

TOP 10 WAYS TO GET SUED



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#10 PAYMENT OF ALL WAGES DUE AT TERMINATION OR SEASONAL LAYOFF





I PAY MY EMPLOYEES ON THEIR REGULAR PAY DAY AT THE
END OF SEASON. I'M BRINGING THEM BACK IN A FEW
WEEKS, SO I DON'T NEED TO PAY THEM SOONER, RIGHT?

FINAL WAGES DUE

Worker Layoffs/Terminations: All due wages must be paid that same workday.

-Even when working on piece rate

Worker Voluntary Quit: All due wages paid within 3 days/72 Hours.

Employer responsible for getting final checks to workers, even if they don't show to pick them up.

Don't know where to find your employee? Turn it over to the labor commissioner unpaid wage fund.





WAITING TIME PENALTIES IF NOT PAID ON TIME

WAITING TIME PENALTIES

01

Waiting Time
Penalties

02

$\$15.50 \times 8$
hours $\times 30$
days = \$3,720
per worker

03

Three Year
Statute of
Limitations

04

100 Workers =
\$372,000



FINAL WAGES DUE



- My employee gave me two weeks notice. Today is her last day.
 - When are the final wages due?

#9 OUTDATED HANDBOOKS



I GOT MY HANDBOOK
FROM MY FRIEND. THIS IS
FINE, RIGHT?





8 NOT HAVING ARBITRATION AGREEMENT

ARBITRATION AGREEMENTS

Needs to be updated for
2023 after court decisions.

Can't force a waiver of
PAGA rights.

Can't force arbitration as a
condition of employment



NAJARRO V. HORIZON PERSONNEL SERVICES, INC., (OCT. 2021)

- Arbitration agreements should not contain language that waives the employee's right to bring a representative action under the California Labor Code Private Attorney General Act of 2004 (PAGA).
 - Could be unconscionable even if plaintiff didn't have PAGA case
- Arbitration agreements must be signed by both parties – employer and employee – to be valid
- Must identify the employer's name, not just 'company' or 'employer'

NAJARRO ARBITRATION RULES CONT.

- Employees asked to sign arbitration agreements that incorporate specific arbitration rules such as JAMS or the American Arbitration Association should be provided with a copy of those rules at the time they are asked to sign the agreement.
 - The employer's failure to provide such rules "established at least some degree of procedural unconscionability."
- Employees should be given an opportunity to review and understand what they are being asked to sign.

Actions that could be fraud:

- refusing to explain what the employee is being asked to sign,
- statements made to pressure an employee into signing,
- misrepresenting the agreement as an "unimportant" document,
- failing to encourage employees with limited education to seek outside review of the agreement before signing.



**ARBITRATION AGREEMENT
STOPS A CLASS ACTION!!!**

**CALIFORNIA IS STILL FIGHTING
OVER WHETHER PAGA CAN BE
FORCED INTO ARBITRATION.**

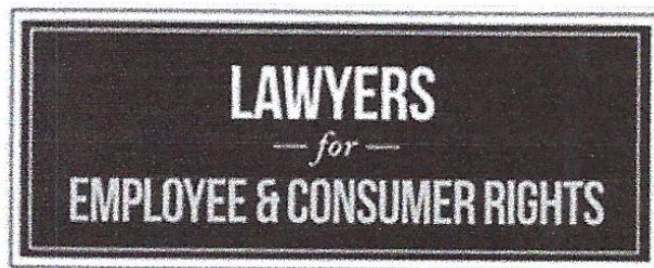
STAY TUNED!

A hand holding a pencil is positioned over a document that contains a table with multiple columns and rows. In the background, another hand is visible, possibly interacting with the document. The scene is set on a desk with a blurred background.

#7 TURNING OVER PAYROLL & PERSONNEL RECORDS



**I GOT A LETTER REQUESTING MY EMPLOYEE'S
PAYROLL AND PERSONNEL RECORDS.**



LAWYERS FOR EMPLOYEE AND CONSUMER RIGHTS
4100 West Alameda Avenue, Third Floor
Burbank, California 91505
(323) 375-5101 telephone (general)
(323) 306-5571 facsimile
www.LawyersForEmployeeAndConsumerRights.com

JAMIE BELIN
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Confidential Settlement Communication
(Cal. Evid. Code § 1152)

November 27, 2019

 MAIL



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June 16, 2021

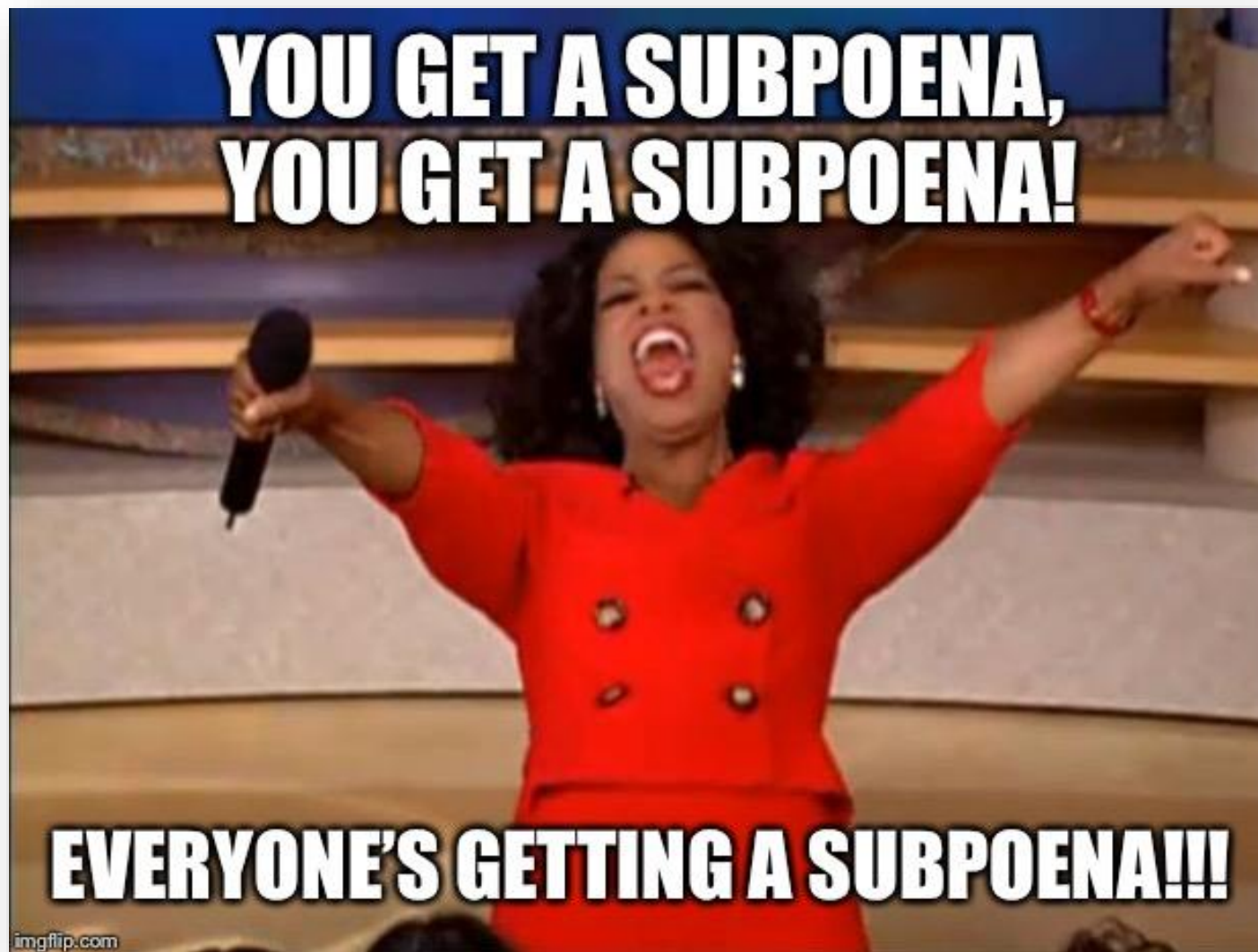
Via Certified Mail and E-Mail:

[REDACTED]
Attention: Human Resources Director
[REDACTED]
[REDACTED]
[REDACTED]

Re: [REDACTED]

This correspondence is protected by California Evidence Code § 1154 regarding settlement discussions.

Abramson Labor Group has been retained to represent [REDACTED] ("Plaintiff") in his claims against [REDACTED] ("Defendant") for (1) Discrimination in Violation of FEHA; (2) Retaliation in



I GOT A SUBPOENA
FROM MY EMPLOYEE'S
WORKER'S
COMPENSATION
ATTORNEY.

I HAVE TO PRODUCE THOSE,
RIGHT?



#6 BUSINESS EXPENSES LABOR CODE 2802

NICE PRUNING SHEARS...

- You provided your employees with pruning shears. The employees complain because the shears are uncomfortable and break. Employees have been buying their own shears. Only one or two use the company shears. You do not want to buy shears because the employees are always losing them, and they don't return them when they leave.
- Any issues?



BUSINESS EXPENSES — LABOR CODE § 2802

- An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties
- Attorney's Fees

- 
- Tools
 - Tool sharpeners
 - Gloves
 - Protective Gear
 - Specialized Boots

TOOLS & EQUIPMENT



Employers **cannot require employees to purchase tools, goods or services.**



Employers (and supervisors) should not sell anything to employees.

Employees may claim that they were forced to make the purchases due to the supervisor or employer's control over their job, which can result in liability to the employer.



Employers cannot charge employees who lose or break the employer's tools or equipment without facing the possibility of an illegal payroll deduction.



Uniforms must be supplied by the employer **if required.**

MY EMPLOYEE
CHOOSES TO
WORK FROM
HOME, BUT I
PROVIDE HER AN
OFFICE THAT HAS
EVERYTHING SHE
NEEDS.

I DON'T NEED TO PAY FOR HER
INTERNET OR PHONE, RIGHT?
WHAT ABOUT HER DESK AND
ERGONOMIC CHAIR? LAPTOP?
PRINTER? OFFICE SUPPLIES?





CELL PHONES AND INTERNET CHARGES

Employers must reimburse employees for expenses incurred within course and scope of employment (LC 2802).

If use of the employee's own device for work results in an increase in employee's data or phone charges, must reimburse.

Policy can require employees to submit actual expenses.

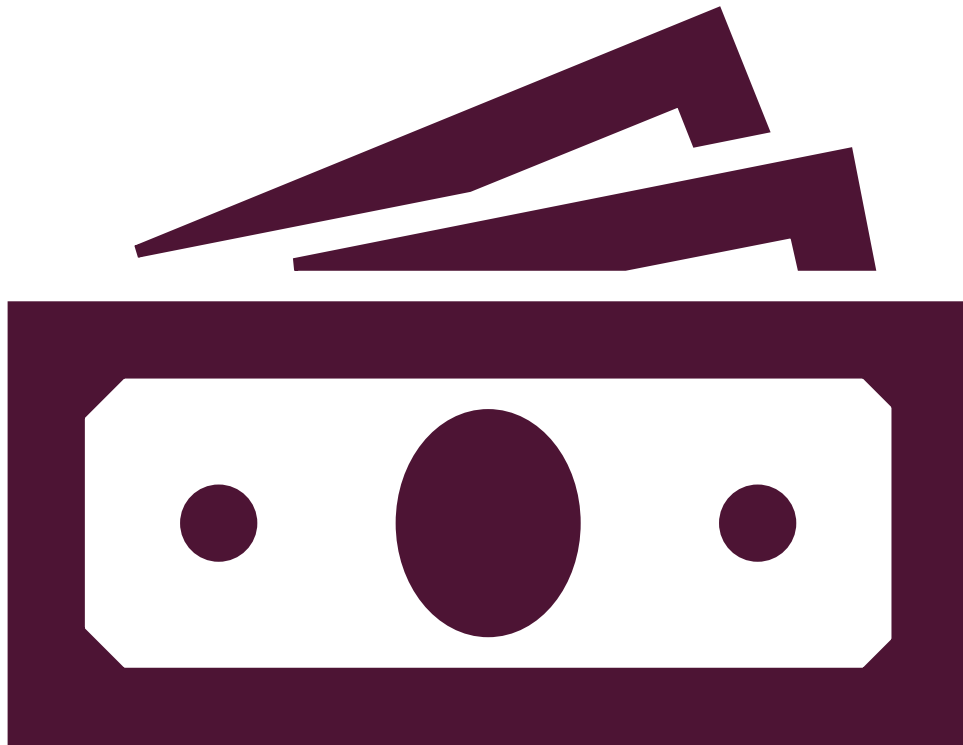
Or policy may be to reasonably approximate expenses that will be incurred by the typical employee and set a reasonable allowance for such expenses (e.g., \$50/mo).

Allowance must be reasonably related to approximate cost borne by the employee.

MILEAGE REIMBURSEMENT AKA DRIVING FOR DOLLARS

As of January 1, 2023, the new mileage IRS mileage rates are:

- 65.5 cents per mile for business miles driven
- Not Taxed!!
- Or pay actual expenses



#5 WEIGHTED AVERAGE OVERTIME & THE REGULAR RATE OF PAY



I GIVE MY EMPLOYEES AN END OF SEASON BONUS
OF \$200 IF THEY STAY UNTIL OCTOBER 1ST.

THIS DOESN'T TRIGGER ANY OVERTIME ISSUES, RIGHT?

“Regular Rate of Pay”

Regular rate of pay is not the agreed rate of pay for the employee’s straight time hours.

Regular rate of pay is the actual hourly rate paid for the employee’s work including the agreed rate plus all other forms of compensation.

The regular rate includes commissions, nondiscretionary bonuses, piecework earnings, and the value of meals and lodging (in some circumstances).

Weighted Average: If an employee, in a single workweek, performs two or more different types of work for which different non-overtime hourly rates of pay have been established, the employee’s regular rate for that week ordinarily is the weighted average of those rates. The 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.



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 pay

- 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)

FLAT SUM BONUSES / BONUS PAY



CALCULATION OF FLAT SUM BONUSES AND OVERTIME

Alvarado v. Dart Container Corporation of California – Cal. Sup. Ct. (2018)

- When calculating overtime in pay periods in which an employee earns a flat sum bonus, employers must divide the total compensation earned in a pay period by only the non-overtime hours worked by an employee.
- In order to encourage attendance on unpopular workdays, Dart paid employees an “attendance bonus” of \$15 per day for employees who worked on a Saturday or Sunday and completed their full work shift.
- Guided by two longstanding principles:
 1. There is a state policy favoring an eight-hour workday and six-day 40-hour workweek; and
 2. The state’s labor laws are to be liberally construed in favor of worker protection.



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



#4 PAYCHECK STUB-LC §226 COMPLIANCE

ID NUMBER: P230161243
BASE RATE: 928.12
SSN: 928.12

FED: STATUS
ST1: SINGLE
ST2: 00
EXEMPT 02

TAX ADJUSTMENTS
FED: \$
DI/UC: \$
LOCAL: \$

ST: \$

IMPORTANT MESSAGE

EARNINGS		TAXES AND DEDUCTIONS	
Y-T-D S/UNITS	DESCRIPTION	CURRENT AMOUNT	Y-T-D AMOUNT
10487.02	SO SEC TAX	57.47	762.33
453.85	MEDICARE TAX	13.44	178.29
554.83	FED INC TAX	103.47	1350.59
800.00	PRI-STATE TAX	22.08	289.52

TOTAL



I USE A BIG, EXPENSIVE
PAYCHECK COMPANY FOR
ALL MY PAY CHECKS, SO I
DON'T HAVE TO WORRY,
RIGHT?

PAY CHECK STUBS—LC 226



Itemized wage statement must include the following information:

All deductions, Federal and State, Health Care, Child Support, Etc.

Inclusive dates of the pay period

Employee name and SSN (only last 4 digits of the SSN)

Employer full legal name, Address, and EIN

Entity securing services (full legal entity name and address – January 1, 2012)

Hours worked and ALL applicable rates of pay

Applicable piece rate and number of pieces produced under each applicable piece rate (Daily)

Gross wages

Net wages

Effective July 1, 2015: Paid Sick Leave hours. Available and Used.

AB 1513: Piece-rate work: Rest & Recovery Periods, and Other Non-Productive Time

PAYCHECK DEDUCTIONS



EARNINGS STATEMENT				
REC. NO.	EMPLOYER ID	CHECK NO.	PAY PERIOD	PAY DATE
6789	101	123	8/28/20-9/11/20	9/11/20
RS	CURRENT TOTAL	DEDUCTIONS	CURRENT TOTAL	YEAR TO DATE
	200.00	FEDERAL TAX	8.63	93.51
		FICA SS TAX	0.00	125.40
		FICA MEDICARE	2.90	31.00
		STATE TAX	0.74	8.21
		TOTAL DEDUCTIONS		NET INCOME
			12.27	187.73
INS	YTD NET INCOME			
	7320.98			

Under California law, an employer may lawfully deduct the following from an employee's wages:

- Deductions that are required of the employer by federal or state law, such as income taxes or garnishments.
- Deductions 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 wage paid to the employee.
- Deductions authorized by a collective bargaining or wage agreement, specifically to cover health and welfare or pension payments.

#3 ROUNDING TIME





**I have an expensive
biometric time
keeping system. I
don't have to
worry about this
right?**

Camp v. Home Depot.

- ▶ The Court of Appeal reversed and remanded.
- ▶ Plaintiffs Camp and Correa filed a putative class action for unpaid wages against Home Depot. Plaintiffs alleged that Home Depot's electronic timekeeping system capture each employee's time worked down to the minute, but due to Home Depot's quarter-hour rounding policy employees were not paid for their full time worked. Home Depot implemented a rounding time policy that rounded an employee's time either up or down to the nearest quarter hour, rather than using the actual time reported.





Post-Camp v. Home Depot. – Rounding Policies May No Longer Be Permitted

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- The court found that plaintiff Camp presented a triable issue of material fact for his unpaid wages where Home Depot's rounding policy precluded plaintiff from being paid for of his hours worked.
- Additionally, the court stated, if an employer can capture and has captured the exact amount of time an employee has worked during a shift, the employer must pay the employee for "all the time" worked.

Camp v. Home Depot's Holding Impact on Employers

Based on the court's ruling in *Camp*, employers should expect that the circumstances in which rounding policies, for the purpose of employee timekeeping, are permitted will likely be further limited going forward or possibly prohibited in completed as technology continues to advance.

DONAHUE V. AMN SERVICES, INC. (CAL. SUPREME COURT)

(NO ROUNDING OF MEAL PERIOD TIME)

Takeaways:

- Rounding at the beginning and end of a shift remains legal, for now.
- BUT rounding at beginning of day to meal period could result in a late meal period claim. (Not getting a meal period by the fifth hour.)
- Start meal periods well before the fifth hour of work.
- Consider extending meal periods to longer than 30 minutes.
- Use an attestation and drop-down menu for non-compliant meal punches if software allows it.
- If an employee is entitled to a meal period premium for a short, late or missed meal period, pay it!

#2 THE FAILURE TO PAY MINIMUM WAGE



MY EMPLOYEES
CHOOSE TO GET TO
WORK 15 MINUTES
EARLY. THEY PICK UP
THEIR TOOLS AND PUT
ON THEIR SAFETY VEST.
THIS IS FINE BECAUSE
IT'S THEIR CHOICE,
RIGHT?



HOURS WORKED



If an employee is “suffered and permitted” to work even though not instructed or requested to do so, it is compensable time or hours worked.



If the employer knows or has reason to know the time is compensable.



Enforce with discipline, not lack of payment.

DE MINIMIS DOCTRINE DOES NOT APPLY IN CA

Under federal law, courts will forgive employers for not paying employees for small amounts of otherwise compensable time upon a showing that the bits of time are administratively difficult to record.

Examples of de minimis time include but are not limited to clocking in or out, turning lights and other systems on or off, and unlocking or locking the facilities.

In *Troester v. Starbucks Corporation*, the California Supreme Court held that the **de minimis exception does not apply in California**. As a result, employers must be sure to compensate employees for any and all time that employees work, regardless of how minor or trivial the amount of time and money may seem.



COMPENSABLE TIME AND DONNING AND DOFFING



THE DEFINITION OF WORKING TIME IS VERY BROAD AND INCLUDES ALL TIME WHEN AN EMPLOYEE IS SUBJECT TO THE CONTROL OF AN EMPLOYER AND INCLUDES ALL THE TIME IN WHICH THE EMPLOYEE IS "SUFFERED OR PERMITTED TO WORK," WHETHER OR NOT REQUIRED TO DO SO.



UNDER THIS BROAD DEFINITION, AN EMPLOYER MUST COMPENSATE EMPLOYEES FOR PERIODS OF TIME IN WHICH NO DUTIES ARE PERFORMED, AS LONG AS THE EMPLOYEE IS SUBJECT TO THE CONTROL OF THE EMPLOYER.

- California donning and doffing - when employees are required to wear specialty gear—including uniforms, safety gear, or other tools and equipment—or undertake other work-related activities before they are allowed to begin their official work duties.
- Must be compensated for this time.



#1

MEAL/REST PERIODS



ITREAT MY EMPLOYEES LIKE
ADULTS. I LET THEM TAKE MEAL
AND REST PERIODS WHENEVER
THEY WANT.



BRINKER SAYS I DON'T NEED TO
POLICY MEAL/REST POLICIES!

Work Hours

Rest Breaks

Meal Periods

Less than 3.5	None	None
3.5- less than 5	10-minute paid	None
5- less than 6	10-minute paid	30-minute unpaid (unless mutually waived)
6- less than 10	Two 10-minute paid	30-minute unpaid
10- less than 11	Three 10-minute paid	Two 30-minute unpaid (unless mutually waived AND first meal period was taken)
11- less than 14	Three 10-minute paid	Two 30-minute unpaid
14- less than 15	Four 10-minute paid	Two 30-minute unpaid
15- less than 18	Four 10-minute paid	Three 30-minute unpaid

HOURS OF WORK
MEAL PERIODS & REST
BREAKS OWED

DUTY FREE MEAL AND REST BREAKS

- Must be relieved of all duty for BOTH now.
- No closing gates.
- No telling workers they can't leave even if it would not be possible.
- Tardiness is a discipline issue.



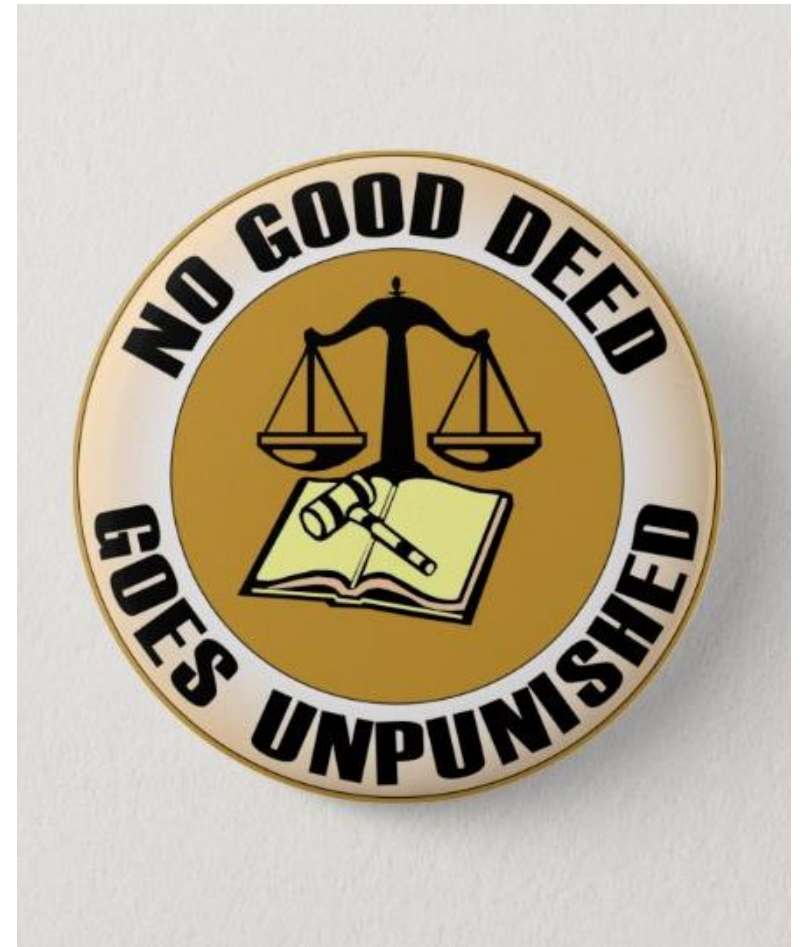
MEAL & REST PERIOD PREMIUMS

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.

I PAY MY EMPLOYEES DURING THEIR 30-MINUTE MEAL PERIOD, SO I'M GOOD RIGHT?

- Still owe 1 hour meal period penalty if compliant duty-free uninterrupted meal period is not provided before 5.0 hours of work and 10.0 hours of work.
- What about the PAGA penalty?



ON DUTY MEAL PERIOD



- 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.
- Do these really exist anymore?
- What about the other penalties available?

QUESTIONS?

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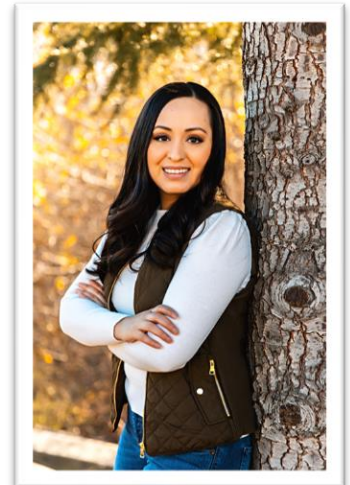
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