

Employment Law Series: Session 1 - Wage and Hour

Collaborative. Accountable. Authentic.
Legal Solutions for Business Objectives.



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AGENDA

- Employee classification
- California minimum wage and overtime requirements
- Meal and rest period compliance
- Recordkeeping obligations
- Business expenses reimbursement issues
- Considerations for remote workers

Classification

Employee or Independent Contractor

- Why is the distinction important?
- Individual's desire to be classified as a contractor is not controlling.

What Factors Matter

- Control
- Economic Dependence
- Continuity of Relationship
- Business Expenses
- Work for Multiple Clients
- Operates as bona fide business

Red Flags a Contractor is Misclassified

- Contractor is performing the same work as individuals classified as employees.
- Former employee is now a contractor.

Classification of Employees: All Employees are Non-Exempt Hourly Employees ...

Unless the Employee Fits Into an Exemption

- Both state and federal law apply
- Employer bears the burden of proving an exemption exists
- Determination is based on applicable legal criteria
- Job Duties Test
- Salary Basis Test- minimum Salary level; \$70,304 annually; \$1,352 weekly

Three Main White Collar Exemptions

- Executive
- Professional
- Administrative

Other Exemptions

- Computer Professional
- Outside Sales
- Inside Sales

Factors that Do Not Establish Exempt Status

- Title
- Existence of subordinates
- Payment on a salary basis
- Education or experience level
- Industry custom

The Job Duties Test: Executive Exemption

1. Manage enterprise in which he/she is employed, or a customarily recognized subdivision thereof; and
2. Customarily and regularly direct work of two or more other employees; and
3. Authorized to hire or fire other employees, or whose opinions on hiring, firing, promotion or other change of status will be given particular weight; and
4. Customary and regular exercise of discretion and independent judgment; and
5. Primarily engaged in duties which meet the test of the exemption

The Job Duties Test: Administrative Exemption

1. Duties and responsibilities involve either:
 - a. Performance of office or non-manual work directly related to management policies or general business operations of the employer, or
 - b. Performance of functions in the administration of a school system, or educational establishment or institution, or of a department or subdivision thereof, in work directly related to the academic instruction or training carried on therein; and

The Job Duties Test: Administrative Exemption, Cont'd.

2. Customarily and regularly exercises discretion and independent judgment; and
 - a. Regularly and directly assists a proprietor, or an employee employed in a bona fide executive or administrative capacity, or
 - b. Performs, under only general supervision, work along specialized or technical lines requiring special training, experience, or knowledge, or
 - c. Executes, under only general supervision, special assignments and tasks, and
3. Primarily engaged in duties which meet the test for the exemption

The Job Duties Test: Professional Exemption

1. Licensed or certified by the State and primarily engaged in the practice of: law, medicine, dentistry, optometry, architecture, engineering, teaching or accounting, or
2. Primarily engaged in a learned or artistic profession
3. Customarily and regularly exercised discretion and independent judgment

Other Exemptions: Computer Professional

1. Primarily engaged in work that is intellectual or creative and requires discretion/independent judgment; and
2. Highly skilled and proficient in theoretical and practical application of highly specialized information to computer systems analysis, programming or software engineering; and
3. Primary duty is either
 - (a) the application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications;

Computer Professional Cont'd.

- (b) 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
- (c) the documentation, testing, creation, or modification of computer programs related to the design of software or hardware for computer operating systems.

Outside Sales Exemption

- Employee must regularly spend more than half his or her work time away from the employer's place of business selling items or obtaining orders or contracts for products, services or the use of facilities

Inside Sales Exemption

- Employee must earn more than 150% of the minimum wage for each hour worked during each pay period; and
- Employee must derive more than 50% of his or her income from commissions during each pay period
- Specific and technical rules apply.
- Does not exempt from meal and rest breaks.
- Only allows exemption in qualifying pay periods.

What now?

Minimum Wage and Overtime Requirements

State Minimum Wage




The statewide minimum wage for most employers as of January 1, 2026 is \$16.90 per hour.

Local Ordinances: Cities like Los Angeles, San Francisco, Berkeley, and Santa Monica have local minimum wages that exceed the state rate. Always check the municipality where work is performed, not where the company is located.

Practical Tip: If you have operations in multiple states, California's rate will govern your California-based and California-based remote employees regardless of where your company is headquartered.

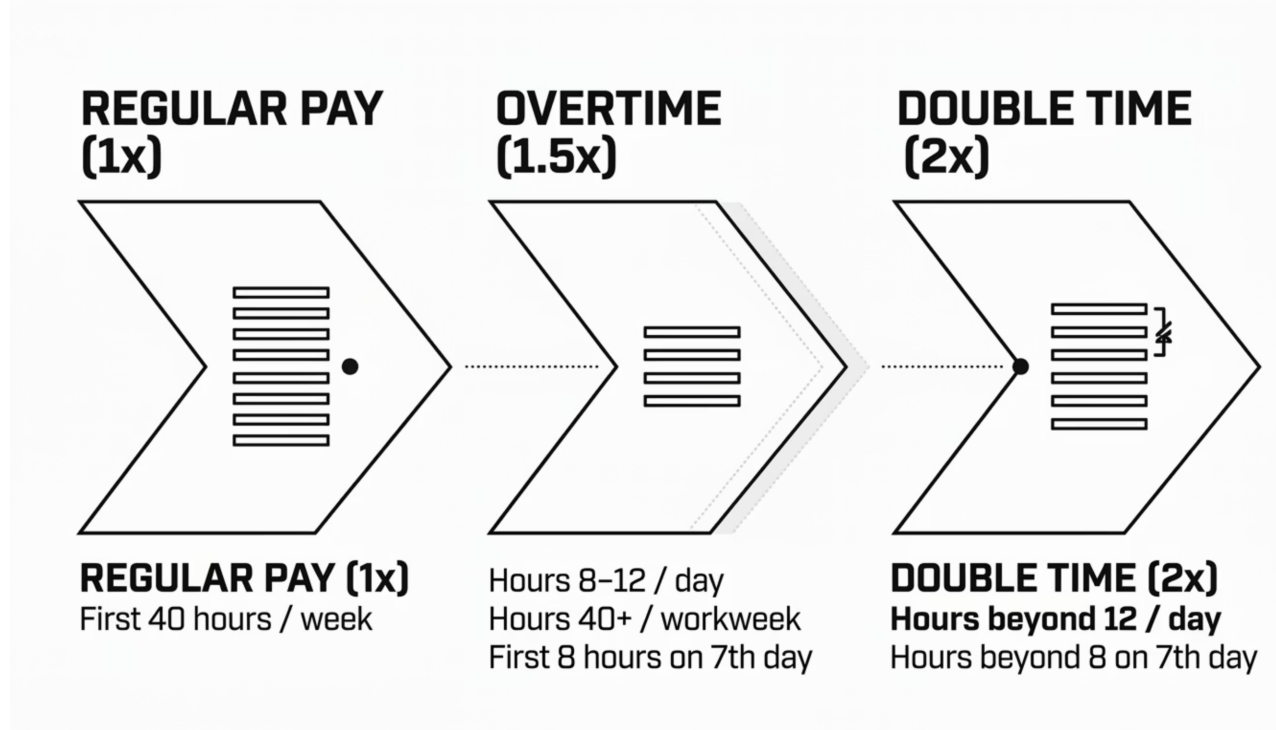
INDUSTRY-SPECIFIC

- The statewide rate is just the baseline. Two layers of higher minimums may apply to your business: local ordinances (cities and counties can set higher rates) and industry-specific rates created by legislation.

 Fast Food Workers	 Healthcare Workers	 Local Ordinances
Under AB 1228, the Fast Food Minimum Wage Council sets the minimum wage for fast food chain workers at \$20.00/hour as of 2026 — and ongoing annual adjustments are built in.	SB 525 phases in a healthcare minimum wage ranging from \$18.63 to \$25.00/hour depending on employer type. It increases again on July 1, 2026 to \$25.00/hour.	Cities like Los Angeles, San Francisco, Berkeley, and Santa Monica have local minimum wages that exceed the state rate. Always check the municipality where work is performed, not where the company is located.

California Overtime Rules: The Daily Difference

- This is where California diverges most sharply from federal law. The federal Fair Labor Standards Act only requires overtime after **40 hours in a workweek**. California requires overtime much sooner — triggering after just 8 hours in a single day.



What Goes Into the Regular Rate of Pay

- California overtime is calculated on the employee's "regular rate of pay" which is often significantly higher than their base hour wage. Many employers miscalculate overtime by ignoring additional forms of compensation that must be factored in.

Shift Differentials	Attendance Bonuses	Piece-Rate Earnings
Extra pay for nights weekends, or holidays must be included; you can't pay overtime at just the base rate and ignore the premium.	If a bonus is tied to showing up (e.g., "perfect attendance") it is non-discretionary and must be factored into the rate.	Workers paid per unit or task must have those earnings averaged into the hourly rate before overtime is calculated.
Commissions	Non-Discretionary Bonuses	Incentive/Productivity Pay
Non-discretionary commissions earned during the workweek must be included in the regular rate, even if paid on a different cycle.	Any bonus promised in advance or tied to performance metrics must be included. Only purely discretionary bonuses are exempt.	Pay tied to speed, output, or efficiency metrics fold into the regular rate of pay calculation.

Overtime

- **Regular rate of pay: weighted average example**
 - Comes into play if employee is paid **two or more rates** by the same employer during the workweek
 - Divide total earnings for the workweek, including earnings during overtime hours, by the total hours worked during the workweek, including overtime hours.
 - *If employee works 32 hours at \$11.00 an hour and 10 hours during the same workweek at \$9.00 an hour, weighted average (and thus the regular rate for that workweek) is \$10.52.*
 - *Add \$442 straight time pay for workweek [(32 hours x \$11.00/hour) + (10 hours x \$9.00/hour) = \$442] and divide by 42 hours worked.*

Regular Rate of Pay — The Formula & Examples

Example 1 - Bonus

- Schedule: Mon–Fri, 10 hrs/day = 50 hours total
- \$100 non-discretionary "perfect attendance" bonus
- Total compensation: $(\$20 \times 50) + \$100 = \$1,100$
- Total hours: 50
- Weighted regular rate: $\$1,100 \div 50 = \$22.00/\text{hr}$
- Daily OT hours (1.5x): Hours 9–10 each day = 2 hrs
 $\times 5 \text{ days} = 10 \text{ hours}$
- Overtime premium owed: $\$22.00 \times 0.5 \times 10 = \110.00

⚠ Employer who used \$20/hr base paid only \$100 in premium. Actual premium owed: \$110. Underpayment: \$10 — every week, every employee receiving that bonus.

Example 2 – Commission Deferred

Schedule: Mon–Fri, 9 hrs/day = 45 hours total

Base pay for the week: \$600

Non-discretionary commission earned this week: \$400 but paid at month-end

STEP 1 — This Workweek (base pay only, commission not yet paid):

- Regular rate (base only): $\$600 \div 45 = \$13.33/\text{hr}$
- Daily OT hours (1.5x): 1 hr/day $\times 5 \text{ days} = 5 \text{ hours}$
- Premium paid this week: $\$13.33 \times 0.5 \times 5 = \33.33

STEP 2 — When Commission Is Paid at Month-End (retroactive true-up required):

- Allocate \$400 commission back to this workweek
- Recalculated regular rate: $(\$600 + \$400) \div 45 = \$22.22/\text{hr}$
- Additional premium owed as true-up: $(\$22.22 - \$13.33) \times 0.5 \times 5 = \22.23
- Total overtime premium for this workweek: $\$33.33 + \$22.23 = \$55.56$

Common Wage & Overtime Mistakes

- Wage and hour claims are the **most common employment litigation** in California. Many violations are unintentional, but that does not reduce your exposure. Here are the patterns attorneys see most often.

Misclassifying Non-Exempt Employees	Failing to Pay Daily Overtime
Calling someone a "manager" or paying a salary does not automatically exempt them from overtime. The duties test must be satisfied in practice, not just on a job description.	Employers accustomed to federal law often overlook the 8-hour daily trigger. Tracking only weekly hours is a compliance gap in California.
Rounding & Auto-Deduct Policies	Ignoring Local Wage Rates
Automatic meal break deductions and aggressive rounding policies can expose employers to significant back pay liability if actual time worked is not captured accurately.	Paying the state rate when a higher local rate applies is a violation, even if unintentional. The employee can recover the difference plus penalties.

Wage Compliance: Practical Tips for Employers

Conduct Annual Wage Audits	Audit Your Exempt Classifications
Each January, confirm you're paying at or above the current state and applicable local minimum wage. Update payroll systems <i>before</i> the new rate takes effect.	Review each exempt employee's actual day-to-day duties — not just their title. Document how they meet both the salary threshold and duties test.
Implement Reliable Timekeeping	Post Required Wage Notices
Use a timekeeping system that captures daily start, stop, and break times . Relying on honor-system reporting creates liability when disputes arise.	California requires employers to post the current minimum wage notice in a conspicuous location. Remote employers should distribute it electronically and retain proof of delivery.

Meal Periods and Rest Breaks

Meal Periods

- 5-hour rule and 10-hour rule
 - 1st 30-minute meal period by end of 5th hour of work
 - 2nd 30-minute meal period by end of 10th hour of work
- Meal period waivers
 - May waive 1st meal period if work no more than 6 hours in a day
 - May waive 2nd meal period if:
 - Work no more than 12 hours in a day, and
 - Did not waive 1st meal period

Meal Periods

Brinker Restaurant Corp. v. Superior Court

- Required to “provide” meal periods; no need to “ensure” taken
- Must not “discourage” or “impede”
- Meal periods must be uninterrupted, and employee must be relieved of all job duties and free to leave the premises
- Exception for “on-duty” meal period
 - Permitted only when the nature of the work prevents employee from being relieved of all duty
 - Need written agreement

Meal Periods

Importance of records

- Record starting and ending times
- Rounding no longer permitted for meal periods

Consequence of violations

- 1 additional hour of pay at regular rate for each workday a meal period was not provided
- Includes late and short meal periods

Rest Breaks

- California requires employers to provide non-exempt employees with the opportunity to take 10-minute paid rest breaks for every 4 hours worked (or major fraction thereof)

Hours of Work in a Workday	Number of Rest Breaks
Less than 3.5 hours	0
At least 3.5 hours but less than 6 hours	1
At least 6 hours but less than 10 hours	2
At least 10 hours but less than 14 hours	3
At least 14 hours but less than 18 hours	4

Rest Breaks

- Employees are entitled to leave work premises during rest breaks
- Rest breaks should be taken in the middle of each work period to the extent practicable
- Rest breaks cannot be combined with meal periods

Rest Breaks

- No recordkeeping requirement
- Must “authorize and permit,” but no need to “ensure”
 - Cannot discourage or impede
- Consequence of violations
 - 1 additional hour of pay at regular rate for each workday a rest break was not authorized and permitted
 - Includes short rest breaks

Recordkeeping Obligations

Timekeeping



What should your timekeeping logs show?



What about editing of time records by managers?



What about rounding?

Camp v. Home Depot USA, Inc. (2022) - employers are **not permitted to round** when they can capture and have captured the exact amount of time an employee has worked during a shift.

Federal vs. California Recordkeeping Requirements

- Both federal law (the **FLSA**) and California law impose recordkeeping duties — but California's requirements are broader, the retention periods are longer, and the penalties for violations are steeper.
- **General Rule:** When in doubt, apply California's longer retention period. Destroying records early is a mistake you cannot undo once litigation begins.

REQUIREMENT	FLSA	CALIFORNIA
Payroll records	3 years	3 years (4 years recommended)
Time Records / Timecards	2 years	3 years (4 years recommended)
Personnel files	1-year post termination	3 years post termination (4 years recommended)
I-9 Forms	3 years from hire or 1 year post-termination (whichever is later)	Same as Federal (4 years recommended)
Wage Statements (pay stubs)	Not specified	3 years (4 years recommended)

What Records Must Be Kept?

- California employers must maintain a wide range of records. Think of these in three categories: **payroll records**, **time and work records**, and **personnel records**.

Payroll Records

- Gross wages earned each pay period
- Total hours worked (daily & weekly)
- All deductions made
- Net wages paid
- Date of payment & pay period covered

Time Records

- Daily start and end times
- Meal period start and end times
- Total daily and weekly hours
- Any split shift records
- Alternative workweek schedules (if applicable)

Personnel Records

- Job applications & offer letters
- Performance reviews & discipline records
- I-9 forms and work authorization
- Training & education records (SB 513): name of employee, training provider, date/duration, core competencies, and any resulting certification
- Signed acknowledgments (handbook, policies)
- Separation documents

Employee Rights to Inspect Records

Under California Labor Code §§ 226 and 1198.5, employees have meaningful rights to access their own records — and employers must respond promptly or face penalties.

Pay Stub Inspection (§ 226)	Personnel File Inspection (§ 1198.5)	Payroll Records (§ 226(b))
Employees may request copies of their wage statements at any time. You must provide copies within a reasonable period . Failure can result in penalties per employee per pay period.	Current and former employees may request to inspect their personnel file . You must provide access within 30 calendar days of a written request, or up to 35 days if the parties agree in writing. The right extends to former employees after separation, and former employees may make one request per year .	Employees can inspect or receive copies of their payroll records upon reasonable request. Employers must respond within 21 calendar days . A failure triggers a rebuttable presumption of violation in litigation.

Consequences of Recordkeeping Failures

- Poor recordkeeping is not just an administrative inconvenience, it can **determine the outcome of litigation**. California courts and agencies treat missing records harshly.

Statutory Penalties	Adverse Inference in Litigation
Failure to provide accurate wage statements carries penalties of [current § 226 penalty] per pay period per employee. These add up fast in class actions.	If records don't exist, courts may presume the employee's account is correct . The burden effectively shifts to the employer to disprove hours or wages claimed.
Agency Audit Exposure	PAGA Claims
DLSE (Division of Labor Standards Enforcement) audits rely heavily on records. Gaps trigger broader investigations — and can result in penalties across your entire workforce , not just the audited employee.	Under California's Private Attorneys General Act, individual employees can sue on behalf of the state for recordkeeping violations. PAGA penalties are assessed <i>per pay period per employee</i> .

Best Practices for Compliant Recordkeeping

Digitize & Centralize

- Use a reliable HRIS or payroll platform that timestamps entries and produces audit trails. Paper systems are vulnerable to loss and harder to produce quickly.

Establish a Retention Schedule

- Create a written policy specifying **what is kept, where, and for how long**. Train your HR and payroll teams on the schedule. Apply California's longer periods as your baseline.

Secure Storage with Access Controls

- Personnel files must be kept confidential. Store physical files under lock and key; digital files behind role-based access. Medical records must be **segregated from general personnel files**.

Conduct Annual Compliance Audits

- Review your records annually for completeness. Confirm that wage statements include all **nine required itemized items** under Labor Code § 226(a). A compliance gap found internally is far less costly than one found in litigation.

Business Expenses

Business Expense Reimbursement

- Labor Code 2802: “all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties”

Business Expense Reimbursement

- Travel- meals, transportation, hotels
- Company credit card
- Cell phones and home internet- reasonable portion of the monthly bill

“Stay or Pay” Agreements

- Contracts entered into on or after January 1, 2026, cannot include terms requiring an employee or contractor to pay a fee, penalty, or cost to the employer if the work relationship terminates
- Limited exceptions
 - Contracts for repayment of tuition
 - Contracts providing for discretionary or unearned payments

Considerations for Remote Workers

Which State's Law Applies?




The core principle in California is that the **law follows where the work is performed**.

- **California's General Rule:** If an employee **performs work in California**, California wage and hour law applies to that work. Choice-of-law clauses generally **do not override** California's mandatory protections. This is true even if:
 - The employer is headquartered outside California
 - The employment contract designates another state's law
 - The employee only recently relocated to California
- **Residency vs. Work Location**
 - A California *resident* working remotely for an out-of-state company is likely covered by California law.
 - An out-of-state resident *performing work* in California is also covered — even for isolated California work days.

Bottom line: Track where work is actually performed, not just where the employee lives. When an employee works in multiple states during a pay period, each state's employment laws generally apply to the work performed within that state. For example, California's wage and hour protections typically apply to California workdays, while another state's laws govern work performed there. Other obligations (such as taxes or benefits) may follow different rules and should be analyzed separately.

Wage & Hour Traps for Remote Workers

Remote work creates a unique set of wage and hour risks. Employees working from home are still entitled to all California protections including daily overtime, compliant meal and rest breaks, and compensation for all hours worked.

 Tracking Hours Worked	 Meal & Rest Breaks	 Off-the-Clock Work Risks
Employers must track all compensable time for non-exempt remote employees. This includes brief tasks outside scheduled hours — checking email at 9 PM, answering a Slack message, or joining an early call. "Off-the-clock" work is still compensable work.	The obligation to provide compliant 30-minute uninterrupted meal breaks and 10-minute rest periods does not disappear for remote workers. Employers must ensure break policies are followed and documented — not simply assumed.	Remote environments blur the line between work and personal time. Employers who knew or should have known that employees were working beyond scheduled hours can be held liable — even without explicit authorization.

What This Means for You: Your timekeeping obligations don't shrink because employees work from home. If anything, they require more proactive enforcement and documentation.

Remote Work Policy Essentials

A written, signed remote work policy is your first line of compliance defense. It sets expectations, limits liability, and demonstrates good faith in any subsequent dispute.

1. Work Location & Prior Approval
2. Hours of Work & Availability
3. Expense Reimbursement Procedure
4. Equipment & Data Security
5. AB 692 & Offer Letter Review
6. Annual Workplace Rights Notice

Upcoming Events

- **Session 2: Leaves of Absence – Tuesday, May 12**
- **Session 3: Performance Management – Wednesday, September 16**

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