## PART 1:
### FAIR LABOR STANDARDS ACT (FLSA) OVERTIME EXEMPTIONS

California has its own overtime exemptions and the tests for these exemptions are listed in Part 3 below. Where federal and state law conflict, the law more protective of employees will apply.

FLSA § 18(a); 29 CFR § 778.5

## PART 2:
### FAIR LABOR STANDARDS ACT (FLSA) NON-EXEMPT EMPLOYEES

#### Minimum Wage

Although the federal minimum wage is $7.25 per hour, California employees must be paid the higher, state minimum wage. The state minimum wage increased from $8.00 to $9.00 per hour on July 1, 2014. The state minimum wage will further increase to $10 per hour on January 1, 2016.

#### Overtime

1. Non-exempt employees must be paid overtime for all hours worked over 40 hours in a workweek
   a) Overtime:
   - 1 ½ times an employee’s regular rate of pay
   - Regular rate of pay must be determined for non-exempt employees paid on a piece-rate, salary, or commission basis by dividing their earnings by the number of hours actually worked
   - Non-discretionary bonuses (i.e., performance incentives) are to be included in an employee’s regular rate of pay to determine overtime payment obligations
     - Bonuses are considered to be discretionary if:
       - The fact that the payment is to be made and the amount are determined at the sole discretion of the employer; and
       - The bonuses are not paid under a prior contract, agreement, announcement, or promise that would cause the payments to be considered “regular”
   29 C.F.R. §§ 778.100 – 778.115

   b) Workweek
   - Regularly recurring period of 168 hours (7 consecutive 24-hour periods)
   - May begin on any predetermined day and hour of day
   29 C.F.R. § 778.105

Note: California has additional overtime requirements. See Part 3 below.

#### Tipped Employees

1. “Tipped Employee”: Employee who typically receives over $30 of tips per month
2. Tipped employees must receive at least the “state minimum wage”
   - Tips actually received by tipped employees may be counted as wages
   29 C.F.R. § 531.50

#### Hours Worked

1. On-call Time:
   - On Employer’s Property: Generally, on-call time is compensable (unless living on property)
» Off Employer’s Property: Generally, on-call time is not compensable (unless activities are restricted)

**Example:**
A paramedic is scheduled to work a 12-hour “on-call” shift, which requires her to remain at the dispatching center to respond to emergencies. All time spent at the dispatching center is compensable time.

**Compare:**
Maintenance employees at a large manufacturing facility are scheduled to be “on-call” one weekend each month. During such time, the employees may do as they please, including staying at home, but must “check-in” with their supervisor by telephone at the beginning and end of each day. The maintenance employee “on-call” time is not compensable.

29 C.F.R. § 785.17

2. Sleeping Time:

If employee is required to be on duty:
» 24 Hours or Less: All time is compensable, even if permitted to sleep
» 24 Hours or More: Employer and employee may agree to exclude sleep time from hours worked, however, sleeping facilities must be provided

29 C.F.R. §§ 785.21 – 785.22

3. Lectures, Meetings, & Training Programs:

Compensable unless all the following elements are met: time spent is (1) outside normal working hours; (2) voluntary; (3) not job related; and (4) no other work is concurrently performed

29 C.F.R. § 785.27

4. Travel Time:

a) Home to Work:
» Not compensable

b) One-Day Special Assignment in Another City:
» If employee ordinarily works at a fixed location, all time spent traveling to and returning from another city on the same day is compensable. However, time the employee normally spends traveling to/from work can be deducted from the otherwise compensable time

29 C.F.R. §§ 785.34 – 785.40

5. Break Time for Nursing Mothers:

Employers are required to provide “reasonable break time for a non-exempt employee to express breast milk for her nursing child for 1 year after the child's birth each time such employee has need to express the milk.” Employers are also required to provide “a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.” 29 U.S.C. § 207(r)(1)

Note: California Labor Code § 1030 requires that employers provide a reasonable amount of break time to accommodate employees (exempt or non-exempt employees) desiring to express breast milk. The break time shall, if possible, run concurrently with any break time already provided to the employee. A suitable private place, other than a bathroom, must be provided.

PART 3:
CALIFORNIA WAGE & HOUR LAWS

Overtime Exemptions

The primary exemptions from the requirement that employees working in California be paid overtime are as follows.

1. Executive

» Manages the enterprise or a customarily recognized department or subdivision thereof;
» Customarily and regularly directs the work of at least two or more other employees therein;
» Has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight;
» Customarily and regularly exercises discretion and independent judgment; and
» Spends more than 50% of his/her time engaged in exempt activities

The employee must also be paid at least two times the state minimum wage for full-time employment in a fixed, predetermined salary. As of July 1, 2014, the minimum weekly salary is $720 per week (37,440 per year).

Cal. Lab. Code § 515; California Industrial Welfare Commission (“IWC”) Wage Orders, § 1
2. Administrative

» Duties and responsibilities involve either:
  • The performance of office or non-manual work directly related to management policies or general business operations of his/her employer or his/her employer's customers; or
  • The performance of functions in the administration of a school system, educational establishment or institution, or of a department or subdivision thereof, in work directly related to the academic instruction or training carried on therein;

» Customarily and regularly exercises discretion and independent judgment;

» Duties and responsibilities include at least one of the following:
  • Regularly and directly assists a proprietor, or an employee employed in a bona fide executive or administrative capacity; or
  • Performs, under only general supervision, work along specialized or technical lines requiring special training, experience, or knowledge; or
  • Executes, under only general supervision, special assignments and tasks; and

» Spends more than 50% of his/her time engaged in exempt activities.

The employee must also be paid at least two times the state minimum wage for full-time employment in a fixed, predetermined salary. As of July 1, 2014, the minimum weekly salary is $720 per week (37,440 per year).
Cal. Lab. Code § 515; IWC Wage Orders, § 1

3. Professional

» Employee is either:
  • Licensed or certified by the State of California and is primarily engaged (i.e., spends more than 50% of his/her time) in the practice of one of the following recognized professions: law, medicine, dentistry, optometry, architecture, engineering, teaching, or accounting; or
  • Primarily engaged (i.e., spends more than 50% of his/her time) in an occupation commonly recognized as a learned or artistic profession. “Learned or artistic profession” means an employee who is primarily engaged in the performance of
    – Work requiring knowledge of an advanced type in a field or science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes, or

4. Computer Software Professional

» Employee is primarily engaged (i.e., spends more than 50% of his/her time) in work that is intellectual or creative and requires the exercise of discretion and independent judgment;

» Employee is primarily engaged (i.e., spends more than 50% of his/her time) 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; or
  • 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; or
  • The documentation, testing, creation, or modification of computer programs related to the design of software or hardware for computer operating systems;

» Employee is highly skilled and 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.
This exemption does not apply to an employee if any of the following apply:

- Employee is a trainee or employee in an entry-level position who is learning to become proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming, and software engineering.
- Employee is employed in a computer-related occupation but has not attained the level of skill and expertise necessary to work independently and without close supervision.
- Employee is engaged in the operation of computers or in the manufacture, repair, or maintenance of computer hardware and related equipment.
- Employee is an engineer, drafter, machinist, or other professional whose work is highly dependent upon or facilitated by the use of computers and computer software programs and who is skilled in computer-aided design software, including CAD/CAM, but who is not in a computer systems analysis or programming occupation.
- Employee is a writer engaged in writing material, including box labels, product descriptions, documentation, promotional material, setup and installation instructions, and other similar written information either for print or for onscreen media, or who writes or provides content material intended to be read by customers, subscribers, or visitors to computer-related media such as the World Wide Web or CD-ROMS.
- Employee is engaged in any of the activities set forth the first three paragraphs above for the purpose of creating imagery for effect used in the motion picture, television, or theatrical industry.

The employee must also be paid at least $40.38 per hour or an annual salary of not less than $84,130.53 for full time employment and paid not less than $7,010.88 per month. (Note: These rates are valid as of January 1, 2014, and may be changed each year.)

Cal. Lab. Code § 515.5; Department of Industrial Relations Memorandum dated October 17, 2008, re: Overtime Exemption for Computer Software Employees.

5. Outside Sales

- Employee is 18 years of age or older.
- 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.


6. Commissioned Salespeople

- Principally involved in selling a product or service.
- Earns commissions based on a percentage of the sales price of the product or service.
- More than half of the employee’s compensation in each pay period is commissions (overtime must be paid for each week that does not meet this criterion); and
- Earns at least 1½ times the minimum wage for each hour worked in a week.


7. Permissible Deductions from Exempt Employees’ Salaries

Exempt employees must be paid a full salary for any week in which they perform any work. However, there are some permissible deductions of less than a week from an exempt employee’s salary which will not violate the “salary basis” requirement for exempt status:

- For absences of one or more full days for personal reasons, other than sickness or disability, a deduction may be made on a pro rata basis by dividing the employee’s salary by the number of days in the employee’s normal work week (either 5 or 6 days).

DLSE Opinion Letter 2002.05.01

- For absences of one or more full days occasioned by sickness or disability (including work-related accidents) if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for loss of salary occasioned by such sickness or disability, and after the employee has exhausted the leave allowance thereunder.

DLSE Manual § 51.6.15.2

- For partial day absences for illness or injury if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation. However, if the accrual which the employer utilizes provides a vested right to wages, as is the case with vacation and PTO plans (discussed below), then deductions from accrued leave may only be made in 4-hour increments.

- An employer is not required to pay the full salary in the initial or terminal weeks of employment unless a full week is worked.

Payment on Separation

1. Voluntary Resignation
   General rule: All earned wages, including earned unused vacation, PTO and/or personal days, are due and payable within 72 hours of resignation (or at the time of resignation if the employee has given at least 72 hours’ notice).
   Cal. Lab. Code § 202

2. Involuntary Termination
   General rule: All earned wages, including earned unused vacation, PTO and/or personal days, are due and payable immediately upon termination at the place of termination.
   Cal. Lab. Code §§ 201, 208

Payment of Wages

Wage Statement Requirements

General Rule: Employers, must furnish a statement to employees at the time of payment of wages (usually done in the form of a pay stub) that shows the following:

» Gross wages earned
» Total hours worked if compensation is based on an hourly rate (unless the employee is exempt and paid a salary)
» All deductions
» If applicable, the number of piece rate units earned and the applicable piece rate
» If applicable, the commission rate and amount of sales
» Net wages earned
» The inclusive dates of the period for which the employee is paid
» The name and the last four digits of the Social Security number of the employee
» The name and address of the legal entity which 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 and, if the employer is a temporary services employer, the rate of pay and the total hours worked for each temporary services assignment.

Cal. Labor Code § 226

There are additional requirements imposed on garment manufacturers.

Deductions

Deductions from an employee’s paycheck are only permitted if they are:

» Made in accordance with state or federal law; or
» Made for the direct benefit of the employee and authorized in writing by the employee to cover:
   • insurance premiums
   • hospital or medical dues; or
   • other deductions which do not amount to a rebate or deduction from the standard wage required by a collective bargaining agreement or by a statute (deductions made pursuant to a collective bargaining agreement for insurance premiums, hospital or medical dues do not have to be authorized in writing by the employee)

Cal. Lab. Code § 224

Note: The IWC Wage Orders also purport to give employers the right to make deductions for cash shortages and for dishonest or willful acts or for an employee’s “gross negligence.” IWC Wage Orders, § 8. However, this is a risky proposition as it is not clearly permitted by the terms of Labor Code § 224 (which sets forth allowable deductions) and the employer bears the burden of proof based on an objective standard.

DLSE Opinion Letters 1993.02.22-2, 1994.01.27, 2008.11.25-1; DLSE Manual § 11.2.4

Timing

General rule: Employees must be paid at least twice a month on days designated in advance as regular paydays which are no more than seven days after the close of the pay period.

» The salaries of employees who are exempt from overtime laws under the executive, administrative and professional exemptions may be paid once a month if payment is made before the 26th and if the entire month’s salary (including the unearned portion) is paid at that time.*
» Payment of overtime wages may be delayed one pay period after they are earned
» Commission wages are due when they are reasonably calculable
» The wages of certain agricultural and domestic employees who are provided with room and board may be paid once a month
* This provision is only applicable to employers who are covered by the FLSA

Posting

Employers must keep posted conspicuously a schedule of paydays and the time and place of payment.
Cal. Lab. Code § 207

Minimum Wage

1. Hourly Amount

General rule: The state minimum wage increased from $8.00 to $9.00 per hour on July 1, 2014. The state minimum wage will further increase to $10 per hour on January 1, 2016.
DLSE Order MW-2014

2. Overtime

General Rules: In addition to the federal law requirements listed above, California also generally requires that employees be paid overtime:
» for all hours worked over 8 hours in a workday at the following rates:
  • 1 ½ times their regular rate of pay for all hours worked over 8 hours in a workday up to 12 hours
  • 2 times their regular rate of pay for all hours worked over 12 hours in a workday
» for all hours worked on the 7th consecutive day of work at the following rates:
  • 1 ½ times their regular rate of pay for the first 8 hours worked
  • 2 times their regular rate of pay for any hours in excess of 8 hours worked

Vacation & Sick Leave

1. Vacation Policies

Accrual
» Employers are not required to provide employees with paid vacation time
» If an employer provides its employees with vacation time, vacation becomes a vested right
» “Use it or lose it” policies are not permitted; however, caps may be placed on the accrual of paid vacation time (i.e., a policy may provide that once a certain number of vacation days are accrued, the employee must use some vacation time before accruing more)
» Initial probationary periods (of any length) during which employees do not accrue vacation are permissible
» All paid time off that is provided without condition by an employer is presumed to be vacation pay, including PTO, floating holidays and personal days

Rest Breaks & Meal Periods

1. Rest Breaks

General rule: Employees are entitled to a 10-minute rest period for each 4 hours of work (or major fraction thereof)
» Employees who work 3-1/2 hours or less in a day are not entitled to rest periods
» Employees are entitled to 10 minutes’ rest for shifts from 3-1/2 to 6 hours in length

2. Meal Periods

General rule: Employees may not work more than 5 hours without being provided a meal period of at least 30 minutes (unless the employee works no more than 6 hours, in which case the meal period may be waived by mutual consent—or unless the employee works no more than 12 hours, in which case the second meal period may be waived by mutual consent)
» Employers must make meal periods available but need not ensure that employees take them or do no work during them
» Meal periods need not be compensated. However, if an employee has to do any work during a meal period, it is an on-duty meal period and must be compensated
» On-duty meal periods are permitted only when:
  • the nature of the work prevents the employee from being relieved of all work; and
  • the employee agrees in a writing that states that the agreement may be revoked at any time; and
  • only one on-duty meal period is taken in a day
Cal. Lab. Code § 512; IWC Wage Order 4-2001, § 11
### Employment of Minors

**1. Minimum Age***

- 12 and 13: Generally restricted from working, but may engage in door-to-door or street sales, work in household occupations or as personal attendants, may sell or distribute newspapers (Lab. Code §§ 1298, 1299, 1308.1; 29 U.S.C. 213; Ed. Code § 49111)
- 14 and 15: Generally restricted from working, but in addition to the above, may perform various duties in the food service, retail and gasoline industries and be employed to run errands and make deliveries by foot, bicycle or public transportation (Lab. Code § 1294.1, 1294.3, 1294.5; 29 CFR Part 570 Subpart C, 29 CFR 570.34)
- 16 and 17: Permitted by law to work except as otherwise legally prohibited, and may be accepted in an approved apprenticeship training program to be trained in specified occupations declared hazardous by federal regulation to minors under 18 (Lab. Code §§ 3077, 1294.1; 29 CFR 570 Subpart E)

* There are exceptions for certain vocational education programs and the entertainment industry

**2. Prohibited Employment**

Minors may not work in any occupation declared hazardous by federal regulations, perform certain work in gas stations, or perform certain work involving alcohol or lottery tickets.

- In addition to the foregoing, minors under the age of 16:
  - may only perform certain work in retail, food service, and gasoline service establishments
  - may not work in manufacturing, mining, or processing
  - may not work in certain occupations involving transportation of persons or property
  - may not work in close proximity to specified dangerous conditions (e.g., moving machinery, construction, railroad, boat, dangerous substances, excavation)
  - may not engage in certain entertainment activities
  - may not work in certain agricultural occupations

Lab. Code § 1294, 1294.1, 1296, 1308; 29 CFR Part 570 Subpart E, 29 CFR 570.33-570.34, 570.51-570.54, 570.55, 570.57-570.62, 570.64-570.68, 570.71 (H.O. 1-17)

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**Payment of Accrued Vacation on Termination**

- All accrued unused vacation must be paid as wages upon termination

Cal. Lab. Code § 227.3

**2. Sick Leave Policies**

- Employers are generally not required to provide employees with sick leave*
- However, if an employer does provide its employees with sick leave for their own illnesses, it must also allow them to use up to half of their annual entitlement to attend to the illness of a child, parent, spouse or registered domestic partner
- Sick leave means increments of compensated leave provided as a benefit for use during an absence for any of the following reasons:
  - The employee is physically or mentally unable to perform his duties due to an illness, injury or a medical condition;
  - The absence is for the purpose of obtaining professional diagnosis or treatment for a medical condition;
  - The absence is for other medical reasons of the employee, such as pregnancy or obtaining physical examination

Cal. Lab. Code § 233

* A San Francisco ordinance requires that employees be provided with sick leave.

**Uniforms**

Where uniforms are required by an employer, the employer must provide and maintain them.

- Includes apparel and accessories of a distinctive design or color (even if the style is not specified
- Does not include required apparel or accessories that are generally used by employees working the same job for other employers (e.g., a white nurse’s uniform)
- Uniforms that require minimal maintenance (i.e., are wash and wear) may be maintained by the employee


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Note: The foregoing is not an exclusive list of all permissible and forbidden employment and many restrictions and exceptions apply. There are also specific rules applicable to the entertainment industry which are not covered here.
### Overtime Exemptions

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<thead>
<tr>
<th>Age</th>
<th>Spread of Hours Permitted</th>
<th>School</th>
<th>Hours Permitted/Requirements</th>
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<tbody>
<tr>
<td><strong>14 &amp; 15</strong></td>
<td>7 am – 7 pm (9 pm from June 1 – Labor Day) (Cal. Labor Code § 1391)</td>
<td>In Session*</td>
<td>Must have completed 7th grade to work while school in session. (Cal. Ed. Code § 49112) 3 hours per school day outside of school hours (Cal. Ed. Code § 49112, 49116; Cal. Labor Code § 1391) 8 hours on any non-school day 18 hours per week (Cal. Ed. Code § 49116; Cal. Labor Code § 1391)</td>
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<td></td>
<td>Not in Session</td>
<td>8 hours per day (Cal. Labor Code § 1391, 1392) 40 hours per week (Cal. Labor Code § 1391)</td>
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<tr>
<td><strong>16 &amp; 17</strong></td>
<td>5 am – 10 pm (12:30 am on any evening preceding a non-school day) (Cal. Labor Code § 1391)</td>
<td>In Session</td>
<td>Must have completed 7th grade to work while school in session. (Cal. Ed. Code § 49112) 4 hours per day on any school day (Cal. Ed. Code § 49112, 49116; Cal. Labor Code § 1391) 8 hours on any non-school day or on any day preceding a non-school day (Cal. Ed. Code § 49112, 49116; Cal. Labor Code § 1391) 48 hours per week (Cal. Labor Code § 1391)</td>
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</table>

*School is considered “in session” during any week that the county’s public schools have at least one scheduled school day. (DLSE Pamphlet entitled “California Child Labor Laws 2013.”)*

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http://www.wagehourblog.com