

## **10 Things HR Needs to Know about California Wage & Hour Laws**

Original article appeared in 2010 [California Employment Law Letter](#), by [Jim Brown](#) and [Marc Koonin](#)

Latest 2017 Updates through June 2017 by [CalWorkSafety.com](http://CalWorkSafety.com)

Companies with employees working in California must always remain mindful of the state's protectionist wage and hour laws. You must always comply with federal standards and all California laws that provide greater protections for employees than the federal requirements. Failure to do so might be an unwelcome invitation to a wage and hour class-action lawsuit.

### **Top 10 list . . .**

**1. You need to know California's daily and weekly overtime rates for various hours worked.** California's overtime regime requires the payment of one and a half times a nonexempt employee's regular rate of pay for work performed in excess of eight and up to 12 hours per day, for any work in excess of 40 hours in one week, and for work performed during the first eight hours of the seventh consecutive workday in a workweek.

California nonexempt employees are also entitled to two times their regular rate of pay for any work performed beyond 12 hours per day and for any hours worked after eight hours on the seventh consecutive workday of a workweek.

In many instances, employers denote a "salary" for nonexempt employees. In California, the salary for a full-time nonexempt employee is defined as representing work for 40 hours per week. However, a salary may also properly be based on a shorter workweek if that is the employer's practice. Accordingly, you must calculate the regular rate used to determine overtime pay (and minimum wage compliance) for salaried nonexempt employees based on a 40-hour (or less) workweek.

**2. You need to know that overtime requirements apply to almost all types of wages, not just hourly wages or salaries.** Nonexempt employees are also entitled to receive overtime pay on commissions, piece-rate work, and nondiscretionary bonuses. In some instances — for example, when a nondiscretionary bonus is paid monthly or quarterly — you may be required to go back and recalculate overtime including the additional amounts in the computation of the "regular rate."

**3. You need to know that you must compensate employees for all hours you "suffer or permit" them to work.** If you know or "should know" that employees are working, regardless of whether the work itself is authorized, then payment is mandatory. This may include work that occurs "off the clock," such as powering up or powering down computers or changing into or out of special protective clothing before clocking in or after clocking out.

You must also compensate employees for all "hours worked," which is time during which employees are under the control of their employer, such as training time, travel time, and time during which they're required to be on sufficiently controlled standby.

**4. You need to know and be familiar with the specific "wage order" that applies to your workforce.**

California has 17 separate wage orders promulgated by the Industrial Welfare Commission (IWC). Employees working in an industry for which there is an industry order are covered by the industry order regardless of their occupations unless specifically exempted by the industry wage order.

Employees who aren't covered by an industry order are regulated by an occupation order or, if no specific industry order or occupation order applies, by "miscellaneous" Wage Order 17. It is very important to be familiar with the particular wage order governing your workforce because while there are many similarities among the various orders, there are also important differences.

For example, "inside sales" positions may be exempt from overtime requirements only under Wage Order 4 (professional, technical, clerical, mechanical, and similar occupations) and Wage Order 7 (mercantile industry) so long as employees earn at least one and one-half times the minimum wage and receive over 50 percent of their compensation in the form of commissions. Employers such as manufacturers and hotels whose workforce is covered by different wage orders can't avail themselves of this particular exemption.

**5. You need to remember that just because an employee is exempt as an executive, administrative, or professional employee under federal law, it doesn't make him exempt under California law.** California employees can't qualify as exempt under these particular exemptions unless they:

1. are primarily engaged (more than 50% of the time) in exempt duties (as specifically defined by California law);
2. customarily and regularly exercise discretion and independent judgment in performing exempt duties; and
3. earn a monthly salary that is at least twice the California minimum wage (currently \$840 per week, \$3,640 per month, and \$43,680 per year based on California's current minimum wage of \$10.0 per hour for employers with 26 or more employees).

Date	Minimum Wage for Employers with 25 Employees or Less	Minimum Wage for Employers with 26 Employees or More
January 1, 2017	\$10.00/hour	\$10.50/hour
January 1, 2018	\$10.50/hour	\$11.00/hour
January 1, 2019	\$11.00/hour	\$12.00/hour
January 1, 2020	\$12.00/hour	\$13.00/hour
January 1, 2021	\$13.00/hour	\$14.00/hour
January 1, 2022	\$14.00/hour	\$15.00/hour
January 1, 2023	\$15.00/hour	

However, there are many city and county ordinances in California which have higher minimum wages, (and also higher requirements for paid sick leave) such as:

#### Los Angeles City and County Minimum Wage

Effective Date:	Minimum Wage businesses with 26+ employees	Minimum Wage businesses with less than 25 employees
July 1, 2016	\$10.50	
July 1, 2017	\$12.00	\$10.50
July 1, 2018	\$13.25	\$12.00
July 1, 2019	\$14.25	\$13.25
July 1, 2020	\$15.00	\$14.25

(If applicable, see also Long Beach, Santa Monica and Pasadena, in Southern CA).

Frequent reasons employees who are designated as exempt fail to meet the California test are that **(1)** they perform exempt duties but not more than 50 percent of the time, **(2)** they apply skills or knowledge rather than customarily and regularly exercise discretion and independent judgment as defined by the regulations, or **(3)** their pay is subject to impermissible deductions that violate California's "salary basis" test.

Also, outside

**6. You need to remember that vacation pay (including floating holidays and paid time off) constitutes wages under California law.** That means they can't be subject to "use it or lose it" policies, forfeitures, or unreasonable caps on accrual. Except to the extent that a valid collective bargaining agreement provides otherwise, you must compensate terminated California employees for the cash equivalent (at the final rate) of any accrued, unused vacation.

You must also remember to specifically define how vacation is earned, especially for employees compensated by commissions or another method other than a salary or hourly wages.

**7. You need to remember to provide sufficient rest and meal periods and to accurately record employee meal periods.** California law requires an unpaid 30-minute meal break after five hours unless the workday is no more than six hours and the meal period has been waived by mutual consent. When the nature of the work prevents an employee from being relieved of all duties during the meal break and both the employer and the employee agree to do so in writing, the unpaid meal break can be converted into an "on the job paid meal period."

The wage orders also require you to allow employees who work at least three and a half hours in a day to take paid 10-minute rest breaks. The number of breaks is based on the hours worked in a day, with one 10-minute break earned for each four hours (or major fraction thereof) worked. Breaks must be in the middle of each four-hour work period to the extent practicable.

You must pay employees an additional one hour at the regular rate for each day no meal break or paid rest period is provided. Recording meal breaks is vital for proof of compliance.

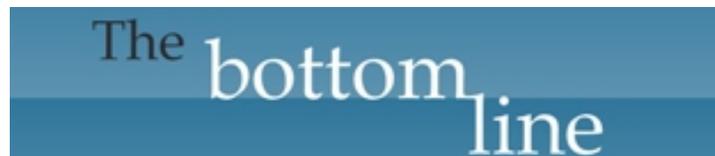
**8. You need to remember that employers are limited with regard to the types of deductions they can make against an employee's wages.** California employers may make deductions from wages if there is a law allowing them to do so, a deduction is expressly authorized in writing by the employee to cover insurance premiums, hospital or medical dues, or other deductions not amounting to a rebate or deduction from the standard wage, or a deduction to cover health and welfare or pension plan contributions is expressly authorized by a collective bargaining or wage agreement.

When a deduction is taken to repay a debt owed to you, there must be express written consent from the employee. Moreover, the deduction can't reduce net pay below the California minimum wage. Finally, even when you have obtained written permission to make paycheck deductions for the repayment of a debt, there can't be a "balloon payment" from the final paycheck.

**9. You must pay nonexempt employees at least semimonthly under the requirements of the California Labor Code.** Because wage and hour claims are made on a daily and weekly basis, we generally recommend use of a biweekly pay period for nonexempt employees.

**10. Finally, you need to ensure that you pay your employees in an authorized manner and provide them with proper itemized wage statements.** For example, checks must bear the name and address of a California bank or financial institution at which the check can be cashed without discount. Similarly, itemized pay statements must include:

1. The employer's name and address
2. The employee's name and only the last four digits of her social security number
3. The inclusive dates for which the employee is being paid
4. The gross wages earned
5. The net wages earned;
6. The total hours worked for nonexempt employees
7. For employees paid on a piece-rate basis, the applicable piece rate and units earned
8. All applicable hourly rates
9. All deductions



These are only a few of the ways California imposes greater restrictions in the wage and hour arena.

There are even more nuances in each of the wage orders, regulations, and administrative guidance than can be mentioned here. If you have a question about compliance, get it answered now rather than waiting for a disgruntled employee to raise the issue in a labor commissioner charge or lawsuit.

### **Other Exemptions From Overtime:**

#### **Employee in The Computer Software Field:**

*... an employee in the computer software field who is paid on an hourly basis shall be exempt under the professional exemption, if all of the following apply:*

1. The employee is primarily engaged in work that is intellectual or creative and requires the exercise of discretion and independent judgment.
2. 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.
3. 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 the exemption.
4. The employee's hourly rate of pay is not less than \$41.85 [the rate in effect on 2016. The Division of Labor Statistics and Research shall adjust this pay rate on October 1 of each year to be effective on January 1 of the following year by an amount equal to the percentage increase in the California Consumer Price Index for Urban Wage Earners and Clerical Worker.

### Outside Sales:

Labor Code section 1171 exempts outside salespersons. *Ramirez v. Yosemite Water Co* (1999). The Industrial Welfare Commission regulations define “outside salesperson” as 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. (8 Cal.C.Reg. § 11010).

### Inside Sales:

Inside salespersons in California are exempt from overtime only if employed in “Professional, Technical, Clerical, Mechanical and Similar Occupations” or persons working in the “Mercantile” industry. Also, qualifying inside salespersons are only exempt from overtime pay, which means they must still be given meal periods, rest periods, minimum wage, etc. They must earn more than one and one-half (1½) times the minimum wage, and more than half (½) of that employee’s compensation represents commissions.

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