



ROSASCO
LAW GROUP

PAYCHECK 101: PAGA PROOFING YOUR PAYCHECK STUB

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LEGAL DISCLAIMER

Seminar materials and this presentation are not intended as legal advice and are not legal advice. These materials cannot substitute for legal advice. You should consult an experienced employment attorney if you have questions about your business, policies or your particular circumstances.



BASIC TYPES OF WAGE AND HOUR LAWSUITS

❖ INDIVIDUAL CLAIMS

- Generally maximum of \$20,000-\$30,000.
- Not a lot of Plaintiff's attorneys interested.

❖ CLASS ACTION CLAIMS

- All Individual Claims for All "Similarly Situated" Employees Going Back 4 Years
- Damages Cannot Be Reduced

❖ PRIVATE ATTORNEYS GENERAL ACT CLAIMS

- Civil Penalties for All Employees for Any Labor Code Violation
- Penalties Can Be Reduced by the Court





THE PRIVATE ATTORNEYS GENERAL ACT OF 2004 (PAGA)

AKA SUE YOUR BOSS LAW

PAGA BACKGROUND



PAGA was enacted to enable employees as private attorneys general to enforce the California Labor Law while labor-law enforcement agencies are able to retain primacy over enforcement efforts.



PAGA enables an aggrieved employee to initiate an action against a former employer on behalf of him/herself and other current or former employees to obtain civil penalties that previously could have been recovered only by the State by the Labor and Workforce Development Agency (LWDA).



In a successful PAGA action, the LWDA is entitled to 75% of the award and the remaining 25% is distributed among the employees affected by the violations at issue.

PAGA ISN'T FAIR OR JUST

- ❖ PAGA applies to all employers regardless of size.
- ❖ PAGA also provides a statutory right to attorney fees for the employee's attorney only
- ❖ PAGA penalties are imposed regardless of intent or the extent of any harm
- ❖ There is no requirement under PAGA that an employee actually suffers harm

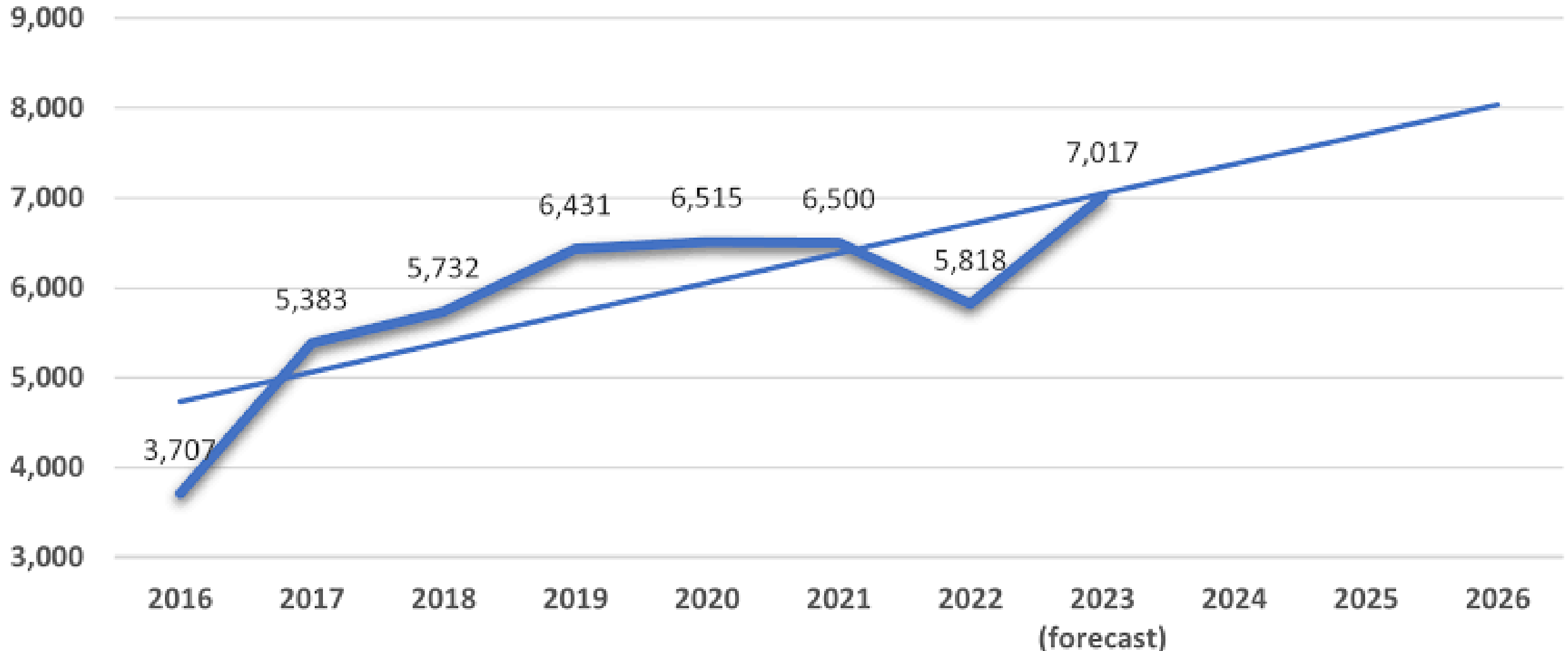


WHY ISN'T THE LABOR COMMISSIONER'S OFFICE DOING ITS JOB?



- ❖ Labor commissioner's office, which is dealing with a staffing shortage and an estimated backlog of 44,000 wage claim cases.
- ❖ The office has hired 352 of the current 472 staff members in the last two years.

Number of PAGA Letters Filed With the LWDA



Your Company's legal name is "Wonderful Winery, Inc."

On your paystubs, your company name is listed as "Wonderful Winery."

Your business runs biweekly payroll (every two weeks) and issues wage statements listing the incorrect legal name or business address to 20 employees for one year.

One employee sues, on her own behalf, and on behalf of the 19 other employees.



What is the penalty?

PAGA PENALTIES ADD UP



- ❖ Incorrect entity name or address and/or inaccurate pay period dates = LC 226 penalty of \$50 for the first pay period and \$100 for every subsequent pay period per employee (up to a maximum of \$4,000 per employee).
- ❖ PAGA = additional \$100 penalty per employee per pay period.
- ❖ On her own behalf, the suing employee can seek statutory penalties in the amount of \$50 for the initial pay period and \$100 for each of the remaining 25 pay periods (total of \$2,550). She can ALSO seek civil penalties under PAGA in the amount of \$100 for each of the 26 pay periods (total of \$2,600). Thus, the employee can seek a total of **\$5,150** on her own behalf.
- ❖ The suing employee can seek PAGA penalties in the amount of \$100 for each of the 26 pay periods (the same \$2,600 figure as above) on behalf of each of the 19 other employees. For these 19 employees, the total penalty is **\$49,400** (19 x \$2,600)!
- ❖ The total penalty exposure is **\$54,550** (\$5,150 + \$49,400) because your legal business name or address was wrong on your paystub.
- ❖ Consider the penalties if you have 100 employees.
- ❖ Plus, your attorney's fees and the plaintiff's attorney's fees.

WHAT CAN YOU DO TO AVOID A PAGA LAWSUIT?

**I use a big, expensive
paycheck company for
all my pay checks, so I
don't have to worry,
right?**



PAYCHECK COMPLIANCE CHECKLIST

- ✓ Gross wages earned
- ✓ Net wages earned
- ✓ Total hours worked by the employee
- ✓ All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item
- ✓ Inclusive dates of the period for which the employee is paid
- ✓ 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,
- ✓ Employee address (DOL?)
- ✓ 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 (i.e., the grower)
- ✓ Employer EIN (DOL?)
- ✓ All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee
- ✓ 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.
- ✓ The number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis
- ✓ Piece rate: Rest and Recovery (for entire workweek) and other nonproductive time (NPT)
- ✓ CA Paid Sick Leave hours. Available and accrued if accruing. Available if front loading.
- ✓ H2A - On or before each payday, each worker must be given an hours and earning statement showing hours offered and hours actually worked
- ✓ Overtime and Meal/Rest Period Premiums paid at the weighted average
- ✓ PSL paid at weekly weighted average or average over last 90 days

WE HAVE MANY DIFFERENT PAY CODES AND GROWERS EACH WEEK! THERE'S NO WAY WE CAN FIT IT ON THE CHECK STUB! CAN'T I USE A SEPARATE PAGE?

Maybe.

- “Detachable part of the check”
- Must be able to “promptly and easily determine” information, or “a reasonable person would be able to readily ascertain the information without reference to other documents or information.”
- No case law on point.
- DLSE says it's fine.
- Los Angeles Plaintiff attorneys?



HOW TO CALCULATE OVERTIME AKA REGULAR RATE OF PAY



Two or more rates in a workweek =
Weighted Average



Employee's total includable earnings are computed to include his or her compensation during the workweek from all applicable rates, and then divided by the total number of hours worked at all jobs.

A photograph of a 'WEEKLY TIME SHEET' form. The form has columns for days of the week (Mon, Tue, Wed, Thu) and rows for dates (6/10, 6/11, 6/12, 6/13). Handwritten blue ink entries show 8.00 hours for 6/11, 16.00 hours for 6/12, and 8.00 hours for 6/13. A calculator and a pen are also visible in the background.

Mon	Tue	Wed	Thu
6/10	6/11	6/12	6/13
	8.00	8.00	8.00
	16.00	16.00	16.00
	7	7	7
	-	-	-

OVERTIME IS NOT A RATE OF PAY



- DLSE Does Not Want Employees to Work More than 8/40.
- Overtime is a PENALTY for Suffering or Permitting Too Much Work.
- Penalty or “Premium” is calculated at the end of the week at .5x the Regular Rate of Pay (“RROP”) for the entire week for each OT Hour.

CALCULATING REGULAR RATE OF PAY

$$\text{TOTAL COMPENSATION} \div \text{TOTAL HOURS} = \text{RRPOP}$$

- TOTAL COMPENSATION
 - Includes wages, piece rate, rest and recovery pay, non-discretionary bonuses (except flat sum, bonuses for now...)
 - Excludes overtime premiums, but not base wages for overtime hours.
- TOTAL HOURS
 - Includes overtime hours
- RATE FOR
 - Overtime (x .5)
 - Sick Pay
 - Meal and Rest Period Premiums
 - Rest Breaks?



NOT INCLUDED IN REGULAR RATE OF PAY



GIFTS (I.E., FOR HOLIDAYS OR BIRTHDAYS, AS A REWARD FOR SERVICE, BUT ONLY THOSE WHERE THE TIMING AND AMOUNT ARE NOT BASED ON ANY OBJECTIVE FACTORS AND ARE LEFT ENTIRELY TO THE EMPLOYER'S DISCRETION)



HOURS PAID BUT NOT WORKED (I.E., VACATION, HOLIDAYS, SICK LEAVE, REPORTING TIME PAY OR SPLIT SHIFT PREMIUMS)



EXPENSE REIMBURSEMENT



OVERTIME PENALTIES

Discretionary bonuses

Note: For a bonus to be “discretionary,” the employer must retain discretion over whether to give a bonus, when to give a bonus, and what amount the bonus will be. When an employer ties a bonus to the occurrence of a particular condition, the bonus will most often be treated as wages, and must be paid if the condition occurs. Further, the bonus must be counted when calculating the regular rate of pay for overtime purposes.

Profit-sharing plans (as long as the contributions are to a bona fide plan without regard to hours worked, production levels, or efficiency)

ERISA plan payments (i.e., health benefit plans, many retirement plans, and similar benefits)

EXAMPLE: SINGLE FLAT RATE

Rip worked one day in a workweek and earned \$16/hour over 10 hours.

Type	Hours	Rate	Total
Reg Hrs	8	\$16/hr	\$128
OT	2	\$24/hr	\$48
TOTAL	10		\$176

Rate of Pay Method

Type	Hours	Units	Rate	Total
Reg Hrs	10		\$16/hr	\$160
OT Prem.		2	\$8/hr	\$16
TOTAL	10			\$176

Premium Method

* $\$160/10=\16 RROP
 $\$16 \times 0.5 = \8 OT Prem.



EXAMPLE: MULTIPLE RATES OF PAY



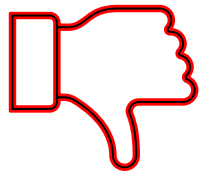
- ❖ Rip earned worked five 9-hour days in a workweek (45 hours total)
- ❖ He earned an \$30/hour the first 2 days.
- ❖ He earned \$16/hour on the last 3 days.
- ❖ He also earned a non-discretionary bonus of \$2 for every hour worked by finishing the season.



EXAMPLE: MULTIPLE RATES OF PAY

Rate of Pay Method

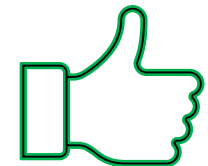
Type	Hours	Units	Rate	Total
Hourly 1	16		\$30/hr	\$480
OT 1	2		45/hr	\$90
Hourly 2	24		\$16/hr	\$384
OT 2	3		\$24/hr	\$72
Bonus		45	\$2	\$90
TOTAL	45			\$1,116



Premium Method

Type	Hours	Units	Rate	Total
Hourly 1	18		\$30/hr	\$540
Hourly 2	27		\$16/hr	\$432
Bonus		45	\$2	\$90
OT Prem.		5	\$11.80*	\$59
TOTAL	45			\$1,121

$*(\$540 + \$432 + \$90 = 1062) \div 45 \text{ hour} = \23.60 RROP
 $\$23.60 \times 0.5 = \11.80 OT Premium





“I WANT TO ENCOURAGE EMPLOYEES TO STAY TO THE END OF THE SEASON BY PROMISING THEM AN EXTRA \$200 IF THEY WORK UNTIL OCTOBER 1.”

- ❖ I’m So Nice!
- ❖ They’re GOING TO BE so GRATEFUL!
- ❖ The Bonus is on top of Wages and Overtime, so it’s Fine!
- ❖ WHY WOULD ANYONE SUE ME FOR PAYING THEM EXTRA?

WHAT IS A FLAT SUM BONUS?

Yes:



- ❖ End of Season
- ❖ Transportation (careful here)
- ❖ Work on Saturday
- ❖ Work on Holiday
- ❖ Bring a friend to work (careful here)

No:



- ❖ Piece rate pay
- ❖ Production Bonus

FLAT SUM BONUSES

Supreme Court Decided That They're Special and Must Be Recalculated With a Special Formula.

STEP 1: Figure Out OT Penalties without Flat Sum Bonus.

STEP 2: Determine Number of Non-OT Hours Worked During the Bonus Period.

STEP 3: Divide Flat Sum Bonus By Non-OT Hours and then Multiply by 1.5.

Step 4: Increase OT Penalty by OT Hours x Step 3 Total.

Logical, right?



PREVIOUS EXAMPLE – ERICA’S WORKWEEK

Non-Sum Rate Bonus



Type	Hours	Units	Rate	Total
Hourly 1	18		\$30/hr	\$540
Hourly 2	27		\$16/hr	\$432
Bonus		45	\$2	\$90
OT Prem.		5	\$11.80	\$59
TOTAL	45			\$1,121

*\$90 bonus / 40 non-OT hours= \$2.25 RROP Increase

\$2.25 x 1.5 = \$3.38 OT Prem Bonus Increase

Flat Sum Bonus



Type	Hours	Units	Rate	Total
Hourly 1	18		\$30/hr	\$540
Hourly 2	27		\$16/hr	\$432
OT Prem.		5	\$10.80	\$54
FS Bonus		1	\$90	\$90
FS Bonus OT Adj.		5	\$3.38*	\$16.90
TOTAL	45			\$1,132.90

BONUSES

NONDISCRETIONARY VS. DISCRETIONARY



Nondiscretionary

You do X = You get Y

Promised

Encourages work, attendance, continued employment

Example – end of season bonus, show up on a weekend or holiday, attend work all week, etc.

When an employer ties a bonus to the occurrence of a particular condition, the bonus will most often be treated as wages, and must be paid if the condition occurs. Further, the bonus must be counted when calculating the regular rate of pay for overtime purposes.

Discretionary bonuses

- ❖ For a bonus to be “discretionary,” the employer must retain discretion over whether to give a bonus, when to give a bonus, and what amount the bonus will be.
- ❖ Example = Christmas bonus

LABOR CODE 226.2

“For employees compensated on a piece-rate basis during a pay period”...

You Must Pay For, and Piece Rate Earnings CANNOT be attributed to:

- ❖ Rest and Recovery Periods
- ❖ Other Non-Productive Time

What is a “piece rate basis”?



REST AND RECOVERY PERIODS



Labor Code section 226.2, sub. (a), paragraph (1) and (3):

Employees must be compensated for rest and recovery periods separate from any piece-rate compensation, and

The rate of compensation for rest and recovery periods shall be the higher of:

An average hourly rate determined by dividing the total compensation for the workweek, exclusive of compensation for rest and recovery periods and any premium compensation for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods.

The applicable minimum wage.

LABOR CODE 226.2

Rest and Recovery Periods

- ❖ Statutory Rest Breaks
- ❖ Must Be Paid at “Average Rate of Pay”
 - Almost always the same as RROP.
- ❖ What about 15-Minute Breaks?

Other Non-Productive Time

- ❖ Any time other than Rest and Recovery Periods where and Employee is Working
 - Donning and Doffing
 - Exercises and Stretching
 - Paperwork
 - Walking to and From Fields/Ranches/Break Areas
- ❖ Can Be Anything At Or Above Minimum Wage
- ❖ Can Be A Reasonable Estimate

CAN'T I JUST PAY HOURLY PLUS PIECE RATE TO COVER REST AND RECOVERY PERIODS?



No.

This only helps with non-productive time.

This encourages employees to take their authorized rest breaks, without feeling that doing so will decrease their compensation.

PIECE RATE EXAMPLE:

An employee a 40-hour week on a piece rate basis. Her piece rate was \$1,000 per unit. In the week, she completed 10,000 pieces.

Paystub:

Type	Hours	Units	Rate	Total
Piece Rate	40	1,000	\$1,000/unit	\$1,000,000
TOTAL	40			\$1,000,000

Any issues?

PIECE RATE EXAMPLE:

An employee a 40-hour week on a piece rate basis. Her piece rate was \$1,000 per unit. In the week, she completed 10,000 pieces.

Paystub:

Type	Hours	Units	Rate	Total
Piece Rate	38.33	1,000	\$1,000/ea.	\$1,000,000
Rest & Recovery	1.67		\$26,089.23/hr.	\$43,569.01
TOTAL	40			\$1,043,569.01

Any issues?

PIECE RATE EXAMPLE:

An employee a 40-hour week on a piece rate basis. Her piece rate was \$1,000 per unit. In the week, she completed 10,000 pieces.

Paystub:

Type	Hours	Units	Rate	Total
Piece Rate	37.08	1,000	\$1,000/ea	\$1,000,000
NPT	1.25		\$15.50/hr	\$19.38
Rest & Recovery	1.67		\$26,089.73/hr	\$43,569.85
TOTAL	40			\$1,043,589.22



DO I NEED TO TRACK REST BRAKES NOW

No, but....

Section 226.2, subdivision (a)(2) requires that an employee's itemized wage statement state "[t]he total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period."

WHAT WAS AUTHORIZED AND PERMITTED?

- ❖ If an employer has authorized and permitted two 10-minute rest periods during an employee's work shift, the "compensable" rest and recovery periods are those that have been authorized and permitted according to existing law.
- ❖ That is the amount of time for which an employee must be compensated (i.e., the "compensable" period), and which must be itemized on the wage statement, regardless of whether the employee actually took only 8 minutes on one rest period (less than the amount of time that was "compensable") or took 13 minutes on another rest period (more than the amount of time that was "compensable").



HOW TO TRACK NON-PRODUCTIVE TIME

“Other non-productive time” Defined:

Time under the employer’s control, exclusive of rest and recovery periods, that is not directly related to the activity being compensated on a piece-rate basis.

- Actual records

Or

- Reasonable good faith estimates.

How is it paid?

- Employees must receive at least minimum wage for this time.



PIECE RATE PAY – COMMON ERRORS

Pure piece rate needs to have rest and recovery paid for the entire week and nonproductive time paid for each piece rate workday.

Hourly plus piece rate needs to pay rest and recovery for the entire workweek.

Paycheck stubs need to have nonproductive time and rest and recovery pay clearly and separately laid out with the hourly rates and amount of time.

If math is required to figure out how the employee was paid then the paycheck is subject to a lawsuit.

Don't get creative with labels to get around paying piece rate rest and recovery and nonproductive time.

If I don't understand the paycheck, neither will the worker.

PIECE-RATE OR “PIECE WORK”

THE AMERICAN HERITAGE DICTIONARY DEFINES THE TERM PIECE-RATE AS: “WORK PAID FOR ACCORDING TO THE NUMBER OF UNITS TURNED OUT.” CONSEQUENTLY, A PIECE-RATE MUST BE BASED UPON AN ASCERTAINABLE FIGURE PAID FOR COMPLETING A PARTICULAR TASK OR MAKING A PARTICULAR PIECE OF GOODS.



The average hourly rate to be paid for the rest periods for this employee is calculated as follows:

	\$500	Total compensation not including compensation for the rest periods
÷	38.33	Total hours less rest periods
=	\$13.04/hr × 1.67 hrs	Rest periods for the workweek
=	\$21.78	Compensation for rest periods for the workweek
Total compensation for the workweek:		
	\$500	Piece-rate compensation
+	\$21.78	Compensation for rest periods
=	\$521.78	

FOR A WORKWEEK OF PIECE-RATE COMPENSATION ONLY:

A PIECE-RATE EMPLOYEE WORKS A 5-DAY, 40-HOUR WORKWEEK.

THE EMPLOYEE HAS TWO 10-MINUTE REST PERIODS AUTHORIZED AND PERMITTED PER DAY, FOR A TOTAL OF 100 MINUTES

(1.67 HOURS) OF REST PERIODS FOR THE WORKWEEK.

THE EMPLOYEE EARNS \$500 IN PIECE-RATE COMPENSATION FOR THE WORKWEEK.

For a workweek of piece-rate compensation and a base rate of minimum wage for all hours worked (HOURLY PLUS PIECE):

- An employee works a 5-day, 40-hour workweek.
- The employee has two 10-minute rest periods authorized and permitted per day, for a total of 100 minutes (1.67 hours) of rest periods for the workweek.
- The employee is paid minimum wage (\$10/hour) for all hours worked, including the two 10-minute rest periods, for a total of \$400.
- The employee also earns a total of \$300 in piece-rate compensation for the workweek.

The average hourly rate to be paid for the rest periods for this employee is calculated as follows:

	\$683.30	Total compensation for the workweek, not including compensation for rest and recovery periods, which is the \$300 in piece-rate compensation, plus the minimum wage paid for all hours worked except the 1.67 hours of rest period time
÷	38.33	Total hours less rest periods
=	\$17.83/hour	Note: \$10/hour of this time is already calculated into and paid in the employee's minimum wage of \$10/hour for all hours worked, including the rest period time. Therefore, the additional amount owed for rest periods under this example is \$7.83/hour.
Total compensation for the workweek:		
	\$400	Minimum wages for all hours worked, including the rest period time
+	\$300	Piece-rate compensation
+	\$7.83 x 1.67 hours = \$13.08	Additional amount over minimum wage required to pay correct average hourly rate for rest periods
=	\$713.08	

For a workweek with both piece-rate work and hourly work (Mixed workweek):

- An employee works a 5-day, 40-hour workweek.
- On two 8-hour days of this workweek (for a total of 16 hours), the employee works at an hourly rate of \$10/hour, and does no piece-rate work.
- On the other three days of the week (for a total of 24 hours), the employee does piece-rate work only and earns a total of \$300 in piece-rate compensation.
- On each day of the workweek, the employee has two 10-minute rest periods authorized and permitted, for a total of 100 minutes (1.67 hours) of rest periods for the workweek.
- On the two hourly-work days, these rest periods are compensated at the \$10 hourly wage.

The average hourly rate to be paid for the rest periods for this employee is calculated as follows:

	\$453.30	Total compensation for the workweek, not including compensation for rest and recovery periods, which is the \$300 in piece-rate compensation, plus the \$160 for hourly work, less \$6.70, which is the compensation for the 40 minutes of rest and recovery periods on the two hourly-rate days.
÷	38.33	Total hours, which is 40 hours less the 1.67 hours of rest period time
=	\$11.83/hour	Note: For the days on which the employee worked at an hourly rate, \$10/hour of this time is already been paid as part of the hourly rate. For those two days, the employee is owed only an additional \$1.83/hour for the rest periods. For the days on which the employee did piece-rate work, the rate to be paid for the rest periods is \$11.83.

Total compensation for the workweek:

	\$160	For the hourly rate worked on two days
+	\$300	Piece-rate compensation
+	\$1.83 x .67 hours = \$1.23	The additional amount owed for the rest periods on the hourly rate days to bring them to the average hourly rate for the workweek.
+	\$11.83 x 1.0 hour	For the rest periods on the piece-rate days
=	\$473.06	

For a workweek of piece-rate compensation and overtime hours:

- An employee works a 6-day, 47-hour workweek, for which 7 hours constitute overtime.
- The employee has two 10-minute rest periods authorized and permitted per day, for a total of 120 minutes (2.0 hours) of rest periods for the workweek.
- The employee earns a total of \$800 in piece-rate compensation for the workweek.

The average hourly rate to be paid for the rest periods for this employee is calculated as follows:

	\$800	Total compensation for the workweek, not including compensation for the rest and recovery periods or premium pay for overtime.
÷	45 hours	Total hours, not including the rest and recovery periods.
=	\$17.78/hour x 2.0 hours = \$35.56	Compensation for rest and recovery periods for this workweek.

The overtime premium compensation for this employee is:

	\$800	Piece-rate compensation
+	\$35.56	Compensation for rest and recovery periods
=	\$835.56	
÷	47 hours	
=	17.78/hour	Regular rate of pay
x	.5	
=	\$8.89	Premium pay due for overtime hours
x	7 hours	Overtime hours
=	\$62.23	

Total compensation for the workweek:

	\$800	Piece-rate compensation
+	\$35.56	Compensation for rest and recovery periods
+	\$62.23	Premium pay for overtime hours
=	\$897.79	

Q. WHY ARE THERE DIFFERENT RULES FOR EMPLOYERS WHO PAY ON A SEMI-MONTHLY BASIS?



A. Actually, the compensation requirements for rest and recovery periods are the same for all employers, including those that pay on a semi-monthly basis. For employers who pay on a semi-monthly basis, however, there is a provision that allows the employer to pay for rest and recovery periods at a rate of at least the minimum wage for the pay period in which the rest and recovery periods occurred, and then to “true up” the compensation owed (to pay “the additional compensation required”) applying the average hourly rate formula that is required and explained above, in the following pay period. This is because when a semi-monthly pay period ends in the middle of a workweek, it may not be possible to determine the “average hourly rate” for that workweek at the time the paycheck is issued for that payroll period.

This is consistent with existing rules in Labor Code section 204 that apply to employers who pay wages on a semi-monthly basis. That section provides, for example, that “all wages earned for labor in excess of the normal work period [e.g., overtime] shall be paid no later than the payday for the next regular payroll period.” (Labor Code §204(b)(1) (language in italics added).)

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?



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.

PAYMENT OF WAGES

- Wages must be paid at least twice during each calendar month on the days designated in advance as regular paydays.
- The employer must establish a regular payday and is required to post a notice that shows the day, time and location of payment. Labor Code Section 207
- Wages earned between the 1st and 15th days, inclusive of any calendar month, must be paid no later than the 26th day of the month during which the labor was performed, and wages earned between the 16th and last day of the month must be paid by the 10th day of the following month.
- Other payroll periods such as weekly, biweekly (every two weeks) or semimonthly (twice per month) when the earning period is something other than between the 1st and 15th, and 16th and last day of the month, must be paid within seven calendar days of the end of the payroll period within which the wages were earned. Labor Code Section 204

FLC—WAGE PAYMENT

Sect. 205, Calif. Labor Code:



"...wages of workers employed by a farm labor contractor shall be paid on payroll periods **at least once every week** on a business day designated in advance by the farm labor contractor. Payment on such payday shall **include all wages earned up to and including the fourth day before such payday.**"



Example: Work Week ends on Sunday - Payday is Thursday.

MEAL & REST PERIOD PREMIUMS

If an employer fails to provide an employee a compliant timely duty-free uninterrupted meal or rest period, 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 or rest is not provided.

Max per day: 1 meal period premium + 1 rest period premium.



**CAN YOU SPOT THE
ISSUES?**

Smith Farming, Inc.
123 Smith Lane
Sacramento, CA

Employee: John Doe
Id: 5678 SSN: Crew: 6
ARN: EIN: 12-3456789
112233 Circle Street, Sacramento, CA

Check: 12345
Ck Dt: 05/13/2021
From: 05/03/2021 Thru: 05/09/2021

Date	Type	Hours	Pieces	Rate	Prem Rate	Deductions	Earnings
05/03/2021	HOURLY	8.00		14.00			112.00
05/04/2021	HOURLY	8.00		14.00			112.00
05/05/2021	HOURLY	8.00		14.00			112.00
05/06/2021	HOURLY	8.00		14.00			112.00
05/07/2021	HOURLY	8.50		14.00			119.00
05/08/2021	HOURLY	4.50		14.00			63.00
05/08/2021	OVERTIME	3.00		21.00			63.00
Totals:						.00	693.00

Smith Farming, Inc.

12345

	Hrs Wrkd	Vac Hrs Avail: .000	Gross	Other Pay	Sick Hrs Avail: 10.000	Fed W/H	Soc Sec	Medi	Other Hrs Avail: .000	St W/H	St/Local	Other Ded	Net Pay
Period:	48.00		693.00	.00		.00	42.97	10.05		.00	8.32	.00	631.66
YTD:	292.50		4,119.50	.00		.00	255.41	59.73		.00	49.45		

DO NOT CASH THIS CHECK WITHOUT VERIFYING SECURITY FEATURES ON BACK OF CHECK

Smith Farming, Inc.
123 Smith Lane
Sacramento, CA

Pay Six Hundred Thirty-One Dollars and 66 Cents

DATE: 05/13/2021 CHECK NO.: 74855 CHECK AMOUNT: 631.66

Pay To: John Doe
The Order of

VOID AFTER 60 DAYS

~~VOID~~

WARM AREA TO REVEAL WORD "VALID"

#123 Doe, John XXX-XX-5678

10/17/22 to 10/23/22

10/27/22

Day	Pay Type	Field	Job	Hrs	Units	Rate	Total
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Good Growers, Inc. 777 Grape Lane, Sacramento, CA

18	Non-Productive Time	5300	Harvesting-Hourly La	0.4900		18.5000	9.07
18	Piecework	5300	Harvesting-Contract L	4.0100	0.3829	320.0000	122.53
18	Rest & Recovery Period	5300	Harvesting-Hourly La	0.2500		34.8600	8.72
18	Piecework	5301	Harvesting-Contract L	3.0000	0.2871	320.0000	91.87
18	Rest & Recovery Period	5301	Harvesting-Hourly La	0.2500		34.8600	8.72

Grape Grower, Inc. 5678 Wine Lane, Sacramento, CA

17	Non-Productive Time	5093	Harvesting-Hourly La	0.4900		18.5000	9.07
17	Piecework	5093	Harvesting-Contract L	3.7600	0.4783	230.0000	110.01
17	Rest & Recovery Period	5093	Harvesting-Hourly La	0.2500		34.8600	8.72

Smith Family Vineyard Management 8899 12th Street, Sacramento, CA

19	Non-Productive Time	5033	Harvesting-Hourly La	0.7500		18.5000	13.88
19	Piecework	5033	Harvesting-Contract L	3.0000	0.7559	200.0000	151.18
19	Rest & Recovery Period	5033	Harvesting-Hourly La	0.2500		34.8600	8.72
20	Non-Productive Time	5033	Harvesting-Hourly La	0.5600		18.5000	10.36
20	Piecework	5033	Harvesting-Contract L	4.1900	1.0602	200.0000	212.04
20	Rest & Recovery Period	5033	Harvesting-Hourly La	0.2500		34.8600	8.72
21	Non-Productive Time	5033	Harvesting-Hourly La	2.0000		18.5000	37.01
21	Piecework	5033	Harvesting-Contract L	2.0000	0.3922	200.0000	78.44

Smith Farming, Inc.
 123 Smith Lane
 Sacramento, CA
 Fed ID: 12-3456789
 St. ID: 111-2222-3

Totals by Pay Type:	Pay Type	Hrs	Units	Rate	Total
	Non-Productive Time	4.2900		18.5000	79.39
	Piecework	9.1900	2.2083	200.0000	441.66
	Piecework	3.7600	0.4783	230.0000	110.01
	Piecework	7.0100	0.6700	320.0000	214.40
	Rest & Recovery Period	1.2500		34.8600	43.60

Totals: 25.5000 3.3566 889.06

Sick Hrs Available: 4.99 Covid Leave Hours Used: 0.00

	This Check	Yr to Date
Gross Wages	889.06	36,025.23
Fed Wht	22.56	970.27
Social Sec.	55.12	2,233.56
Medicare	12.90	522.37
State Wht	0.00	54.94
SDI	9.78	396.28
Medical	0.00	344.96
Net Check	788.70	31,502.85
Total Hours	25.50	1,329.07

FOR SMITH FARMING, INC.

Week of 10/17/22 to 10/23/22	
Total compensation not including compensation for the rest periods (\$889.06 – \$43.60)	\$845.46
Total hours less rest periods (25.5 hours – (1.25 hours of rest periods))	24.25 hrs.
The average hourly rate to be paid for the rest periods (Total compensation less rest period ÷ Total hours worked less rest periods)	\$34.86
Compensation for the rest periods for the workweek	\$43.60
Total compensation for the work week	
Piece rate compensation	\$845.46
Compensation for the rest periods	\$43.60
Total Compensation Payment	\$889.06

Smith Farming, Inc.

EMPLOYEE NO.	EMPLOYEE NAME			SOCIAL SECURITY NO.	PAY PERIOD BEGIN/ENDING		CHECK DATE	
Smith16	Jane Smith			xxx-xx-1111	9/23/19	- 9/29/19	10/2/19	0000
ITEM	RATE	HOURS	TOTAL	ITEM	THIS CHECK	YEAR TO DATE		
Regular	14.75			Gross	420.60	7,883.		
Pieces	3.00	126.00	378.00	Fed Income		-27.		
PiecesBreak	16.25	0.16	2.60	Soc Sec	-26.08	-488.		
PiecesHourly	20.00	2.00	40.00	MEDICARE	-6.10	-114.		
				St Dis Ins	-4.21	-78.		
WEEKS WORKED	HOURS WORKED	GROSS THIS PAY PERIOD		GROSS YEAR TO DATE		NET CHECK	CHECK NO.	
1	128.16	420.60		7,883.38		\$384.21		

Smith Farming, Inc.

#1234 Doe, John xxx-xx-0000

07/16/18 to 07/22/18 Ch# 1401 07/27/18

1401

DayPay Type	Grower	Field	Job	Hours	Units	Rate	Total		This Check	Yr to Date
16 Bonus			28-34	0.00		0.3500	12.25	Gross Wages	171.75	716.25
16 Reg. Hrs			28-34	14.50		11.0000	159.50	Social Sec.	10.65	44.41
								Medicare	2.49	10.39
								SDI	1.71	7.16
								Net Check	156.90	654.29
			Totals:	14.50			171.75			

Sick Hrs Available: 0

Smith Farming, Inc.

1234 Smith Lane

Sacramento, CA

Fed ID: 00-123 St. ID: 012-3456-6

ASSUME THIS IS A FARM LABOR CONTRACTOR

Smith Farming, Inc.

#12345 Jane Doe 4567 Doe Lane, Sacramento, CA XXX-XX-1111

121212

Good Grower 123 Vineyard Blvd., Sacramento, CA

01/20/19 to 01/26/19 Ch#121212 02/01/19

Day	Pay Type	Field	Job	Hours	Units	Rate	Total	This Check	Yr to Date
20	Piecework	2	Vineyard	44.67	4,176.0000	0.3000	1,252.80	Gross Wages 1,304.22	4,270.87
20	R&R	2	Vineyard	1.83	1.8330	28.0500	51.42	Fed Wht 54.00	68.60
								Social Sec. 80.85	264.79
								Medicare 18.91	61.93
								SDI 13.04	42.71
								Total Taxes: 166.80	438.03
								Net Check 1,137.42	3,832.84
								Total Hours 46.50	201.00

Totals by Pay Type:	Pay Type	Hours	Units	Rate	Total
	R&R	1.83	1.8330	28.0500	51.42
	Piecework	44.67	4,176.0000	0.3000	1,252.80
	Totals:	46.50	4,177.8330		1,304.22

Sick Hrs Accrued: 25.79 Sick Hrs Available: 24

FOR SMITH FARMING, INC.

Week of 01/20/19 to 01/26/19	
Total compensation not including compensation for the rest periods	\$1252.80
Total hours less rest periods (14.75 hours – (2 x 10-min rest periods))	44.67 hrs.
The average hourly rate to be paid for the rest periods (Total compensation less rest period ÷ Total hours worked less rest periods)	\$28.05
Compensation for the rest periods for the workweek	\$51.42
Total compensation for the work week	
Piece rate compensation	\$1,252.80
Compensation for the rest periods	\$51.42
Total Compensation Payment	\$1,304.22

Day	G/L #	Crop	Grow	Type	PW Hr	Units	Rate	Total	64.36	0.00	0.00	0.00	766.76	232482
07	601.00	NSLS29	90	RH	0.00	0.0000	16.5000	0.00						
05/10/21-05/16/21			05/20/2021			824.71	16.50	841.21	10.09	0.00	0.00	0.00	766.76	232482
10	601.00	NHWRF82	92	RH	0.00	5.0000	16.5000	82.50						
10	601.00	NHWRF85	92	RH	0.00	3.0000	16.5000	49.50						
11	601.00	NHWRF86	92	PW	2.00	190.0000	0.0600	11.40						
11	601.00	NHWRF88	92	PW	1.25	410.0000	0.0800	32.80						
11	601.00	NHWRF88	92	PW	1.50	334.0000	0.0800	26.72						
11	601.00	NHRF887	92	PW	0.50	115.0000	0.0800	9.20						
11	601.00	NHRF887	92	PW	0.50	173.0000	0.0800	13.84						
11	601.00	NHWRF88	92	PW	0.75	321.0000	0.0800	25.68						
11	601.00	NHWRF88	92	PW	0.50	178.0000	0.0800	14.24						
11	601.00	NHWRF88	92	RR	0.00	0.2500	17.7400	4.44						
11	601.00	NHWRF88	92	RR	0.00	0.2500	17.7400	4.44						
12	601.00	NHWRF88	92	PW	1.00	260.0000	0.0600	15.60						
12	601.00	NHWRF83	92	PW	1.75	670.0000	0.0600	40.20						
12	601.00	NHWRF86	92	PW	1.50	597.0000	0.0600	35.82						
12	601.00	NSHWDR	92	PW	0.50	165.0000	0.0700	11.55						
12	601.00	NSHWDR	92	PW	0.50	268.0000	0.0600	16.08						
12	601.00	NSHWDR	92	PW	1.25	230.0000	0.1000	23.00						
12	601.00	NHWDR1	92	PW	1.00	138.0000	0.1400	19.32						
12	601.00	NHWRF83	92	RR	0.00	0.2500	17.7400	4.44						
12	601.00	NSHWDR	92	RR	0.00	0.2500	17.7400	4.44						
13	601.00	NHWLA63	92	RH	0.00	6.0000	16.5000	99.00						
13	601.00	NHWLA63	92	RH	0.00	2.0000	16.5000	33.00						
14	601.00	NSLS22A	90	RH	0.00	3.0000	16.5000	49.50						
14	601.00	NSLS23A	90	RH	0.00	5.0000	16.5000	82.50						
15	601.00	NSLS22A	90	RH	0.00	3.5000	16.5000	57.75						
15	601.00	NSLS21A	90	RH	0.00	1.5000	16.5000	24.75						
15	601.00	NSLS21A	90	OT	0.00	2.0000	24.7500	49.50						

Smith Farming, Inc.
 123 Vineyard Lane
 Sacramento, CA

Payroll Earnings Record

Federal ID #: 123456

Jané Smith
 456 Farming Circle
 Sacramento, CA

S.S. #: ***-**- 6789 Account #: 1234

Check Dates: 06/01/2019 to 12/31/2022

Last Check Date: 06/16/2022 Date Last Worked: 06/07/2022

Pay Period	Check Date	Reg Wages	Excess Overtime	Check Total	SDI FICA	Fed Wht State Wht	WBF/L&I	Loans Misc Ded	Net Check	Check #
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Day	G/L #	Crop	Grow	Type	PW Hr	Units	Rate	Total	88.04	8.04	0.00
11	5100.00	ALMOND	911	RH	0.00	41.0000	21.9512	900.00			
	5100.00	ALMOND	911	OT	0.00	2.0000	32.9268	65.85			
16	5100.00	WALNUT	851	RH	0.00	4.0000	18.5000	74.00			
	5100.00	WALNUT	851	OT	0.00	4.0000	27.7500	111.00			

The Calculation:

For the correct calculation for the 1/11/21-1/17/21 pay period, you should calculate the base rate of pay for all hours worked:

$$\begin{array}{r} 43 \text{ hours at } \$21.9512/\text{hour} = \$943.90 \\ 8 \text{ hours at } \$18.50/\text{hour} = \underline{\$148.00} \\ \hline \$1091.90 \end{array}$$

Then calculate the average rate of pay:
 $\$1091.90 \div 51 \text{ hours} = \$21.41/\text{hour}$

And then pay half that rate time the number of hours worked in the work week.

$$\$21.41 \times 6 \text{ OT hours} \times .5 = \$64.23 \text{ OT Premium.}$$

His total pay should have been \$1,156.13 instead of \$1150.85. This fairly minor underpayment exposes you to significant statutory and civil penalties, including 30 days of this employee's wages for waiting time penalties.

#1082 [REDACTED], JESUS XXX-XX-0516 04/18/22 to 04/24/22 Ch# 168842 04/28/22

Day	Pay Type	Field	Job	Hrs	Units	Rate	Total
[REDACTED], CA 94610							
18	Non-Productive Time	5025	Suckering	0.4900		18.5000	9.07
18	Piecework	5025	Suckering	4.4500	376.3333	0.2400	90.32
18	Piecework	5025	Suckering	2.5600	272.3333	0.1900	51.75
18	Rest & Recovery Period	5025	Suckering	0.5000		24.5300	12.26
[REDACTED], CA 94558							
19	Regular Hours	5029	Cultivation	6.7500		25.0000	168.75
19	Rest & Recovery Period	5029	Cultivation	0.2500		24.5300	6.13
20	Regular Hours	5029	Cultivation	2.5000		25.0000	62.50
22	Regular Hours	5029	Sulfuring	7.5100		29.0000	217.79
22	Rest & Recovery Period	5029	Sulfuring	0.5000		24.5300	12.27
22	Overtime Premium	5029	Sulfuring	0.0000	0.0100	12.2700	0.13
[REDACTED], CA 94574							
19	Regular Hours	5000	Safety	1.0000		25.0000	25.00
21	Non-Productive Time	5000	Cultivation	0.1600		18.5000	2.96
21	Non-Productive Time	5000	Suckering	0.0800		18.5000	1.48
21	Regular Hours	5000	Suckering	3.0000		22.0000	66.00
21	Rest & Recovery Period	5000	Suckering	0.2500		24.5300	6.13
21	Regular Hours	5000	Safety	2.5000		25.0000	62.50
[REDACTED], CA 94574							
20	Rest & Recovery Period	5062	Cultivation	0.5000		24.5300	12.27
20	Regular Hours	5062	Cultivation	5.0000		25.0000	125.00

	This Check	Yr to Date
Gross Wages	932.31	7,834.80
Social Sec.	57.81	485.76
Medicare	13.51	113.60
State Wht	15.70	112.19
SDI	10.25	86.18
Net Check	835.04	7,037.07
Total Hours	38.00	821.92

[REDACTED], Inc.
 Fed ID: [REDACTED] St. ID [REDACTED]

Totals by Pay Type:	Pay Type	Hrs	Units	Rate	Total
	Non-Productive Time	0.7300		18.5000	13.51
	Overtime Premium		0.0100	12.2700	0.13
	Piecework	2.5600	272.3333	0.1900	51.75
	Piecework	4.4500	376.3333	0.2400	90.32
	Regular Hours	3.0000		22.0000	66.00
	Regular Hours	17.7500		25.0000	443.75
	Regular Hours	7.5100		29.0000	217.79
	Rest & Recovery Period	2.0000		24.5300	49.06
	Totals:	38.0000	648.6766		932.31

Covid Leave Hours Used: 0.00



HOT TIP

If the employee must do math to figure out how they were paid, then it probably is not compliant.

IN REVIEW: MOST COMMON PAYCHECK ERRORS



- Using rate in effect for overtime
- Failing to have NPT when working pure piece rate
- Calculating rest & recovery by the day
- Paying minimum wage for CA paid sick leave
- No having the hours worked for piece rate work
- Failing to list the grower's full legal name and physical address
- Failing to list the hours worked for each rate of pay for the workweek
- Not paying weighted average overtime
- Not paying rest and recovery for the entire workweek when piece rate is worked
- Not have CA paid sick leave on the check stub
- Rounding errors
- Calling piece rate a bonus to avoid R&R
- Relying on expensive paycheck services and software for compliance
- Failing to audit before disaster strikes

A close-up photograph of two people shaking hands. The person on the left is wearing a dark grey suit jacket with three buttons visible. The person on the right is wearing a grey sweater. The background is a blurred office environment with wooden chairs and a desk.

**SKIP THE CLASS ACTION BY HAVING AN
UP-TO-DATE ARBITRATION AGREEMENT**

QUESTIONS?



ROSASCO
LAW GROUP



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