

Wage and Hour Master Class: Understanding the Complexities of Compliance

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WAGE AND HOUR LAWSUIT ALLEGATIONS

- Employment class action/Private Attorney General Act (“PAGA”). Defendant does not
 - Pay minimum wage;
 - Pay overtime wages;
 - Denies employees meal breaks;
 - Denies employees rest breaks;
 - Gives employees inaccurate wage statements;
 - Does not pay wages when due;
 - Does not timely pay final wages owed;
 - Does not reimburse employees for business expenses.

MINIMUM WAGE

MINIMUM WAGE: RULE

- Every employer shall pay to each non-exempt employee wages not less than the following:
 - \$16.50 per hour regardless of the number of employees.
 - Exceptions:
 - Some cities and counties require a higher minimum wage, ranging from \$16.89 to \$19.65 (see [Inventory of US City and County Minimum Wage Ordinances - UC Berkeley Labor Center](#))
 - Fast Food Restaurant employees: \$20.00 per hour.
 - Healthcare Facility employees: it's complicated.

WHAT ARE “HOURS WORKED”?

- The California wage orders define “hours worked” as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered and permitted to work, whether or not required to do so.”

AREAS OF LIABILITY

- Off the clock work.
- Insufficient records/No records.
- Rounding.

OFF THE CLOCK WORK: COMMON CLAIMS

- Before clocking in, employees
 - Attend trainings/orientation;
 - Perform work;
 - Walk to field;
 - Travel in company vehicle to field;
 - Wait in line to punch in;
 - Wait in line to wash hands;
 - Exercise;
 - Put on protective or other gear (donning/doffing);
 - Attend tailgate meetings;
 - Arrive before start time per instructions.

OFF THE CLOCK WORK: COMMON CLAIMS

- After clocking out, employees
 - Removed protective gear;
 - Cleaned up work area;
 - Walked from field;
 - Traveled in company vehicle.

GOOD TIME RECORD?

Week ending: _____

Employee name: _____

Department: _____

DAY	TIME IN	TIME OUT	TIME IN	TIME OUT	LEAVE CODE	LEAVE HOURS	REG HOURS*	OT HOURS*
SUN								
MON								
TUES								
WED								
THU								
FRI								
SAT								
TOTAL HOURS*								

Employee Signature: _____ Date: _____

IS A GOOD FORM ENOUGH?

- Who is filling out time records?
 - Employees or foremen/supervisors?
- Handwritten? Time clock? App?
- Are time records being filled out correctly?
 - Employees clocking in and out?
 - Rounded vs. exact times?
- Who is doing the math?
- Rounding?
- Employee signature – enough?
- Are employees signing?
- What about time records for crews?

MINIMUM WAGE: PENALTIES

- Unpaid wages plus interest;
- Attorneys' fees and costs;
- Liquidated damages in the amount of the unpaid wages;
- Waiting time penalties up to a maximum of 30 days;
- Private Attorney General Act (PAGA) claim.

MINIMUM WAGE: WHAT TO DO

- Ensure time records show actual hours worked.
- Don't rely on employee math.
- When totaling hours, do not round.
- Ensure employees perform no work before clocking in or after clocking out.
- Document training/instructions on start/end time, donning/doffing, no work before or after clock-in/clock-out.
- Ensure a clock-in method that doesn't cause employees to wait.
- On the employee's timecard, have them sign acknowledging they recorded all hours worked.



OVERTIME

WHAT YOU ALREADY KNOW:

- Triggered at 8 hours in a day or 40 hours per week.
- 1.5 x pay (2x for Double Time (“DT”).
- Not owed to exempt employees on salary.
- Old Wage Order 14 exemptions phased out in 2022.



WHERE WE FIND LIABILITY

- Not counting all hours.
- Miscalculating the regular rate of pay.
- Misclassifying salaried employees.
- Including overtime pay in non-exempt salaries.

OVERTIME IS NOT A RATE OF PAY

- California thinks overtime is bad, and you're bad for making employees work it.
- Per the Division of Labor Standards Enforcement (“DLSE”), “the purpose of overtime is to provide a penalty to discourage employers from requiring overtime.”
- The penalty or “premium” is calculated at the end of the week at 0.5x the Regular Rate of Pay (“RROP”) for the entire week for each overtime hour.

1.5 x THE EMPLOYEE'S "REGULAR RATE"

- The "Regular Rate" is the per-hour average of total contractual pay for the workweek (if overtime didn't exist).
 - Total weekly earnings / Total hours worked;
 - Excludes non-work pay (sick, vacation, meal/rest penalties, other exemptions);
 - Special calculations for pay that cannot, by law, include payment for overtime (like FSB).

THE OVERTIME PENALTY IS THE “ONE-AND-A-HALF”

- Paid at $\frac{1}{2}$ the RROP for each overtime hour *on top of* the regular rate of pay (that was already paid).
- If payroll provider has a “units” column, good practice to pay it as units rather than hours.
- Alternatively, combine the rate in effect during the overtime hours with the overtime premium.
 - Make sure it’s not double counting overtime hours.
 - Consider a new provider – can’t do piece rate without units.

EXAMPLE: OVERTIME “PREMIUM”

- 10-hour shift on Monday at \$20 per hour.
- 3-hour shift on Tuesday at \$25 per hour.
- 8-hour shift on Wednesday at \$18.50 per hour.
- 2 x 9-hour shifts on Thursday and Friday at \$25 per hour.
- Incentive bonus of \$1 per hour worked that week.
- Add Total Non-OT Earnings - \$912
- Total Hours = 39
- RRPOP = \$23.3846

Type	Hrs	Units	Rate	Pay
Hourly 1	10		\$20.00	\$200.00
Hourly 2	21		\$25.00	\$525.00
Hourly 3	8		\$18.50	\$148.00
Bonus		39	\$ 1.00	\$ 39.00
OT		4	\$11.69	\$ 46.76
TOTAL	39			\$958.76

EXAMPLE – OVERTIME “RATE”

- 10-hour shift on Monday at \$20 per hour.
- 3-hour shift on Tuesday at \$25 per hour.
- 8-hour shift on Wednesday at \$18.50 per hour.
- 9-hour shifts on Thursday and Friday at \$25 per hour.
- Incentive bonus of \$1 per hour worked that week.
- Do “Premium” Calculations to find out RROP \$23.38.
- Add OT Premium of \$11.69 to each rate in effect for OT and pay as a rate.
- Easier?

Type	Hrs	Rate	Pay
Hrly 1	8	\$20.00	\$160.00
OT 1	2	\$31.69	\$ 63.38
Hrly 2	19	\$25.00	\$475.00
OT 2	2	\$36.69	\$73.38
Hrly 3	8	\$18.50	\$148.00
Bonus	0	\$39.00	\$ 39.00
TOTAL	39		\$958.76

COMMON MISTAKES IN RROP/OT

- Paying overtime (“OT”) at the rate in effect.
- Failing to adhere to defined workweek.
- Paying OT at regular rate of pay for the day/ task/ location/grower.
- Paying OT for piece-rate at 1.5 times the piece rate.
 - Approved prior to AB 1513.
 - What about now?

CLASSIFICATION: EXEMPT OR NON-EXEMPT

- Exempt or Non-Exempt?
 - Federal and state laws exempt certain employees from certain wage and hour requirements, including overtime pay and meal and rest break requirements.
 - Threshold salary requirement: \$68,640 in 2025.
 - Duties requirement - Job titles alone do not determine whether an employee is exempt or non-exempt.
 - Consequences of misclassification can be severe.

CLASSIFICATION: EXEMPT OR NON-EXEMPT

- Executive (Managerial) Exemption
 - Manage company or department and supervise 2 or more employees.
- Administrative Exemption
 - Office or nonmanual related to operations, and either assists bona-fide executive or does technical work only under general supervision.
- Professional Exemption
 - Doctors, lawyers, artists, etc.
 - Master's degree required.

SALARIED VS. EXEMPT

- Salary just means payment is fixed (i.e., not based on hours or pieces).
- Salaried employees can only be exempt from overtime if they are “Primary Engaged In” exempt duties in a given workweek.
 - “Primarily Engaged In” vs. “Primary Duty.”
 - “Working foreman has ‘duties’ which are designed to be production duties and may, also, have some limited managerial duties as well.” The production duties are “not an outgrowth of his limited supervisory role, but [are] simply a part of his production duties.”
- Must “customarily and regularly exercise independent judgment.”
 - Examples: Fast Food Managers, Pharmacists, Repairmen.
 - Irrigators, most forepersons, many office staff are NOT properly exempt even if paid high enough salary!

NON-EXEMPT SALARY?

- Non-Exempt Salary can only account for pay of up to 8 hours per day and up to 40 hours per week.
- Overtime hours are *unpaid* by salary (or day-rate) even if you agree otherwise.
- Must track hours actually worked, include those hours on the wage statement, record meal and rest breaks, etc.
- Regular Rate of Pay is total pay (including salary and other contractual pay) divided by maximum contracted non-overtime hours.

EXAMPLE: Good Boy Contracting, Inc.



- Rudy started a Farm Labor Contractor (“FLC”) called “Good Boy Contracting, Inc.
- His crews are going to work 8-hour shifts, but he knows foremen generally work at least a little overtime each day due to set-up and clean-up.
- In his area, the common practice is to pay foremen flat \$220 daily sums, regardless of how much time they work.
- Rudy knows that the day rate cannot include overtime work, so he instead promises that foremen will be paid at least \$220 -- \$20 per hour, and will be paid for at least 10 hours of work, including a \$10 overtime premium for the 9th and 10th hours.
- Rudy will pay an additional \$30 for every hour after 10 hours.
- If his foreman worked five 8.5-hour days and was paid \$1100 for the week, did Rudy violate overtime laws?

SHAME!



- Yes, Rudy violated California overtime laws.
- This is called a *Belo Contract*. Per the DLSE:
 - *“The concept flies in the face of the very reasons that the IWC adopted premium pay for overtime [...] Adopting a contract which provides for paying an individual on a regular basis to work overtime simply encourages the working of overtime. The system provides no penalty to the employer for employing the employee over eight hours in a day or forty hours in a week; in fact, the system encourages the employer to so employ the worker because the overtime has, according to the plan, already been paid for.”*
 - By law, the guaranteed \$220/day covers only 8 hours.
 - Regular rate of pay is \$27.50 (\$220/8)
 - The employee is unpaid for 2.5 hours of overtime.
 - Owed the base pay ($\$27.50 \times 2.5 = \68.75) PLUS the overtime premium ($\$13.75 \times 2.5 = \34.38) for those hours, or \$103.13 of underpayment.
 - He’s still a good dog, though.

OVERTIME TAKEAWAYS

- Employees may love overtime, but California hates it.
- No good deed goes unpunished – small bonuses create millions in penalties.
- Set up your payroll to get it right every time automatically, but do regular audits.
- No good way to guarantee overtime pay.
- Exemptions should be limited to true supervisors and high-level office staff.

MEAL PERIODS

MEAL PERIODS:

Wage Order 14 at section 11

- An employer may not employ an employee for a work period of more than five (5) hours without providing the employee with 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 employer and the employee.
- 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 meal period of not less than 30 minutes, 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 the employee only if the first meal period was not waived.

Wage Order 14 at section 7(A)(3)

- (A) Every employer shall keep accurate information with respect to each employee including the following:
 - (3) Time records showing when the employee begins and ends each work period. Meal periods . . . shall also be recorded. **Meal periods during which operations cease . . . need not be recorded.**

AREAS OF LIABILITY

- Insufficient records/No Records.
- Rounding.
- Meal period waivers.
- On-duty meal periods.

GOOD TIME RECORD?

	In	MP Start	MP End	2 nd MP Start	2 nd MP End	Out	Total
Mon	<i>6:57 am</i>	<i>12 pm</i>	<i>12:29 pm</i>			<i>3:32 pm</i>	<i>8.0</i>
Tue	<i>7 am</i>	<i>12 pm</i>	<i>12:31 pm</i>	<i>6 pm</i>	<i>6:32 pm</i>	<i>7:57 pm</i>	<i>12.0</i>
Wed	<i>7:05 am</i>	<i>11:59 am</i>	<i>12:30 pm</i>			<i>3:30 pm</i>	<i>8.0</i>
Thu	<i>6:58 am</i>	<i>12:02pm</i>	<i>12:35 pm</i>			<i>3:35 pm</i>	<i>8.0</i>
Fri	<i>7:02 am</i>	<i>11:55 am</i>	<i>12:27 pm</i>	<i>6:05 pm</i>	<i>6:30 pm</i>	<i>8:01 pm</i>	<i>12.0</i>
Sat	<i>7 am</i>	<i>12:01 pm</i>	<i>12:32 pm</i>			<i>3:35 pm</i>	<i>8.0</i>
Sun							

I certify that the above accurately reflects the hours that I worked and that I was provided an opportunity to take all required meal periods.

Date: *1/28/2025*

Signature: _____

MEAL PERIOD WAIVER:

Wage Order 14 at Section 11

- [W]hen 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 employer and the employee.
- [I]f the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.
- **Any mention of written consent?**

1st MEAL PERIOD WAIVER FORM

1.

- I understand that California law requires that I be provided an unpaid, duty-free meal period of at least 30 minutes when I work more than 5 hours in a day. I understand that employer and I may agree to waive this meal period when I work less than 6 hours in a day.
- By signing below, I consent to waive my 30-minute duty-free meal period on those days when I work more than 5 hours but no more than 6 hours.

OR?

2.

- I am scheduled to work a shift of 6 hours or less on:
 - Date: _____
- I understand that I may waive my 30-minute unpaid meal period only when my work will be completed in 6 hours or less in one workday.
- For this waiver to be valid, an authorized company official must also authorize the waiver in writing by signing below. I may revoke this agreement to waive my meal period at any time by signing this form as indicated below.

2nd MEAL PERIOD WAIVER FORM

1.

- I understand that I am entitled to a second duty-free unpaid meal period of not less than 30 minutes if I work more than ten (10) hours during a workday. However, I understand that I can waive the second meal period on those days when my total day's work will be completed within a work period of not more than twelve (12) hours.

OR?

2.

- I am scheduled to work a shift of 12 hours or less on:
 - Date: _____
- I understand that I am entitled to a second duty-free unpaid meal period of not less than 30 minutes on any day that I work more than ten (10) hours.
- However, I understand that I can waive the second meal period when my total day's work will be completed within a work period of not more than twelve (12) hours, as long as I did not waive the first meal period.
- For this waiver to be valid, an authorized company official must also authorize the waiver in writing by signing below. I may revoke this agreement to waive my meal period at any time by signing this form as indicated below.

ON-DUTY MEAL PERIOD AGREEMENTS:

Wage Order 14 at Section 11

- 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 meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

COMPLIANT WITH THE LAW?

- I understand that an on-duty meal period is allowed only when the nature of the work prevents the employee from being relieved of all duty.
- I understand and agree that the nature of my job prevents me from being relieved of all duty during the meal period, and I agree and consent to take an on-duty meal period which shall be compensated.

ROUNDING:

Donohue v. AMN Services, LLC (2021) 11 Cal. 5th 58

- Employers cannot round time punches for meal periods.
- Even a “minor infringement” of wage order requirements, such as a meal period of 28 or 29 minutes, triggers an employer’s premium pay obligations.
- If there is rounding at the beginning of a work shift, that may mask a meal period not beginning within the first five hours of work.

MEAL PERIODS: PENALTIES

- Meal period premiums (one additional hour of pay at the employee's regular rate of pay for each day that the meal period is not provided);
- Attorneys' fees and costs;
- Waiting time penalties up to a maximum of 30 days;
- Private Attorney General Act (PAGA) claim.

MEAL PERIODS: WHAT TO DO

- Have a written meal period policy.
- Ensure the meal period premium is paid when applicable.
- Itemize the meal period premium on the employee's wage statement, i.e., "MP" or "MP Premium."
- Remind employees of the requirement to take meal periods, i.e., orientation, tail gates, annual meetings, semi-annual meetings.
- Document meeting agendas, have sign-in sheets.
- Have an acknowledgment on the time card for the employee to sign confirming that he/she had an opportunity to take meal periods.
- Observe whether employees are taking their meal breaks.
- Have compliant written meal period waivers for you and the employee to sign.
- Ensure on-duty meal periods meet the nature of the job requirements.

REST PERIODS

REST PERIODS: RULE

- 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** (i.e., 3½- 6 hours = 1 rp; 6-10 hours – 2 rp; 10-14 hours – 3 rp).
- A rest period need not be authorized for employees whose total daily work time is less than three and one-half (3½) hours.

REST PERIOD SCHEDULE

Shift Length	Breaks Required
Up to 3 hours and 29 minutes.	None.
3.5 hours to six hours.	One 10-minute rest break.
Six hours and one minute to 10 hours.	Two 10-minute rest breaks.
10 hours and one minute to 14 hours.	Three 10-minute rest breaks.
Every 4 hours thereafter.	Additional 10-minute rest break.

TOP REST BREAK MISTAKES

- Starting rest breaks late or ending breaks early.
 - No strict timing requirement, but at least 10 minutes.
 - Suitable rest break location.
- Policy restricting/controlling employees during breaks.
- Records showing missing rest breaks or automatic rest breaks.
- Piece Rate “Rest and Recovery”
 - “For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period”
- Not paying ANY rest period premiums.

PIECE RATE – REST AND RECOVERY

- “For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period: [...]
 - (3)(A) Employees shall be compensated for rest and recovery periods [...] 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.
- What about rest breaks on days with no piece rate?

REST BREAK RECORDS?



OFFICIAL NOTICE
INDUSTRIAL WELFARE COMMISSION
ORDER NO. 14-2001
REGULATING
WAGES, HOURS AND WORKING CONDITIONS IN THE
AGRICULTURAL OCCUPATIONS

Effective January 1, 2002 as amended

This Order Must Be Posted Where Employees Can Read It Easily

Visit www.dir.ca.gov

REST BREAK RECORDS?

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.

WHAT ABOUT PIECE RATE BREAK RECORDS?

Q. Does Labor Code section 226.2 mean that employers will need to track the number of minutes that employees actually take for their rest and recovery periods?

A. No. 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." (Emphasis added.)

If an employer has authorized and permitted two 10-minute rest periods during an employee's work shift (see quote from *Brinker* above), 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").

REST BREAKS - CONCLUSION

- Consider 15-minute rest breaks.
- Make sure your policy is compliant.
- Start the “clock” when employees are relieved of all duty.
- Don’t record rest breaks, but make sure you report when they are not taken or are interrupted.
- If employees work piece rate in a workweek, pay 10 minutes per required rest break at the RROP. (Consider paying the extra 5 as non-productive time (“NPT”).
- Pay at least some rest break premiums.

TO RECORD OR NOT TO RECORD

Record Rest Breaks If:

- You will always accurately record each and every rest period that employees take.
 - No automatic punches.
 - No missing punches.
- You automatically pay a rest period premium for every rest period that isn't recorded.
 - If the records don't show a rest period occurred, it never happened.

• **Don't Record Rest Breaks If:**

- You would not bet 6-7 figures that 100% of your recordkeeping is always perfect.

WAGE STATEMENTS

WAGE STATEMENTS: RULE

An employer, semimonthly or at the time of each payment of wages, shall furnish to their employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing

- Gross wages earned,
- Total hours worked by the employee (not in the case of exempt employees)
- All deductions,
- Net wages earned,
- Inclusive dates of the period for which the employee is paid,
- Name of the employee and only the last four digits of their social security number or an employee identification number other than a social security number,
- Name and address of the legal entity that is the employer,
- All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee,
- The amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave (can also be provided in a separate writing provided on the designated pay date with the employee's payment of wage).
- The number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis.

WAGE STATEMENTS: COMMON ERRORS

- Name of employer does not match name on Secretary of State website
- Address of employer does not match address on Secretary of State website
 - Check website: [Search | California Secretary of State](#)
- Inclusive pay period does not show – i.e., just shows beginning date;
- Total hours are not shown or do not add up;
- Paid sick leave does not show;
- No employee id number.
- **Don't rely on a payroll company to catch these errors.**

WHAT ABOUT PIECE RATE EMPLOYEES?

Q. Are there any wage statement requirements under this law?

A. Yes. Labor Code section 226.2, subdivision (a)(2) provides that:

The itemized statement required by subdivision (a) of [Labor Code] Section 226 shall, in addition to the other items specified in that subdivision, separately state the following, to which the provisions of Section 226 shall also be applicable:

- A. The total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period.
- B. *Except for employers paying compensation for other nonproductive time in accordance with paragraph (7),* the total hours of other nonproductive time, as determined under paragraph (5), the rate of compensation, and the gross wages paid for that time during the pay period.

As indicated in the language in italics above, an employer is not required to state the total hours of other nonproductive time, the rate of compensation, or the gross wages paid for that time, if the employer “in addition to paying any piece-rate compensation, pays an hourly rate of at least the applicable minimum wage for all hour worked,” as authorized by the “safe harbor” language in subdivision (a)(7).

The wage statement requirements should be read in tandem with the current requirement under section 226, subdivision (a), that an itemized wage statement show “all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...” (§226(a)(9)). To the extent there may be overlap between this provision and section 226.2(a)(2) going forward, the requirements will be harmonized. Employers will not be required to state the same information twice on the wage statement.

WHAT ELSE?

- If not all wages, meal and rest period premiums, etc. have been paid, is the wage statement compliant?
- If the regular rate of pay is not calculated correctly, is the wage statement compliant?

WAGE STATEMENTS: PENALTY

- 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.
- Private Attorney General Act (PAGA) claim.

TIMELY PAYMENT OF WAGES

FAILURE TO PAY ALL WAGES ON TIME

- Agricultural employers must pay twice per month on days designated in advance as regular paydays. Labor performed between the 1st and 15th of the month are paid between the 16th and 22nd, and labor performed between the 16th and last day must be paid between the first and seventh day.
- Weekly or bi-weekly payment is probably okay if not more than 7 days from the end of the pay period.
- **Farm Labor Contractors** must pay weekly and include all wages up to and including the fourth day from the payday.

FAILURE TO PAY ALL WAGES ON TIME

- We usually see that the timing of payment practices is correct, but liability also exists if the employer miscalculated wages.
- By not paying all wages, they also failed to pay all wages “On Time.”
- Penalty is \$100 per pay period plus 25% of wages withheld.

DEDUCTIONS FOR EMPLOYEE DEBTS?

- Deductions for a payroll advance, previous overpayment, loan, rent, etc.?
- Employers cannot make deductions from payroll other than as required by law with explicit voluntary written consent of the employee – consent that can be revoked.
- DLSE suggests that the employee must still receive minimum wage *after* the deducted amount.
- Employer can only take the authorized amount – no “remainder” provisions.
- You can terminate an employee who refuses to pay you back, but cannot terminate for their refusal to agree to payroll deductions.

PAY AT TERMINATION

FINAL PAYCHECK RULE

- Discharge or lay-off: If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, including vacation/PTO.
 - Note that a layoff without a specific return date within the same pay period constitutes a discharge, and final wages, including unused vacation or PTO, are due immediately. (*Hartstein v. Hyatt Corporation* (9th Cir. 2023) 82 F.4th 825.)

FINAL PAYCHECK RULE

- Voluntary Quit: If an employee not having a written contract for a definite period quits his or her employment, wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his/her intention to quit, in which case the employee is entitled to his/her wages at the time of quitting.
 - Notwithstanding any other law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he/she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of providing payment within 72 hours of the notice of quitting.
 - Keep documentation of the mailing.

FINAL PAYCHECK RULE: NO OFFSETS

- Employers cannot withhold amounts owed by employee from a final paycheck, including for
 - Damage caused by employee, damaged or unreturned equipment, keys, etc.;
 - Amounts owed for overpayment or loans;
 - Amounts owed for pay or vacation advances.

EXPENSE REIMBURSEMENT

EXPENSES: RULE

- 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, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.
- For purposes of this section, the term “necessary expenditures or losses” shall include all reasonable costs, including, but not limited to, attorney's fees incurred by the employee enforcing the rights granted by this section.

BE REASONABLE

- “In calculating the reimbursement amount due [...] the employer may consider not only the actual expenses that the employee incurred, but also whether each of those expenses was ‘necessary,’ which in turn depends on the reasonableness of the employee’s choices.” (*Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554 (2007)).
- Policy can help define scope of reasonableness.



SECRET EXPENSES

- “Before an employer’s duty to reimburse is triggered, it must either know or have reason to know that the employee has incurred an expense. Once the employer has such knowledge, then it has the duty to exercise due diligence and take any and all reasonable steps to ensure that the employee is paid for the expense. *Wilson v. The La Jolla Group* (2021) 61 Cal.App.5th 897, 919.
- What about a policy requiring employees to report expenses?



MILEAGE

- Not just gas – wear and tear, insurance, etc.
- IRS Rate presumptively reimburses for mileage incurred in personal vehicle.
- \$0.70 per mile in 2025.
- Not owed for commuting to first place of employment.
 - Travel between job sites: time + mileage.



CELL PHONES

- Unlimited plan?
 - Purpose of law is to prevent the employer from passing on operating expenses to the employees.
- Reasonable portion of cell phone bill.
 - Depends on use. Hard to calculate.
 - Be reasonable and pass the burden of proof to employees.
- Triggered when employees are reasonably required to use their personal cell phone.
 - Includes using applications to clock in, complete paperwork, send and receive photos/messages.
 - Probably doesn't include ascertaining schedule or calling in sick.

TOOLS

- Must provide tools necessary to perform the job.
 - Uniforms vs. wardrobe items which are *usual and generally usable in the occupation?*
 - Cal-OSHA required safety equipment vs. safety policy equipment?
- “But my employees want to use their own tools!”
 - Have written tool policy. Document refusal to use tools.
 - Provide enough for them to use physically at the job site.
 - Provide maintenance equipment. Require maintenance to be done during shift.
- Hand tool exception?
 - 2x minimum wage. Only “hand” tools. Rarely done right.

UNPAID EXPENSES: PENALTIES

- Unpaid expenses plus interest;
- Attorneys' fees and costs;
- Private Attorney General Act (PAGA) claim.

EXPENSES: WHAT TO DO

- Written Policy to Reimburse for All Reasonable Necessary Business Expenses
 - Include procedure for employee to obtain approval for and report expenses.
 - Be proactive – train supervisors and foremen to identify expenses incurred and direct employees to request reimbursement.

Questions?

Thank you!

DISCLAIMER

- The information in these materials is provided for general informational purposes only and is not intended to constitute legal advice.
- You should seek the advice and opinion of a qualified, licensed attorney on specific facts, circumstances, and legal issues that concern you before acting on any information provided in these materials.