CA PAYROLL and TAX LEGISLATION

INDUSTRIAL WELFARE COMMISSION WAGE ORDERS

All employers that conduct business within California must adhere to specific wage orders determined by the type of business the employer operates. There are 17 IWC wage orders that regulate wages, hours, and working conditions. They are numbered by industry or occupation group.

Each of the wage orders is specific to the industry or occupation it covers. Within each wage order, the following regulations can be found:

- Hours and days of work;
- Minimum wages;
- Overtime;
- Alternative workweeks;
- Reporting time pay;
- Special licenses for disabled workers;
- Record retention;
- Cash shortage and breakage;
- Uniform and equipment;
- Meals and lodging;
- Meal periods; and
- Rest periods.

Some of the provisions of these orders may conflict with FLSA standards. At these times, the standard/law that benefits the employee is the standard/law that prevails. For the most part, it is the wage orders that take precedence.

POSTING REQUIREMENTS

The California Department of Industrial Relations requires employers to post information related to wages, hours, and working conditions in an area frequented by employees where it may be easily read during the workday. Additional posting requirements apply to some workplaces. Under special circumstances, the information sheet may be kept in a binder. Examples of where this could be acceptable are a construction site where there is only an on-site trailer or an agricultural site where the workplace is outdoors. If employers put the information in a binder, they must tell employees where the binder is located, have the binder available for employees, and ensure employees have easy access to the material and don't have to walk a long distance or ask to see the material.

The following Web site is available to print the wage order(s) specific to your business for posting purposes: *http://www.dir.ca.gov/WP.asp*.

MULTIPLE ORDER COMPLIANCE

Large businesses may conduct a variety of operations and it may appear initially that different industry orders could apply, but if part of the main business, look to the main business to apply only one order. There are times when an employer may have multiple main businesses and may therefore truly have multiple wage orders, but this is rare. Defining the classifications within a business of mixed nature may be difficult. A business must define its primary purpose on the basis of observation and common sense. The DLSE enforces the provisions of all wage orders and in this context publishes "Which IWC Order?" to help employers determine the right wage order. It can be found at *http://www.dir.ca.gov/dlse/WhichIWCOrderClassifications.PDF*.

STATE EXEMPTION REQUIREMENTS

California law and related Wage Orders of the IWC set the standards when determining an employee's exemption status. [CLC § 515] An employee's exempt status relates to the employee being exempt from California Wage and Hour Laws, including overtime pay. The exemption has far-reaching ramifications since that status deprives the employee not only of the right to overtime compensation, but also to most of the other protections afforded to nonexempt employees by the Wage Orders.

The IWC has chosen to adopt regulations for Wage Orders 1-13 and 15 that substantially conform to current guidelines in the Fair Labor Standards Act regulations [29 C.F.R. Part 541], but have also adapted the FLSA rules to eliminate provisions that are inconsistent with the more protective provisions of California law. The DLSE has recognized these inconsistencies and tailored the federal enforcement policy to fit the California law. In light of this approach, the following exemption qualifications combine the FLSA requirements with the California requirements to present a total picture of the requirements. [DLSE Enforcement Policies and Interpretations Manual § 51.6.2]

MINIMUM SALARY REQUIREMENT FOR EXEMPT EMPLOYEES

Employees that are exempt from overtime must earn a minimum monthly salary of no less than two times the California state minimum wage for full-time employment. With California's minimum wage of $9 an hour, the minimum rate for exempt employees is $18 (2 × $9) an hour or $720 weekly, a figure much higher than the FLSA $455 weekly threshold. Under the California rules, fewer white collar employees will be considered exempt. The California test assumes a 40-hour work week. [DLSE Enforcement Policies and Interpretations Manual § 51.1; CLC § 515, 29 C.F.R. § 541.118]

The total exemption categories are too numerous to cover. So check the DLSE Web site for the complete listing. [*http://www.dir.ca.gov/dlse/DLSEManual/dlse_enfcmanual.pdf*] Below are the most widely used exemptions.

COMPUTER PROFESSIONAL EXEMPTION

Computer professionals are exempt from overtime pay if they:

- Are primarily engaged in work that is intellectual or creative;
- Are primarily engaged in work that requires the exercise of discretion and independent judgment;
- Are primarily engaged in duties that consist of one or more of the following:
  - Applying systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications;
  - Designing, developing, documenting, analyzing, creating, testing, or modifying computer systems or programs, including prototypes, based on and related to user or system design specifications; or
  - Documenting, testing, creating, or modifying computer programs related to the design of software or hardware for computer operating systems.
- Are highly skilled and proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming, and software engineering; and
- Effective January 1, 2015, are paid an hourly rate of at least $41.27, changed from 2014's rate of $40.38; the minimum monthly salary exemption is increased to $7,165.12; and the minimum annual salary exemption is increased to $85,9814.40, as well. [CLC § 515.5 as amended by the State Budget and Budget Reform Act of 2008.] Full-time employment equates to 40 hours per week. Both the hourly pay rate and the salary will be adjusted each October 1 to be effective on January 1 of the following year.
  - **CAUTION** Under CLC § 515.5 there is both a minimum compensation requirement and applicable duties tests that an employer will now need to check to assure the exemption applies.

LICENSED PHYSICIANS AND SURGEONS

An exception to the salary requirement exists for certain doctors. Licensed physicians or surgeons, who are primarily engaged in performing duties for which licensure is required are exempt from overtime if they are paid at least the current minimum hourly rate of $75.19 per hour beginning January 1, 2015. [CLC § 515.6(a)]

This exemption does not apply to employees in medical internships or resident programs, physician employees covered by collective bargaining agreements, or veterinarians.

HEALTH SAVINGS ACCOUNTS - HSA

The Franchise Tax Board continues to not respect Health Savings Account (HSA) deferrals. Conformity to the federal tax code still does not cover deferrals to HSAs.

Employee contributions, made from payroll deductions to a qualified HSA account cannot be pre-taxed.

Employer contributions, made to a qualified HSA for eligible employees must be reported as CA State Taxable income.

MINIMUM WAGE and OVERTIME

Governor Jerry Brown signed into legislation AB 10 to increase California's minimum wage to $10.00 per hour. The legislation increases the minimum wage in two parts. On July 1, 2014 the minimum wage increased to $9.00 per hour and on January 1, 2016 it will increase to $10.00 per hour.
If at any time the federal FLSA minimum wage is scheduled to exceed the minimum wage fixed by the IWC, the provisions of CLC §§ 1178 and 1178.5 pertaining to wage boards is to be waived and the IWC will, in a public meeting, adopt an order fixing a new minimum wage at the scheduled higher federal minimum wage. The effective date of the order is to be the same as the effective date of the federal minimum wage, and the order may not become operative in the event the scheduled increase in the federal minimum wage does not become operative. [CLC § 1182(b)]

When the California rate is higher than the federal rate, the state rate applies to all employees covered by the state law.

SAN FRANCISCIO MINIMUM WAGE REQUIREMENT

On November 4, 2014, San Francisco voters passed Proposition J, raising the minimum wage to $15.00 by 2018. The San Francisco minimum wage will increase according to the following schedule:

EFFECTIVE DATE	MINIMUM WAGE RATE
1/1/2015	$11.05
5/1/2015	$12.25
7/1/2016	$13.00
7/1/2017	$14.00
7/1/2018	$15.00

SAN JOSE MINIMUM WAGE REQUIREMENT

The Minimum Wage Ordinance, Measure 'D' was passed by City of San Jose voters on November 6, 2012. It requires employers to pay their employees a minimum wage of $10.30 per hour effective January 1, 2015 who performs at least two (2) hours of work per week within the City of San José and requires the minimum wage to increase annually by the cost of living, if any.

LIVING WAGE ORDINANCES

California cities that have ordinances covering "living wages" require employers that contract with cities or that receive economic development subsidies from the cities to pay their employees a higher rate than under California's minimum wage rules.

Each city has its own formula for calculating the living wage, but generally, living wages are quoted two ways: with health care benefits and without. Many ordinances also have provisions regarding paid vacation and sick leave, labor relations, and hiring practices. Living wages are generally tied to some Consumer Price Index.

Note that many cities get behind in making and announcing annual adjustments to their rates. It will be important to check with the municipality to be sure the rates you are using are the most current ones.

Cities with Living Wage Ordinances:

Albany, Berkely and Berkely Marina, Davis, Fairfax, Hayward, Irvine, Los Angeles City and County, Marin County, Oakland, Pasadena, Petaluma, Port Hueneme, Richmond, Sacramento, San Diego, San Fernando, San Francisco, San Jose, San Leandro, Santa Barbara, Santa Cruz City and County, Santa Monica, Sebastopol, Sonoma, Ventura City and County, Watsonville, West Hollywood.

PAYSTUBS AND PAYCHECKS

REPORTING REQUIREMENTS

California has four approved methods of payment. [CLC § 212]

- *Cash.* If the employee is paid in cash, a record must be kept of these payments for at least three years (deduction statement must also be provided at time of payment). [CLC § 226]
- *Check.* Checks must be payable on demand in full, without discount, at an established place of business in the state from the date the check is issued until at least 30 days after the date. The business name and address must appear on the check. The check must be negotiable at any branch of the bank on which the check is drawn.
- *Direct Deposit or by electronic payment.* Although electronic payments are an approved method, an employer cannot force an employee to elect to use direct deposit.
- *Electronic—Debit Paycards.* The DLSE issued two Opinion letters which considered the Debit Paycard programs it reviewed in compliance as a form of direct deposit, but it is noted that each program provided a slew of details to the agency. The agency relied on the details to come to their conclusions, so take care that you read the opinion letters carefully and do your homework if you are planning to go this route.

ELECTRONIC PAY ADVICES

In California, an employer may provide an employee with an electronic wage statement as long as the employee has the option to request a hard copy.

An employer may not mandate conversion to an electronic wage statement and eliminate the paper version entirely. However, employers may set up electronic pay statements for any employees that have voluntarily enrolled in direct deposit unless the employee selects a paper statement. Once the employee starts to receive electronic pay statements, the employee at any time may elect to receive a paper statement.

The DLSE has the following requirements; however, there is no requirement for employers to obtain approval from the DLSE before implementing an electronic wage statement:

- Web site must be secure using industry standard security and encryption technology.
- The employees' access must be controlled through the use of unique employee identification and confidential personal identification numbers.
- Firewalls need to be implemented to prevent any unauthorized access.
- Access to the Web site must use properly configured Web browsers on terminals both at the worksite and home.
- The service has to be available 24 hours a day, seven days a week, with the exception of minimal downtime for system maintenance.
- At work, every employee has access to either an individual or network printer at all reasonable hours of the day, at no cost to the employee. The network printer must be secure in order to ensure that others are not able to print an employee's information and be close enough to the employee to eliminate the risk that the wage statement, once printed, would be taken by someone else.
- The electronic wage statement must be available to active employees for viewing and printing for three years. Former employees should be provided with printed copies at no cost when requested.
- Employees must be able to elect to receive the information electronically and must be able to change their election at any time to receive a traditional paper itemized wage statement.

PAYROLL CHECKS NEED TO BE CASHABLE IN CALIFORNIA WITHOUT BANK FEES

It is not easy to pay employees in California. The law requires that wages be paid in a form that is "negotiable and payable in cash, on demand, without discount, at some established place of business in the state, the name and address of which must appear on the instrument." [CLC § 212] This creates concern for employers utilizing banks located outside of California and may also be a concern for employers utilizing a California bank where fees to cash checks are charged.

ALTERNATIVE WORK WEEK

AB 60 provides flexibility by allowing employees to arrange alternative work schedules with employers, such as working four 10-hour days in a workweek. No employer shall be deemed to have violated the daily overtime provisions by instituting, pursuant to the election procedures set forth in this wage order, a regularly scheduled alternative workweek schedule of not more than ten (10) hours per day within a 40 hour workweek without the payment of an overtime rate of compensation. All work performed in any workday beyond the schedule established by the agreement up to 12 hours a day or beyond 40 hours per week shall be paid at one and one-half (1 1/2) times the employee's regular rate of pay. All work performed in excess of 12 hours per day and any work in excess of eight (8) hours on those days worked beyond the regularly scheduled number of workdays established by the alternative workweek agreement shall be paid at double the employee's regular rate of pay. Any alternative workweek agreement adopted pursuant to this section shall provide for not less than four (4) hours of work in any shift. Nothing in this section shall prohibit an employer, at the request of the employee, to substitute one (1) day of work for another day of the same length in the shift provided by the alternative workweek agreement on an occasional basis to meet the personal needs of the employee without the payment of overtime. No hours paid at either one and one-half (1 1/2) or double the regular rate of pay shall be included in determining when 40 hours have been worked for the purpose of computing overtime compensation.

GUIDELINES

Carefully take into consideration all guidelines when creating an alternative workweek arrangement. Not all IWC orders provide for alternative workweek arrangements. Alternative workweeks are provided for in Orders 1–13, 16 and 17. However, you must be aware that there are different rules to be applied depending upon which Order is applicable to the employee(s).

12-hour day limit: The alternative workweek arrangements, generally, may comprise workdays not exceeding 12 hours. However, any work time more than 10 hours per day is subject to overtime premium pay.

Employees in the health care industry: up to 12-hour days.

Orders 4 and 5 allow employees in the Health Care Industry (as that term is defined at Section 2(G) of Orders 4- and 5-2001) to agree to an alternative workweek of up to 12-hour days without the requirement to pay overtime premium pay for any hours up to 12.

Workdays within alternative workweek must be at least four hours, except under Order 16-2001.

Alternative Workweek Election: Two-thirds of affected employees must vote by secret ballot in favor of adoption of the alternative workweek. The election is limited to the employees in the affected work unit, and at least two-thirds of those must vote in favor of the alternative workweek.

REPORTING REQUIREMENT

Election Results to be sent to:

Department of Industrial Relations

Attention: Alternative Workweek Election Results

P. O. Box 420603

San Francisco, CA 94142

REPORTING TIME REQUIREMENT

Employers must guarantee at least partial compensation for employees who report to their job expecting to work a specified number of hours and who are deprived of that amount of work because of inadequate scheduling or lack of proper notice by the employer, the IWC Wage Orders Numbers 1–16 require that employers pay nonexempt employees, in addition to the hours the employee actually works, for certain un-worked but regularly scheduled time. Such payments are known as "reporting time pay." Reporting time pay compensation for hours in excess of the actual hours worked is not considered wages and 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.
- 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.

The DLSE provides advice concerning reporting time as it relates to mandatory "Training" or "Staff" meetings. The following are the most common situations:

1. Required meeting is scheduled for a day when the worker is not usually scheduled to work. The employer tells all the workers that attendance at the meeting is mandatory and a one- or two-hour shift is scheduled for the meeting. For those workers not regularly scheduled to work, the employee must be paid at least one-half (1 1/2) of the employee's usual or scheduled day's work.
2. Required meeting is scheduled on a day a worker is scheduled to work, but after the worker's scheduled shift ends.

If there is an unpaid hiatus between the end of the shift and the meeting, the employee must be paidat least two hours for reporting a second time in one day.

If the meeting is scheduled to immediately follow the scheduled shift, there is no requirement for the payment of reporting time no matter how long the meeting continues.

Scheduled Hours to Work	*Minimum Reporting Time Pay Owed*
10	4
9	4
8	4
7	3.5
6	3
5	2.5
4	2
3	2
2	2

Exceptions to the requirement for reporting time pay are found in IWC Order Numbers 1–16.

RULES for MEAL and REST PERIOD

MEAL PERIOD

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may also not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

Premium for Failure of the Employer to Provide the Meal Period. For each workday that the employer fails to provide the required meal period, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation. This premium pay is a "wage" under CLC § 200. [DLSE Enforcement Manual § 45.2.7]

Premium for Missed Meal Period Is Imposed Only Once Each Day. No matter how many meal periods (rest period penalties are separate) are missed, only one meal period premium is imposed each day. Thus, if an employer employed an employee for twelve hours in one day without any meal period, the penalty would be only one hour at the employee's regular rate of pay.

REST PERIOD

Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of 10 minutes net rest time per four hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

Less than three and one-half hours = none

Three and one-half hours to six hours = one

Over six hours to ten hours = two

Over ten hours to fourteen hours = three

DISABILITY INSURANCE

SDI TAX RATE and TAXABLE WAGE LIMIT

For 2015, the SDI withholding rate including PFL is 0.9 percent of taxable earnings. The SDI taxable wage limit has been increased to $104,378 per employee for calendar year 2015. Therefore, the maximum amount that can be withheld from an employee's wages for SDI and PFL is $939.40 for 2015.

Examples of some payments not included in subject wages: (see EDD Publication DE44 for list)

- Vacation pay, sick pay, and holiday pay (accrued only)—only when the pay is earned and has not been paid prior to termination of employment due to a voluntary quit, discharge, or layoff due to lack of work with no specific date to return to work;
- Moving expenses—qualified expenses if it is reasonable to believe the expenses will be deductible by the employee under IRC § 217;
- Life insurance premiums—paid by employer on behalf of employee;

INTEGRATION with SICK LEAVE or 3rd PARTY SICK PAY

Take care in evaluating when company paid sick leave or 3rd party sick pay is paid to the employee receiving SDI. The goal is to ensure the employee is not paid an excess of regular salary when combining all payments. Otherwise, EDD will request a refund from the employee for overpayment.

MANDATORY SICK LEAVE PAY

AB 1522 provides for the State of California's new paid sick leave law and is referred to as the Healthy Workplace/Healthy Families Act of 2014, Paid Sick Leave. This law took effect January 1, 2015. However, the right to accrue and take sick leave under this law does not take effect until July 1, 2015. Employers are required to post the DLSE Paid Sick Leave Posting where employees can easily read.

Entitlement:

- An employee who, on or after July 1, 2015, works in California for 30 or more days within a year from the beginning of employment is entitled to paid sick leave.
- Paid sick leave accrues at the rate of one hour per every 30 hours worked, paid at the employee's regular wage rate. Accrual shall begin on the first day of employment or July 1, 2015, whichever is later.
- Accrued paid sick leave shall carry over to the following year of employment and may be capped at 48 hours or 6 days. However, subject to specified conditions, if an employer has a paid sick leave, paid leave or paid time off policy (PTO) that provides no less than 24 hours or three days of paid leave or paid time off, no accrual or carry over is required if the full amount of leave is received at the beginning of each year in accordance with the policy.

Usage:

- An employee may use accrued paid sick days beginning on the 90th day of employment.
- An employer shall provide paid sick days upon the oral or written request of an employee for themselves or a family member for the diagnosis, care or treatment of an existing health condition or preventive care, or specified purposes for an employee who is a victim of domestic violence, sexual assault, or stalking.
- An employer may limit the use of paid sick days to 24 hours or three days in each year of employment.

Retaliation or discrimination against an employee who requests paid sick days or uses paid sick days or both is prohibited. An employee can file a complaint with the Labor Commissioner against an employer who retaliates or discriminates against the employee.

PTO Plans: The new law establishes a minimum requirement, but an employer can provide sick leave through its own plan or establish different plans for different categories of workers. However, each plan must satisfy the accrual, carryover, and use requirements of the law or put the full amount of leave into the employee's leave bank at the beginning of each year in accordance with the PTO policy. If an employer provides a policy which exceeds the minimum requirements, including providing a specific cap, the policy must be clear as to the additional terms that apply to their employees.

Rehired Employees: The paid sick leave law requires that the employee's accrued sick leave be restored if the employee returns to the same employer within 12 months from the previous separation. Although an employer does not have to allow an employee the use of the paid sick leave prior to working 90 days, because the law specifically requires that the leave be restored to you, in your second year, you have met the 90 day restriction on use after 30 days (due to working 60 days in the prior year) and can begin to use your paid sick leave after working 30 days in the second year.

Pay Statements: Employers must show, on the pay stub or a document issued the same day as the paycheck, how many days of sick leave an employee has available. Employers also must keep records showing how many hours an employee has earned and used for three years. This information may be stored on documents available to employees electronically.

Beginning January 1, 2015, employers are required to post in a conspicuous place at the workplace, a poster containing the following information: (1) that an employee is entitled to accrue, request, and use paid sick days; (2) the amount of sick days provided for and the terms of use of paid sick days; (3) that retaliation or discrimination against an employee who requests paid sick days or uses paid sick days or both is prohibited; and (4) that an employee has the right under this law to file a complaint with the Labor Commissioner against an employer who retaliates or discriminates against an employee.
After January 1, 2015, employers are required to provide most employees with an individualized Notice to Employee (required under Labor Code section 2810.5) that includes paid sick leave information.

NEW HIRE REPORTING

REQUIREMENTS

All California employers must report their new or rehired employees who work in California to the New Employee Registry. The reporting requirement applies to all businesses, state and local government employers, nonprofit organizations, and household employers, regardless of the number of employees.

Employers are required by law to report all newly hired or rehired employees to the New Employee Registry (NER) within (20) days of their start-of-work date. The start-of-work date is the first day services were performed for wages.

An employer must report the following information:

- Employee's full name, Social Security number, address, and "date of hire," which is considered to be the first day a worker performs services for wages;
- Employer's name, address, phone number, contact person, California employer account number, and federal employer identification number (FEIN).

REHIRED EMPLOYEES

If the employer/employee relationship has ended and the returning individual had been separated from that same employer for at least 60 consecutive days, the rehire must be reported. Employers are required by law to report the rehired and all newly hired or rehired employees to the New Employee Registry (NER) within (20) days of their start-of-work date. The start-of-work date is the first day services were performed for wages.

FORMER and TERMINATED EMPLOYEES

Newly hired employees who quit before the New Employee Registry report is due must, nonetheless, be reported. Because wages were earned, a New Employee Registry report must be submitted. Even though the employment period was short, the reported information may be the key to locating a noncustodial parent. Employers only have to report when an employee begins his or her employment.

QUARTERLY TAX FILINGS

WITHHOLDING, UNEMPLOYMENT, DISABILITY AND ETT – FILING

All employers must report subject wages (UI, SDI, and ETT) and contributions, as well as personal income tax (PIT) withheld on Form DE 9C, the *Quarterly Contribution Return and Report of Wages (Continuation)*. Employers will reconcile quarterly on the Form DE 9, *Quarterly Contribution Return and Report of Wages.*

Quarterly due dates: Form DE 9 and DE 9C are due on January 1, April 1, July 1, and October 1 each year, but are only considered delinquent if not filed by the last day of the month following quarter end. Any unremitted withholding should accompany the DE 9 via Form DE 88. Deposit due dates are not affected by the quarterly filings of Form DE 9 and DE 9C. Employers now have more options available to electronically file returns, and make deposits and payments on outstanding liabilities.