We have partnered with ThinkHR to provide their robust People Risk Management (PRM) solution as a complimentary service to help our clients save time and money while reducing risks associated with HR and compliance issues.

California Minimum Wage and Overtime
The California minimum wage and overtime laws discussed here are as follows:

- Minimum Wage
- Compensable Hours
- Overtime
- Recordkeeping
- Posting
- Enforcement

California’s minimum wage, hourly, and overtime laws are located at Cal. Labor Code §§ 500 – 558 and 1171 – 1206.

Most employers in California are subject to both the federal and state minimum wage laws. Therefore, when legal requirements are conflicting (state versus federal), the employer must abide by the law that is most advantageous for the employee. Thus, since California’s current law requires a higher minimum wage rate than the federal law, all employers in California who are subject to both laws must pay the state minimum wage rate unless their employees are exempt under California law.

In addition, the following localities in California enforce a local minimum wage ordinance:

- Alameda
- Belmont
- Berkeley
- Cupertino
- Daly City
- El Cerrito
- Emeryville
- Fremont
- Long Beach (for hotel workers, otherwise California minimum wage applies)
- Los Altos
- Los Angeles City
- Los Angeles County
- Malibu
Employers with offices in San Francisco should also be aware of the city's Family Friendly Workplace Ordinance (FFWO) and Formula Retail Employee Rights Ordinances.

Employers with offices in Emeryville should also be aware of the city's Fair Workweek Employment Standards Ordinance.

Employers with offices in San Jose should also be aware of the city’s Opportunity to Work Ordinance.

**Note:** On April 4, 2016, Governor Brown signed Senate Bill 3, establishing an escalating minimum wage for the state. In order for the City of Sacramento to remain aligned with the state, Chapter 5.158 of the city code was repealed, which would have created a city minimum wage. Sacramento minimum wage requirements are now consistent with state requirements, and Sacramento employers are required to post the standard California and Federal Labor Law poster that all California employers are required to post.

**Minimum Wage**

As of January 1, 2020, California’s minimum wage is $12 per hour for small employers (1 – 25 employees) and $13 per hour for large employers (26 or more employees). According to Cal. Labor Code § 200, wages are all amounts for labor performed by employees of every description — whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation. Labor includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment.

**Scheduled Increases to the Minimum Wage**

On April 4, 2016, California Governor Jerry Brown signed legislation (S.B. 3), which raises the state minimum wage to $15 per hour by 2023. The minimum wage will increase in phases as follows:
Effective Date | Small Employer (1 – 25 employees) | Large Employer (26+ employees)  
--- | --- | ---  
January 1, 2020 | $12 | $13  
January 1, 2021 | $13 | $14  
January 1, 2022 | $14 | $15  
January 1, 2023 | $15 | $15  

Beginning January 1, 2024, the minimum wage will be adjusted annually based on the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). The bill allows the Governor to suspend increases to the minimum wage under certain circumstances.

Covered Employers and Employees

California’s minimum wage and overtime law is applicable to all private employers. An employer is any person, association, organization, partnership, business trust, limited liability company, or corporation who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person.

With exception, California’s minimum wage, hourly, and overtime laws apply to all persons employed in any occupation, trade, or industry (whether compensation is measured by time, piece, or otherwise). However, there are some employees who are exempt from the minimum wage law, such as outside salespersons, individuals who are the parent, spouse, or child of the employer, and apprentices regularly indentured under the State Division of Apprenticeship Standards.

Additionally, there is an exception for learners, regardless of age, who may be paid no less than 85 percent of the minimum wage rounded to the nearest nickel during their first 160 hours of employment in occupations in which they have no previous similar or related experience. There are also exceptions for employees who are mentally or physically disabled, or both, and for nonprofit organizations such as sheltered workshops or rehabilitation facilities that employ disabled workers. Such individuals and organizations may be issued a special license by the Division of Labor Standards Enforcement authorizing employment at a wage less than the legal minimum wage. There may be a maximum number of employees that can be employed under these special licenses in any occupation, trade, industry, or establishment in which a minimum wage has been established.

Immigration Status

According to Cal. Labor Code § 1171.5 all protections, rights, and remedies available under state law, except any reinstatement remedy prohibited by federal law, are available to all individuals regardless of immigration status who have applied for employment, or who are or who have been employed, in California. Additionally, for purposes of enforcing state labor and employment laws, both of the following apply:

- A person’s immigration status is irrelevant to the issue of liability.
- In proceedings or discovery for the enforcement of these state laws, inquiries about a person’s immigration status are not permitted except where the person making the inquiry has shown by clear and convincing evidence that it is necessary in order to comply with federal immigration law.

Exemptions
Exempt status deprives an employee of certain protections of the Industrial Welfare Commission Orders. Exempt status eliminates an employee’s right to overtime compensation and all of the following:

- Overtime premium.
- Minimum wage.
- Reporting time pay.
- Requirement of records under the Industrial Welfare Commission (IWC) Orders (but not records required by the Labor Code).
- Requirement that employer furnish uniforms and equipment (however, any expenditure by an employee is recoverable under Cal. Labor Code § 2802).
- Requirement that meals and lodging amounts be limited.
- Meal period requirement.
- Rest period requirement.

The following employees are exempt from California’s minimum wage law and applicable IWC orders:

- Outside salespersons who are age 18 years of age or older, who customarily and regularly work 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.
- Any individual participating in a national service program, such as AmeriCorps.
- Any individual who is the spouse, domestic partner, parent, child, or legally adopted child of the employer.
- Administrative, executive, and professional employees.

Administrative, Executive, and Professional Exemptions

According to Cal. Labor Code § 515, individuals employed in an administrative, executive, or professional capacity are not required to be compensated for overtime work. For exemption purposes, full-time employment is employment in which an employee is employed for 40 hours a week.

Administrative Exemption

A person employed in an administrative capacity means any employee:

- Whose duties and responsibilities involve either of the following:
  - The performance of office or non-manual work directly related to management policies or general business operations of an employer or an employer’s customers.
  - The performance of functions in the administration of a school system, educational establishment, institution, or of a department or subdivision, in work directly related to the academic instruction or training.
- Who customarily and regularly exercises discretion and independent judgment.
- Who either:
  - 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.
- Who is primarily (more than one-half of the employee’s work time) engaged in duties that meet the test of the exemption.
- Who earns a monthly salary equivalent to no less than two times the state minimum wage for full-time employment (40 hours per week).

The following are some examples of employees who might qualify for the administrative exemption so long as they meet the aforementioned criteria:

- Employees who regularly and directly assist a proprietor or exempt executive or administrator. Included in this category are those executive assistants and administrative assistants to whom executives or high-level administrators have delegated part of their discretionary powers. Generally, such assistants are found in large establishments where the official assisted has duties of such scope and which require so much attention that the work of personal scrutiny, correspondence, and interviews must be delegated.

- Employees who perform, only under general supervision, work along specialized or technical lines requiring special training, experience, or knowledge. Such employees are often described as “staff employees” or functional, rather than department heads. They include employees who act as advisory specialists to management, or to the employer’s customers. Typical examples are tax experts, insurance experts, sales research experts, wage rate analysts, foreign exchange consultants, and statisticians. Such experts may or may not be exempt, depending on the extent to which they exercise discretionary powers. Also included in this category would be persons in charge of a functional department, which may even be a one-person department, such as credit managers, purchasing agents, buyers, personnel directors, safety directors, and labor relations directors.

- Employees who perform special assignments under only general supervision. Often, such employees perform their work away from the employer’s place of business. Typical titles of such persons are buyers, field representatives, and location managers for motion picture companies. This category also includes employees whose special assignments are performed entirely or mostly on the employer’s premises, such as customers’ brokers in stock exchange firms and so-called “account executives” in advertising firms.

**Executive Exemption**

A person employed in an **executive** capacity means any employee:

- Whose duties and responsibilities involve the management of the enterprise in which he or she is employed or of a customarily recognized department or subdivision of the enterprise;
- Who customarily and regularly directs the work of two or more other employees;
- Who 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;
- Who customarily and regularly exercises discretion and independent judgment;
- Who is primarily (more than one-half of the employee’s work time) engaged in duties that meet the test of the exemption; and
- Who earns a monthly salary equivalent to no less than two times the state minimum wage for full-time employment (40 hours per week).

**Professional Exemption**

A person employed in a **professional** capacity means any employee who:

- Is either of the following:
  - Licensed or certified by the state of California and is primarily engaged in the practice of any of the following recognized professions:
- Law.
- Medicine.
- Dentistry.
- Optometry.
- Architecture.
- Engineering.
- Teaching.
- Accounting.

Primarily engaged in an occupation commonly recognized as a learned or artistic profession, meaning the employee is primarily engaged in the performance of:

- Work requiring knowledge of an advanced type in a field of 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 work that is an essential part of or necessarily incident to any of the above work; or
- Work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work that can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee or work that is an essential part of or necessarily incident to any of the above work; and
- Whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time.

- Customarily and regularly exercises discretion and independent judgment in the performance of the aforementioned duties.
- Earns a monthly salary equivalent to no less than two times the state minimum wage for full-time employment.

For the learned professions, an advanced academic degree (above the bachelor level) is a standard prerequisite and for the artistic professions, work in a “recognized field of artistic endeavor” includes such fields as music, writing, the theater, and the plastic and graphic arts.

Required Rate of Pay

An employee must earn a monthly salary equivalent to no less than two times the state minimum wage for full-time employment to be exempt.

2019 Exemption Rate

For employees of employers with 25 or fewer employees, the 2019 rates for exemption were as follows:

- Weekly: $880
- Biweekly: $1,760
- Semimonthly: $1,906.67
- Monthly: $3,813.34
- Annually: $45,760

For employees of employers with 26 or more employees, the 2019 rates for exemption were as follows:
2020 Exemption Rate
For employees of employers with 25 or fewer employees, the 2020 rates for exemption are as follows:

- Weekly: $960
- Biweekly: $1,920
- Semimonthly: $2,080
- Monthly: $4,160
- Annually: $49,920

For employees of employers with 26 or more employees, the 2020 rates for exemption are as follows:

- Weekly: $1,040
- Biweekly: $2,080
- Semimonthly: $2,253.34
- Monthly: $4,506.67
- Annually: $54,080

Additional Information Regarding Exemptions

Pharmacists
Pharmacists employed to engage in the practice of pharmacy, and registered nurses employed to engage in the practice of nursing are not considered exempt professional employees, nor are they considered exempt from overtime, alternative workweek, makeup time, or meal period coverage unless they individually meet the criteria established for exemption as executive or administrative employees. However, certain advance practice nurses may qualify for the professional exemption if the individual satisfies the other requirements (for example, a salary test).

Physicians and Surgeons
According to Cal. Labor Code § 515.6, physicians and surgeons whose primary duties require licensure and hourly rate of pay is equal to or greater than $82.72 ($84.79 effective January 1, 2020) are considered exempt employees. However, this exemption does not apply to an employee in a medical internship, resident program, or to a physician employee covered by a valid collective-bargaining agreement.

Computer Professionals
According to Cal. Labor Code § 515.5, an employee in the computer software field who is paid on an hourly basis is exempt if all of the following apply:

- The employee is primarily engaged in work that is intellectual or creative and requires the exercise of discretion and independent judgment.
- The employee is primarily engaged in duties that consist of one or more of the following:
The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications.

The design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications.

The documentation, testing, creation, or modification of computer programs related to the design of software or hardware for computer operating systems.

- The employee is highly skilled and is proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming, and software engineering. A job title is not determinative of the applicability of this exemption.

- The employee’s hourly rate of pay is no less than $45.41, or if the employee is paid on a salaried basis, the employee earns an annual salary of no less than $94,603.25, which is paid at least once a month and in a monthly amount of no less than $7,883.62. Effective January 1, 2020, these rates increase to an hourly rate of pay that is no less than $46.55, or if the employee is paid on a salaried basis, the employee earns an annual salary of no less than $96,968.33, which is paid at least once a month and in a monthly amount of no less than $8,080.71. The California Division of Labor Statistics and Research adjusts the pay rate on October 1 of each year to be effective January 1 of the following year by an amount equal to the percentage increase in the California Consumer Price Index for Urban Wage Earners and Clerical Workers.

The computer professional exemption is not applicable to an employee if any of the following apply:

- The 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.

- The employee is in a computer-related occupation, but has not attained the level of skill and expertise necessary to work independently and without close supervision.

- The employee is engaged in the operation of computers or in the manufacture, repair, or maintenance of computer hardware and related equipment.

- The 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 engaged in computer systems analysis, programming, or any other similarly skilled computer-related occupation.

- The 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 on screen 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.

- The employee is engaged in any applicable activities for the purpose of creating imagery for effects used in the motion picture, television, or theatrical industry.

Commissioned Employees and Employment Contracts

According to Cal. Labor Code § 2751, whenever an employer enters into an employment contract with an employee for services to be rendered within California and the method of payment involves commissions, the contract must be in writing and set forth the method the commission is computed and paid.

Per Cal. Labor Code § 204.1, commission wages are compensation paid to any person for services rendered in the sale of the employer’s property or services and based proportionately upon the amount or value of the property or services. Commissions are not:
• Short-term productivity bonuses such as are paid to retail clerks.
• Temporary, variable incentive payments that increase, but do not decrease, payment under the written contract.
• Bonus and profit-sharing plans, unless there has been an offer by the employer to pay a fixed percentage of sales or profits as compensation for work to be performed.

Employers must give a signed copy of the employment contract to every employee who is a party to the contract and obtain a signed receipt for the contract from each employee. If an employment contract expires but the parties continue to work under the terms of the expired contract, the contract terms are presumed to remain in full force and effect until the contract is superseded or employment is terminated by either party.

Wage Orders

In addition to California’s general minimum wage and overtime law, California has wage orders governing minimum wage and overtime rules for the following industries:

• Manufacturing (No. 1-2001).
• Personal service (No. 2-2001).
• Canning, freezing, and preserving (No. 3-2001).
• Professional, technical, clerical, mechanical, and similar occupations (No. 4-2001).
• Public housekeeping (No. 5-2001).
• Laundry, linen supply, dry cleaning, and dyeing (No. 6-2001).
• Mercantile (No. 7-2001).
• Industries handling products after harvest (No. 8-2001).
• Transportation (No. 9-2001).
• Amusement and recreation (No. 10-2001).
• Broadcasting (No. 11-2001).
• Motion picture (No. 12-2001).
• Industries preparing agricultural products for market, on the farm (No. 13-2001).
• Agricultural occupations (No. 14-2001).
• Household occupations (No. 15-2001).
• Certain on-site occupations in the construction, drilling, logging, and mining industries (No. 16-2001).
• Miscellaneous employees (No. 17-2001).

Each wage order includes regulations on terms and conditions of employment, including the following:

• Alternative workweeks.
• Applicability of order and definitions.
• Cash shortage and breakage.
• Changing rooms and resting facilities.
• Elevators.
• Exemptions.
• Hours and days of work.
• Inspection.
• Licenses for disabled workers.
• Meals and lodging.
• Minimum wages.
• Overtime.
• Penalties.
• Posting and recordkeeping.
• Reporting time pay.
• Rest and meal periods.
• Seats.
• Special licenses for disabled workers.
• Temperature.
• Uniforms and equipment.

Additional Wage Regulations

Gratuities
According to Cal. Labor Code §§ 350 – 356, employers may not:

• Take or receive any gratuity or a part thereof that is paid, given to, or left for an employee by a patron.
• Deduct any amount from wages due to an employee on account of a gratuity.
• Require an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due to the employee from the employer.

Gratuities include any tip, gratuity, money, or part thereof that has been paid or given to or left for an employee by a patron of a business over and above the actual amount due the business for services rendered or for goods, food, drink, or articles sold or served to the patron. Tips and gratuities (gratuities) are the sole property of the employee or employees for whom they are paid, given, or left, and may not be credited toward the minimum wage. An employer that allows patrons to pay gratuities by credit card must pay the employees the full amount of the gratuity that the patron indicated on the credit card slip, without any deductions for any credit card payment processing fees or costs that may be charged to the employer by the credit card company. Payment of gratuities made by patrons using credit cards must be paid to the employees no later than the next regular payday after the date the credit card payment was authorized.

Recordkeeping and Penalties
Employers must keep accurate records of all gratuities received, whether received directly from the employee or indirectly by means of deductions from the wages of the employee or otherwise. The records must be open to inspection at all reasonable hours by the Department of Industrial Relations.

Any employer who violates any of the gratuity provisions may be charged with a misdemeanor, punishable by a fine of up to $1,000, imprisonment for up to 60 days, or both.

Public Works
According to Cal. Labor Code §§ 1720 et. seq. and 1770 – 1781, California has specific wage and hour requirements for labor performed on public works projects. Among these requirements is the obligation to pay no less than the prevailing rate of per diem wages to all employees and apprentices on the public works job. Employers subject to state contracts as a result of a business relationship with the state government should carefully review the obligations engendered by such a relationship.

Public works includes any construction, alteration, demolition, or repair work performed under contract and paid for — in whole or in part — out of public funds, except for certain work done directly by a public entity. Among these requirements is the obligation to pay no less than the prevailing rate of per diem wages to all employees and apprentices on the public works job.
However, this obligation does not apply to public works projects of $1,000 or less. In addition, an awarding body may not require the payment of the general prevailing rate of per diem wages or the general prevailing rate of per diem wages for holiday and overtime work for any public works project of $25,000 or less when the project is for construction work, or for any public works project of $15,000 or less when the project is for alteration, demolition, repair, or maintenance work, if the awarding body elects to either:

- Initiate and enforce a labor compliance program for every public works project under the authority of the awarding body.
- Undertake all of the following for every public works project:
  - Ensure that all bid invitations and public works contracts contain appropriate legally required language.
  - Conduct a pre-job conference with the contractor and subcontractor to discuss federal and state labor law requirements applicable to contract.
  - Pay a fee to the California Department of Industrial Relations for the enforcement of prevailing wage obligations in an amount that the department will establish, and may amend, not to exceed ¼ of 1 percent of the total public works project costs, sufficient to support the department’s costs in ensuring compliance with and enforcing prevailing wage requirements on the project.

Note: Cal. Labor Code § 1720.4 excludes from the application of the law governing public works, any work performed by a volunteer, a volunteer coordinator, or by members of the California Conservation Corps or of certified Community Conservation Corps.

Apprentices and Payment for Time Spent on Pre-Employment Activity

Unless otherwise provided by a collective-bargaining agreement, when a contractor requests the dispatch of an apprentice to perform work on a public works project and requires the apprentice to fill out an application or undergo testing, training, an examination, or other pre-employment process as a condition of employment, the apprentice must be paid for the time spent on the required pre-employment activity, including travel time to and from the required activity, if any, at the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered. Unless otherwise provided by a collective-bargaining agreement, a contractor is not required to compensate an apprentice for the time spent on pre-employment activities if the apprentice is required to take a pre-employment drug or alcohol test and he or she fails to pass that test.

Uniforms and Equipment

When employers require uniforms to be worn by employees as a condition of employment, that uniform must be provided and maintained by the employer. A uniform includes wearing apparel and accessories of distinctive design or color. Ordinary work clothes are not considered uniforms when the employees have free choice of what to wear. When the employer specifies the design or color or requires that an insignia be affixed, it is considered a uniform. Per Cal. Labor Code § 452, employers may prescribe the weight, color, quality, texture, style, form, and make of uniforms required to be worn by employees. Nurses’ white uniforms and black and white uniforms for service personnel need not be supplied to employees by the employer, as these uniforms are standard in their industries and can be used from one job to the next.

Employees may be asked to maintain employer-furnished uniforms when the uniforms require minimal time for care, for example, uniforms made of a material requiring only washing and tumble or drip drying. Employers must maintain or provide a maintenance allowance for uniforms requiring
ironing or dry cleaning, or uniforms requiring special laundering for heavy soil, or requiring patching and repairs due to the nature of the work. According to Cal. Labor Code § 2802, where an employer does not provide a uniform allowance, an employee may be entitled to reimbursement for costs incurred for maintenance.

An employer who is required to furnish personal protective clothing or equipment must also pay for that equipment.

If an employer requires an employee to have certain tools or equipment, or if such tools are required to perform the job, the employer must provide and maintain them. However, any employee who is paid at least twice the minimum wage may be required to provide and maintain hand tools and equipment customarily required by his or her trade. Exceptions may apply to apprentices (indentured through the Division of Apprenticeship Standards), beauty salons, and barbershops.

A reasonable deposit, for which a receipt is provided, may be required as security for the return of uniforms, tools, and equipment furnished by the employer. Upon job completion, employees must return all items furnished by the employer. An employer with the prior written authorization of the employee may deduct from the employee’s last check the cost of any items that are not returned. No deduction may be made at any time for normal wear and tear.

Meals and Lodging

Meals or lodging may not be credited against the minimum wage without a voluntary written agreement between the employer and the employee. The maximum amounts allowed to be credited against the minimum wage for meals and lodging are listed in the applicable Minimum Wage Order.

Meal and Rest Periods

See California Meal and Rest Periods.

Physical Examination

According to Cal. Labor Code § 222.5, employers are prohibited from withholding or deducting from an employee’s wages, or requiring any prospective employee or applicant to pay, any fee for, or cost of, either of the following:

- Any pre-employment medical or physical examination taken as a condition of employment.
- Medical or physical examinations required by any law or regulation of federal, state, or local governments or agencies.

Compensable Hours

An employer is obligated to pay the wages of an hourly employee for all time that the employee is under the employer’s control and includes all the time the employee is suffered or permitted to work, whether or not required to do so. According to Cal. Labor Code § 510, eight hours of labor constitutes a day’s work. Both a workday and a day are any consecutive 24-hour period commencing at the same time each calendar day.

Travel Time

Travel time is considered compensable work hours where the employer requires its employees to meet at a designated place, use the employer’s transportation to and from the work site, and
prohibits employees from using their own transportation (*Morillion v. Royal Packing Co.*, 22 Cal.4th 575 (Cal. 2000)).

Compulsory travel time longer than the employee’s normal commute is considered compensable time. Travel time to a job site within reasonable proximity of the employee’s regular work site is not compensable. If an employee has no regular job site, travel time to the new job site each day is not compensable. If an employee has a temporary work location change, the employee must be compensated for any additional time required to travel to the new job site in excess of the employee’s normal commute time.

The definition of hours worked is found in the Industrial Welfare Commission Orders and means the time during which the employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so. State law does not distinguish between hours worked during the “normal” working hours or hours worked outside “normal” working hours, nor does it distinguish between hours worked in connection with an overnight out-of-town assignment.

Under state law, if an employer requires an employee to attend an out-of-town business meeting, training session, or any other event, the employer cannot disclaim an obligation to pay for the employee’s time in getting to and from the location of that event. Time spent driving, or as a passenger on an airplane, train, bus, taxi cab, car, or other mode of transportation, in traveling to and from the out-of-town event, and time spent waiting to purchase a ticket, check baggage, or get on board is, under such circumstances, time spent carrying out the employer’s directives, and thus, can only be characterized as time in which the employee is subject to the employer’s control. Conversely, time spent taking a break from travel in order to eat a meal, sleep, or engage in purely personal pursuits not connected with traveling or making necessary travel connections (such as, for example, spending an extra day in a city before the start or following the conclusion of a conference to sightsee), is not compensable.

The rate at which the travel must be paid depends upon the nature of the compensation agreement. If the employer has agreed to pay a fixed hourly rate of pay for any work performed, then travel time must be paid at that regular hourly rate, or if applicable, the required overtime rate. An employer may establish a separate rate of pay for travel before the work is performed for hourly employees, provided the rate does not fall below the statutory minimum wage. Salary nonexempt employees must be paid at the appropriate overtime rate for any hours worked in excess of eight in a day or 40 in a week, computed by converting the weekly salary to an hourly rate.

All necessary expenses incurred in connection with employer-required travel must be reimbursed to the employee.

**Piece-Rate**

*Piece-rate* or *piecework* is defined as work paid for according to a set rate per unit. A piece-rate must be based upon an ascertainable figure paid for completing a particular task or making a particular piece of goods. The piece rate earned must equal or exceed California’s minimum wage rate for all hours worked.

**On-Call or Standby Time**

According to the Department of Labor Standards Enforcement (DLSE), on-call or standby time at the worksite is considered hours worked for which the employee must be compensated even if the employee does nothing but wait for something to happen. An employer may elect to hire a worker to do nothing or to do nothing but wait for something to happen. Refraining from other activities often is a factor of instant readiness to serve, and idleness plays a part in all employment in a stand-by
capacity. See Armour & Co. v. Wantock (1944) 323 U.S. 126. Examples of compensable work time include, but are not limited to, meal periods and sleep periods during which times the employees are subject to the employer’s control.

Whether on-call or standby time off the worksite is considered compensable must be determined by examining the restrictions placed on the employee, for example:

- Whether there are excessive geographic restrictions on the employee’s movements.
- Whether the frequency of calls in unduly restrictive.
- Whether a fixed time limit for response is unduly restrictive.
- Whether the on-call employee can easily trade his or her on-call responsibilities with another employee.
- Whether and to what extent the employee engages in personal activities during on-call periods.

### Reporting Time Pay

**Reporting time pay** is partial compensation for employees who report to work expecting to work a specified number of hours and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer. To guarantee at least partial compensation for employees who report to their job expecting to work a specified number of hours but who are deprived of that amount of work because of inadequate scheduling or lack of proper notice by the employer, the Industrial Welfare Commission Orders (1 – 16, Section 5) require that employers pay nonexempt employees, in addition to the hours the employee actually works, for certain unworked but regularly scheduled time. Such payment is reporting time pay and reporting time pay for hours in excess of the actual hours worked is not counted as hours worked for purposes of determining overtime.

The specific requirements for reporting time pay are:

- Each workday an employee is required to report to work, but is not put to work or is furnished with less than half of his or her usual or scheduled day’s work, the employee must be paid for half the usual or scheduled day’s work, but in no event for less than two hours nor more than four hours, at his or her regular rate of pay. For example, if an employee is scheduled to report to work for an eight-hour shift and only works for one hour, the employer is nonetheless obligated to pay the employee four hours of pay at his or her regular rate of pay (one for the hour worked, and three as reporting time pay). Only the one-hour actually worked, however, counts as actual hours worked.
- If an employee is required to report to work a second time in any one workday and is furnished less than two hours of work on the second reporting, he or she must be paid for two hours at his or her regular rate of pay.

### Exceptions

According to the California Department of Industrial Relations, no reporting pay time is due under any of the following circumstances:

- When operations cannot begin or continue due to threats to employees or property, or when civil authorities recommend that work not begin or continue.
- When public utilities fail to supply electricity, water, or gas, or there is a failure in the public utilities, or sewer system.
- When the interruption of work is caused by an Act of God or other cause not within the employer’s control, for example, an earthquake.
The reporting time pay provisions do not apply to employees on paid standby status or when an employee has a regularly scheduled shift of less than two hours, such as a relief cashier who works only during a one-hour period in the middle of the day.

Overtime

According to Cal. Labor Code § 510, and with exceptions, a nonexempt employee may not be employed more than eight hours in any workday nor more than 40 hours in any workweek unless he or she is compensated at a rate of one and one-half times his or her regular rate of pay for all hours worked over eight hours in any workday and over 40 hours in the workweek. Eight hours of labor constitutes a day’s work, and employment beyond eight hours in any workday or more than six days in any workweek is permissible provided the employee is compensated for the overtime at no less than:

- One and one-half times the employee’s regular rate of pay for all hours worked in excess of eight hours up to and including 12 hours in any workday, and for the first eight hours worked on the seventh consecutive day of work in a workweek; and
- Double the employee’s regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight on the seventh consecutive day of work in a workweek.

These overtime provisions apply to the following employees:

- Nonexempt employees age 18 or older.
- Any minor employee age 16 or 17 not required by law to attend school and not otherwise prohibited by law from engaging in the particular work.

A workday is any consecutive 24-hour period beginning at the same time each calendar day. A workweek is any seven consecutive days, starting with the same calendar day each week, and is a fixed and regularly recurring period of 168 hours (seven consecutive 24-hour periods).

Employers are not required to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work. However, at no time may the regular rate of pay be less than the applicable minimum wage. These requirements do not apply to the payment of overtime compensation to an employee working pursuant to any of the following:

- An alternative workweek schedule.
- An alternative workweek schedule adopted pursuant to a collective-bargaining agreement.
- An alternative workweek schedule to which the law is inapplicable per Cal. Labor Code § 554.

Bonuses

Nondiscretionary bonuses are included in the regular rate of pay for purposes of calculating overtime when the bonus is based on hours worked, production, or proficiency. However, discretionary bonuses or sums paid as gifts at a holiday or other special occasions (such as a reward for good service) that are not measured by or dependent upon hours worked, production, or efficiency, are not included for purposes of determining the regular rate of pay.

Alvarado and Flat Rate Bonuses
According to the California Supreme Court in *Alvarado vs. Dart Container Corporation of California*, when calculating overtime in pay periods during which an employee earns a flat rate bonus, employers must divide the total compensation earned in a pay period by only the non-overtime hours worked. Specifically, the correct calculation of overtime associated with a flat sum bonus is the amount of the bonus divided by the regular hours worked by the employee, multiplied by 1.5:

\[
(Overtime \text{ Hours} \times \text{Regular Rate} \times 1.5) + \frac{(\text{Bonus/Regular Hours Worked} \times \text{Overtime Hours Worked}) \times 1.5}{\text{Overtime Hours Worked}} = \text{Total Overtime Compensation}
\]

Unauthorized Overtime

California law requires that employers pay overtime, whether authorized or not. An employer may discipline an employee upon violation of the employer's policy of working overtime without the required authorization. California's wage and hour laws require that the employee be compensated for any hours suffered or permitted to work, whether or not required to do so.

California case law holds that *suffer or permit* means work the employer knew or should have known about. Thus, an employee cannot deliberately prevent the employer from obtaining knowledge of the unauthorized overtime worked, and later claim recovery. The employer must have the opportunity to obey the law.

Calculating Regular Rate of Pay

Overtime is based on the regular rate of pay, which is the compensation normally earned for the work performed. The regular rate of pay includes a number of different kinds of remuneration, such as hourly earnings, salary, piecework earnings, and commissions. In no case may the regular rate of pay be less than the applicable minimum wage. Generally, the hours to be used in computing the regular rate of pay may not exceed the legal maximum regular hours which, in most cases, is eight hours per workday, 40 hours per workweek. This maximum may also be affected by the number of days an employee works in a workweek and is important to determine in each case. The alternate method of scheduling and computing overtime under most Industrial Welfare Commission Wage Orders, based on an alternative workweek schedule of four 10-hour days or three 12-hour days does not affect the regular rate of pay, which in this case also would be computed on the basis of 40 hours per workweek.

The agreed upon regular hours must be used if they are less than the legal maximum regular hours. For example, if an employee works 32 to 38 hours each week, there is an agreed workweek of 35 hours, and 35 hours is the figure used to determine the regular rate of pay. However, in circumstances where the workweek is less than 40 hours, the law does not require payment of the overtime premium unless the employee works more than eight hours in a workday or more than 40 hours in a workweek. For instance, if an employee is working under a policy that provides for a 35-hour workweek, the law does not require the employer to pay the overtime premium until after 40 hours in a workweek. If the employee works more than 35 but fewer than 40 hours in a workweek, he or she will be entitled to be paid for the extra hours at his or her regular rate of pay, as overtime premium pay is only required after 40 hours in a workweek.

The following are examples of how to calculate the regular rate of pay:

- If an employee is paid on an hourly basis, then that hourly rate is the regular rate of pay.
- Salaried employees' regular rate may be determined as follows:
  - Annual salary equals monthly remuneration multiplied by 12 (months).
  - Weekly salary equals the annual salary divided by 52 (weeks).
  - Regular hourly rate equals the weekly salary divided by the number of legal maximum regular hours (40).
• For employees paid by piece or commission rate, either of the following methods may be used to determine the regular rate of pay for purposes of computing overtime (see note, below):
  o The piece or commission rate is the regular rate. Employees are paid one and one-half the regular rate for production during the first four overtime hours in a workday, and double time for all hours worked beyond 12 in a workday.
  o Divide total earnings for the workweek, including earnings during overtime hours, by the total hours worked during the workweek, including the overtime hours. For each overtime hour worked employees are entitled to an additional one-half the regular rate for hours requiring time and one-half, and to the full rate for hours requiring double time.
• If employees are paid two or more rates by the same employer during the workweek, then the regular rate is the weighted average. The weighted average is determined by dividing total earnings for the workweek, including earnings during overtime hours, by the total hours worked during the workweek, including the overtime hours.

Note: A group rate for piece workers is an acceptable method for computing the regular rate of pay. In using this method, the total number of pieces produced by the group is divided by the number of people in the group, with each person being paid accordingly. The regular rate for each worker is determined by dividing the pay received by the number of hours worked. The regular rate cannot be less than the minimum wage.

Exclusions from Regular Rate

Examples of some of the more common exclusions are:

• Discretionary bonuses.
• Expense reimbursements.
• Failure of the employer to provide sufficient work.
• Holiday.
• Illness.
• Payments made for occasional periods when no work is performed due to vacation.
• Premium pay for Saturday, Sunday, or holiday work.
• Sums paid as gifts for special occasions.

Teacher Exemption

According to Cal. Labor Code § 515.8, the provisions of Cal. Labor Code § 510 (working hours and overtime) do not apply to teachers at a private elementary or secondary academic institution where students are enrolled in kindergarten or any of grades 1 to 12, inclusive. Teachers covered by this exemption must meet all of the following requirements:

• Be primarily engaged in the duty of imparting knowledge to students by teaching, instructing, or lecturing.
• Customarily and regularly exercise discretion and independent judgment in performing the duties of a teacher.
• Earn the greater of the following as of July 1, 2017:
  o No less than 100 percent of the lowest salary offered by any school district to a person who is in a position that requires him or her to have a valid California teaching credential and who is not employed in that position pursuant to an emergency permit, intern permit, or waiver.
  o The equivalent of no less than 70 percent of the lowest schedule salary offered by the school district or county in which the private elementary or secondary academic
institution is located to a person who is in a position that requires him or her to have a valid California teaching credential and is not employed in that position pursuant to an emergency permit, intern permit, or waiver.

- Have at least one of the following levels of professional advancement:
  - A baccalaureate or higher degree from an accredited institution of higher education.
  - Current compliance with the requirements established by the California Commission on Teacher Credentialing, or the equivalent certification authority in another state, for obtaining a preliminary or alternative teaching credential.

These provisions do not apply to any tutor, teaching assistant, instructional aide, student teacher, day care provider, vocational instructor, or other similar employee. This exemption is in addition to, and does not limit or supersede, any exemption from overtime established by a Wage Order of the Industrial Welfare Commission (IWC) for persons employed in a professional capacity, and does not affect any exemption from overtime established by the IWC pursuant to Cal. Labor Code § 515(a) for persons employed in an executive or administrative capacity.

**Sullivan v. Oracle: Work Performed in California by Nonresident Employees**

Per the California Supreme Court opinion in *Sullivan v. Oracle Corporation*, 254 P.3d 237, 51 Cal. 4th 1191, 127 Cal. Rptr. 3d 185 (2011), if a nonresident employee performs work in California for a complete day or more, the daily California overtime protections will apply and the employer's failure to compensate accordingly will create a claim for up to four years. The court further stated that California's overtime laws apply by their terms to all employment in the state, without reference to the employee’s place of residence.

Based upon the *Sullivan* ruling, California-based employers that employ nonresidents who perform work in California must ensure their time-recording and overtime practices and policies allow for nonresident employees to receive daily overtime pay under California law for the hours worked in California. California-based employers must also record the daily hours that nonexempt, nonresident employees work in California and pay overtime at the applicable rate for any hours worked in excess of eight hours per day in California.

**Alternative Workweek Schedules**

According to Cal. Labor Code § 511 and upon the employer’s proposal, employees may adopt a regularly scheduled alternative workweek that authorizes work by the affected employees for no longer than 10 hours per day within a 40-hour workweek without the payment to the affected employees of overtime compensation.

A proposal to adopt an alternative workweek schedule may only be adopted if the proposal receives approval in a secret ballot election by at least two-thirds of affected employees in a work unit. Employers must report the results of any secret ballot election to the California Division of Labor Statistics and Research within 30 days after the results are final.

The regularly scheduled alternative workweek proposed by an employer may be either of the following:

- A single work schedule that would become the standard schedule for workers in the work unit. A work unit includes a division, department, job classification, shift, separate physical location, or a recognized subdivision. A work unit may consist of an individual employee as long as the criteria for an identifiable work unit are met.
• A menu of work schedule options, from which each employee in the unit would be entitled to choose. The menu of work schedule options may include a regular schedule of eight-hour days that are compensated according to the general working hours provisions located at Cal. Labor Code § 510. Employees who adopt a menu of work schedule options may, with employer consent, move from one schedule option to another on a weekly basis.

An employer may not reduce an employee’s regular rate of hourly pay as a result of the adoption, repeal, or nullification of an alternative workweek schedule.

Employers are bound by the following in regard to both the adopted alternative workweek and the secret ballot election:

• An employer must make a reasonable effort to find a work schedule not to exceed eight hours in a workday, in order to accommodate any affected employee who was eligible to vote in an election and who is unable to work the alternative schedule hours established as the result of the election.
• Employers are permitted to provide a work schedule not to exceed eight hours in a workday to accommodate any employee who was hired after the date of the election and who is unable to work the alternative schedule established as the result of the election.
• An employer must explore any available reasonable alternative means of accommodating the religious belief or observance of an affected employee that conflicts with an adopted, via election, alternative workweek schedule.

Alternative Workweek Overtime
An affected employee working longer than eight hours, but not more than 12 hours in a day pursuant to an alternative workweek schedule, must be paid as follows:

• An overtime rate at least one and one-half times the regular rate of pay for any work in excess of the regularly scheduled hours established by the alternative workweek agreement for any work in excess of 40 hours per week.
• An overtime rate of compensation of at least double the regular rate of pay must be paid for any work in excess of 12 hours per day and for any work in excess of eight hours on those days worked beyond the regularly scheduled workdays established by the alternative workweek agreement.

Employers are not required to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

Make Up Work Time
Make up work time occurs when an employee leaves or misses work one day and then makes up the time by working a longer shift later. According to Cal. Labor Code § 513 and the wage orders, employers may use make-up time as requested by the employee because of personal obligations as a narrow exception to the daily overtime rules, but only if certain statutorily enumerated requirements are met. Generally, the employer may pay the make-up time at the straight time rate, rather than at the overtime rate only if:

• The initial missed work time was due to the employee’s personal obligation (rather than to the employer’s business needs).
• The employee requests to use make-up time in writing before taking the time off or working the make-up hours (up to four weeks in advance).
The time is made up in the same workweek that the time was taken off. The made up time does not cause the employee to work more than 11 hours in a day or 40 hours in a week (at which point overtime must be paid).

Employers are strictly prohibited from encouraging or otherwise soliciting an employee to request make-up time.

Compensatory Time Off

Compensatory time off means the hours when an employee is not working, which are not counted as hours worked during the applicable workweek or other work period for purposes of overtime compensation, and for which the employee is compensated at the employee’s regular rate.

The combination of California and federal law makes it difficult to grant nonexempt employees compensatory time off without precise application of the legal rules. Private employers in California may provide compensatory time off to nonexempt employees in lieu of overtime compensation only if all of the following occur:

- The employee is subject to Wage Order 2, 4, 6, 7, 9, 11, 12, or 15.
- The employee voluntarily requests compensatory time off in writing in lieu of overtime compensation.
- An employee must be granted an hour and a half of compensatory time for an hour of overtime worked.
- Compensatory time off is provided pursuant to a written agreement reached before the work in question is performed.
- The employee must not accrue more than 240 hours of compensatory time off.
- Upon the employee’s request, the employer must pay overtime compensation in cash in lieu of compensatory time for any such time accrued for at least two pay periods.

Unused compensatory time off, like vacation, is payable at termination of employment.

Federal law prohibits private employers from providing compensatory time off to nonexempt employees in lieu of overtime compensation. Thus, any California private employer that allows its nonexempt employees to use compensatory time off in lieu of paying overtime runs the risk of being sued under federal law for the value of the unpaid overtime wages. However, federal enforcement policy allows an employer to give an employee time off in lieu of overtime compensation if the time off is taken in the same week and the employee does not work more than 40 hours during that workweek. To be in compliance with federal and California law, the employer must provide an hour and a half of time off in that workweek for every hour of overtime worked in that workweek (in addition to meeting the other aforementioned requirements).

Collective-Bargaining Agreements

According to Cal. Labor Code § 514, the day’s work, overtime, commuting time, and alternative workweek schedule regulations do not apply to an employee covered by a valid collective-bargaining agreement if the agreement expressly provides for both of the following:

- The wages, hours of work, and working conditions of the employees.
- Premium wage rates for all overtime hours worked and a regular hourly rate of pay for those employees of no less than 30 percent more than the state minimum wage.

Agricultural Workers and Overtime
Effective January 1, 2019, **IWC No. 14-2001**, regulating the wages, hours, and working conditions of employees in agricultural occupations, employers of more than 25 employees in agricultural occupations must comply with the following overtime compensation requirements:

1. As of January 1, 2019, an employee may not work more than nine and one-half hours per workday or 55 hours per workweek unless the employee receives one and one-half times his or her regular rate of pay for all hours worked over nine and one-half hours in any one workday or more than 55 hours in any one workweek.

2. Starting January 1, 2020, an employee may not work more than nine hours per workday or 50 hours per workweek unless the employee receives one and one-half times his or her regular rate of pay for all overtime hours worked over nine hours in any one workday or more than 50 hours in any one workweek.

3. Starting January 1, 2021, an employee may not work more than eight and one-half hours per workday or 45 hours per workweek unless the employee receives one and one-half times his or her regular rate of pay for all hours worked over eight and one-half hours in any one workday or more than 45 hours in any one workweek.

4. Starting January 1, 2022, an employee may not work more than eight hours per workday or work in excess of 40 hours per workweek unless the employee receives one and one-half times his or her regular rate of pay for all hours worked over eight hours in any workday or more than 40 hours in any workweek and double the employee’s regular rate of pay for all hours worked over 12 hours in any one workday.

The wage order also requires the following for employers with 25 or fewer employees in agricultural occupations to comply with the following overtime compensation requirements (in direct correlation to the above bulleted list):

- Starting January 1, 2022, the overtime standards and compensation in bullet #1 applies to any employee who works over the specified threshold hours in any one workday or workweek.
- Starting January 1, 2023, the overtime standards and compensation in bullet #2 applies to any employee who works over the specified threshold hours in any one workday or workweek.
- Starting January 1, 2024, the overtime standards and compensation in bullet #3 applies to any employee who works over the specified threshold hours in any one workday or workweek.
- Starting January 1, 2025, the overtime standards and compensation in bullet #4 applies to any employee who works over the specified numbers of hours in any one workday or workweek.

**Recordkeeping**

Every employer must:

- Furnish to the IWC, upon request, reports or information that the commission requires to administer the law. According to **Cal. Labor Code § 1174**, the reports and information must be verified when required.
- Provide free access to the workplace to allow any member of the commission or the employees of the DLSE to secure authorized information or make lawful investigations. The commission may inspect or make excerpts, relating to the employment of employees, from the books, reports, contracts, payrolls, documents, or papers of the person.
- Keep accurate information for each employee, including the following:
  - Full name, home address, occupation, and Social Security number.
Birth date and, if under 18, designation as a minor.
- Time records showing when the employee begins and ends each work period, meal periods, split shift intervals, and total daily hours worked (meal periods during which operations cease and authorized rest periods need not be recorded).
- Total wages paid each payroll period, including the value of board, lodging, or other compensation actually furnished to the employee.
- Total hours worked in the payroll period and applicable rates of pay.
- When a piece-rate or incentive plan is in operation, piece-rates or an explanation of the incentive plan formula must be provided to employees, and an accurate production record must be maintained by the employer.

Note: Records must be kept for at least three years and must be made available for inspection by the employee after a reasonable request is made.

Posting

In relation to minimum wage and overtime, California employers are required to post the following:

- A copy of any applicable wage order posted in an area frequented by employees where it may be easily read during the workday.
- The Minimum Wage Order.
- The federal FLSA minimum wage poster.
- The Pay Day Notice.

Establishments Licensed by the State Board of Barbering and Cosmetology

Establishments licensed by the State Board of Barbering and Cosmetology are required to post a notice of wages and hours in English, Spanish, Vietnamese, and Korean. The Labor Commissioner provides a model posting notice in each of the listed languages.

Enforcement

Effective July 1, 2004, the California Legislature defunded the Industrial Welfare Commission (IWC). However, the IWC wage orders, which govern wages, hours, and working conditions in California, are still in effect and must be posted by all employers in an area frequented by employees, where they may be easily read during the workday. Subsequently, the DLSE continues to enforce the provisions of the wage orders and is responsible for administering and enforcing the minimum wage law.

Violations and Penalties

Wage Violations

According to Cal. Labor Code § 1199, every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of no less than $100, by imprisonment for no less than 30 days, or by both, who does any of the following:
• Requires or causes any employee to work for longer hours than those fixed or under conditions of labor prohibited by a wage order.
• Pays or causes to be paid to any employee a wage less than the minimum fixed by a wage order.
• Violates, refuses, or neglects to comply with a provision of the California wage and hour provisions, any order, or ruling of the DLSE.

Hour Violations

Employers are liable for the following hour violations:

• According to Cal. Labor Code § 1198, the employment of any employee for hours longer than those fixed by a wage order or under conditions of labor prohibited by the wage order is unlawful.
• According to Cal. Labor Code § 553, any person in violation of the hour regulations is guilty of a misdemeanor.
• According to Cal. Labor Code § 226.7, employers are prohibited from requiring any employee to work during any meal or rest period mandated by an applicable wage order. Employers that fail to provide an employee with the applicable and required meal or rest period must pay the employee one additional hour of pay (a premium payment) at the employee’s regular rate for each workday that the meal or rest period was not provided. Importantly, according to United Parcel Service, Inc. v. Superior Court, Cal. Labor Code § 226.7 authorizes up to two premium payments (rather than one) per workday — one premium payment for an employer’s failure to provide a meal period and a second premium payment for the failure to provide a rest period.

Civil Penalties

According to Cal. Labor Code § 558, employers who violate any provision regulating hours and days of work in any wage order are subject to the following civil penalties:

• For any initial violation, $50 for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.
• For each subsequent violation, $100 for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.
• Wages recovered as a civil penalty are paid to the affected employee.
• Any other additional civil or criminal penalty provided by law.

If, upon inspection or investigation, the Labor Commissioner determines that a person paid or caused to be paid a wage for overtime work in violation of hourly laws or any provision regulating hours and days of work in any wage order, the commissioner may issue a citation to the person in violation.

The commissioner will take all appropriate action to enforce the citation and recover the civil penalty assessed in connection with the citation.

According to Cal. Labor Code § 1197.1, any employer who pays an employee a wage less than the minimum fixed by a wage order is subject to a civil penalty, restitution of wages, and liquidated damages, payable to the employee as follows:
• For any initial violation that is intentionally committed, $100 for each underpaid employee for each pay period for which the employee is underpaid.
• For each subsequent violation for the same specific offense, $250 for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed.
• Any other additional penalty provided by law.

If, upon inspection or investigation, the Labor Commissioner determines that a particular person paid or caused to be paid a wage less than the minimum, the commissioner may issue a citation to the person in violation. In addition, if, upon inspection or investigation, the commissioner determines that an employer has paid or caused to be paid a wage less than the wage set by contract in excess of the applicable minimum wage, the commissioner may issue a citation to the employer in violation to recover restitution of those amounts owed. **Contract wages** are wages based upon an agreement, in excess of the applicable minimum wage, for regular, nonovertime hours. The commissioner will take all appropriate action to enforce the citation and recover the civil penalty, assessed wages, and liquidated damages in connection with the citation.

According to **Cal. Labor Code § 1197.2** and in addition to any other penalty imposed by law, an employer who willfully fails to pay and has the ability to pay a final court judgment or final order issued by the Labor Commissioner for all wages due to an employee who has been discharged or who has quit within 90 days of the date that the judgment was entered or the order became final is guilty of a misdemeanor. If the total amount of wages due is less than $1,000, upon conviction, the employer will be fined between $1,000 and $10,000, or imprisoned in a county jail for up to six months, for each offense. If the total amount of wages due is more than $1,000, upon conviction, the employer will be fined between $10,000 and $20,000, or imprisoned in a county jail for between six months and one year, or both the fine and imprisonment, for each offense. If there are multiple failures to pay wages involving more than one employee, the total amount of wages due to all employees will be aggregated together for purposes of determining the level of fine and the term of imprisonment.

**Records Violations and Penalties**

According to **Cal. Labor Code § 1175**, the following employer violations are a misdemeanor:

• Any employer who neglects or refuses to furnish the information requested under the recordkeeping provisions of California’s minimum wage law.
• Any employer who refuses access to or hinders the work of any member of the commission, or employee of the DLSE, when administering or enforcing the minimum wage law.
• Any employer who fails to keep any required records.

According to **Cal. Labor Code § 1174.5**, any employer that willfully fails to maintain the records required by law or fails to allow the inspection of those records, is subject to a civil penalty of $500.

*This article is a general overview and should not be construed as legal advice. In no event will we be liable for any damages whatsoever resulting from use of this material. We recommend that you seek legal advice when applying these guidelines.*