours' notice, final pay is due within 72 hours of when the employee gave notice.

Scenario — Final Pay Timing Question

- The company's payroll administrator asks Calvin the following questions:
 - When the company terminates employees, can they provide the final pay via direct deposit if this is the employee's preferred method?
 - If an employee owes the company any money at the time of termination, can the company deduct what is owed deducted from the employee's final paycheck?

Key Takeaways And Best Practices

Key Takeaways And Best Practices

- Maintain accurate timekeeping records:
 - Eliminate rounding of timekeeping.
 - Use acknowledgements in timekeeping system.
- Ensure employees are paid for all hours worked.
- Confirm regular rate of pay is properly calculated for overtime and other purposes.
- Have and enforce a compliant meal and rest period policy.
- Review wage statements for required information.
- Follow timing requirements for final pay.

Key Takeaways And Best Practices, Cont.

- Regularly assess workplace policies and practices for compliance with California law.
- Identify and implement necessary policy and practice changes.
- Consult legal counsel regarding compliance issues.
- Take “all reasonable steps” to ensure compliance:
 - Conduct regular payroll audits.
 - Review and update wage and hour policies regularly.
 - Disseminate lawful written policies to all employees.
 - Train supervisors on wage and hour compliance, and discipline supervisors as needed.
- Document all compliance actions taken!

Q & A



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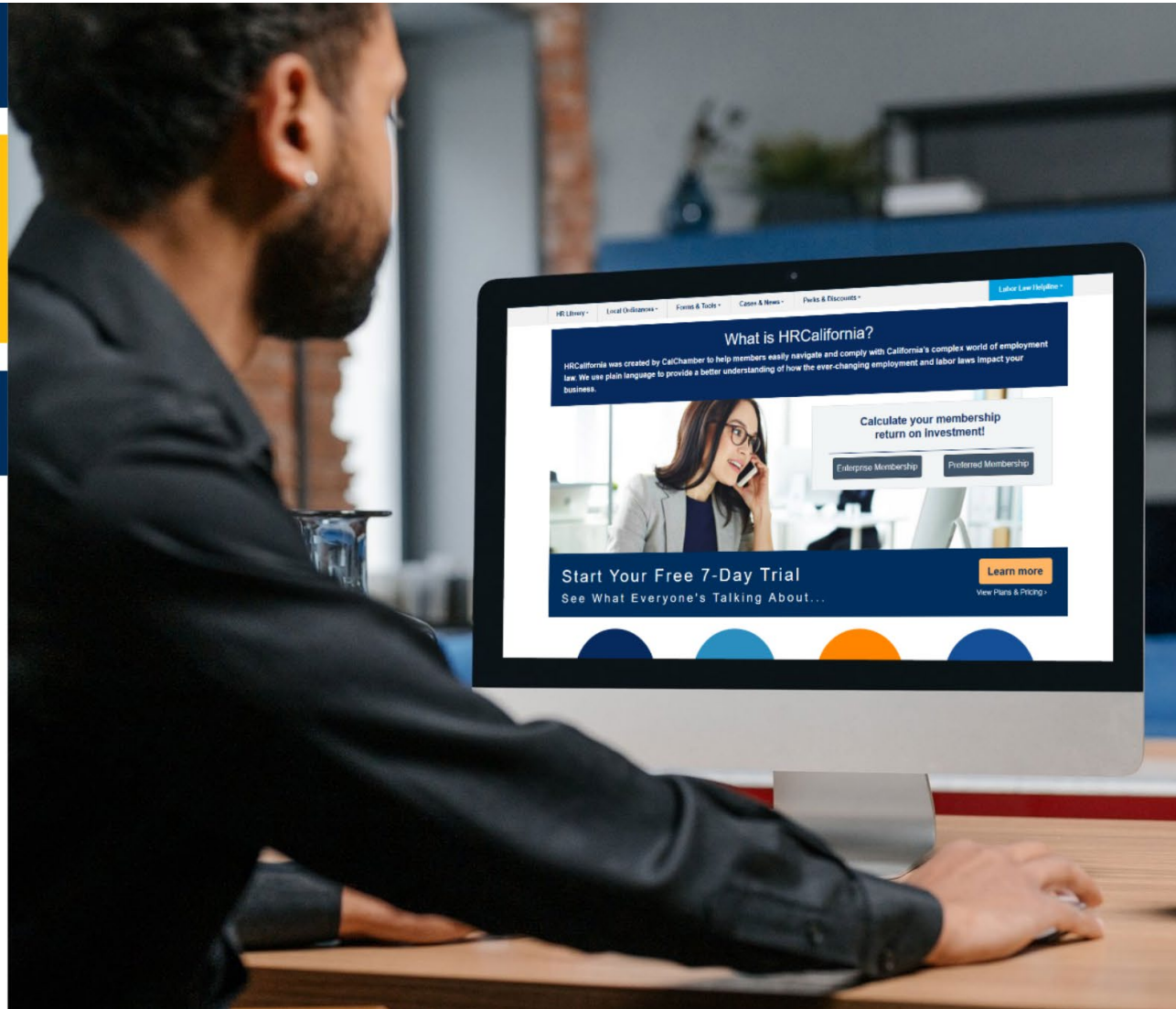


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