



## What sets California apart from other states?

Unique Employment Labor Laws to be aware of, if you have employees located in California

As California businesses have grown, so has the number of workers attracted to this diverse state. Although many employers are physically located in other states, they often have employees who work in California and therefore need to be informed of California's labor laws and regulations.

Legal requirements in California prevail over other state laws and in some cases supersede federal laws as well. California regulations are subject to enforcement by up to six different state regulatory agencies, in comparison other states are usually subject to only two or three.

Listed below are several legal requirements that are exclusive to workers in California.

## **Wage & Hour Issues**

### **Minimum Wages**

As opposed to the Federal minimum wage of \$7.25 per hour, California's minimum wage was increased to \$8.00 per hour on January 1, 2008. This minimum wage also impacts the minimum weekly salary that must be paid for executive, administrative, and professional employees to be exempt to avoid misclassification problems.

Throughout the state, there are also city wages and living wages which supersede California's state minimum wage laws. For example, the minimum wage for employees in the city of San Francisco increases nearly every year (see the end of this article). San Francisco also requires contributions towards transportation expenses and health benefits.

### **Paycheck Rules**

Timely wage payment rules are very strict in California. For each late paycheck, California's Labor Code allows the recovery of up to \$200, plus 25% of the amount unlawfully withheld, per employee, per payroll period.

Employees who are involuntary discharged must be paid all of their unpaid wages at their time of discharge. This rule applies to all employees, including those who are released after completing a specific job assignment, even if the assignment is as short as one day. Failure to meet these payment rules may result in a penalty of up to 30 days of pay at the employee's regular daily rate if the employee files a claim with the Labor Commissioner.

Employees who voluntarily end their employment must receive their final paycheck on their last day of employment (as long as they gave at least 72 hours of notice). Failure to do so may result in a penalty of a full days pay for each day the paycheck is late, up to 30 days.

### **Pay Stub Rules**

With each paycheck an employee must receive a written itemized statement (pay stub) with 11 separate items, such as:

- the inclusive dates of the pay period
- name of the employee and social security number (only the last four digits)
- name and address of the employer
- all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Failure to include all required information with each paycheck can result in penalties of \$100 per employee, per violation, up to a maximum of \$4,000 per employee. *Risk/Potential Impact:* Penalties up to \$4,000, per employee.

California law also requires employers to keep a copy of all payroll records showing the daily hours worked and the wages paid to its employees for at least three years, at the place of employment or at a central location within the State of California. The California Labor Commissioner is assessing a \$250 penalty as an initial citation and a \$1,000 penalty for each subsequent violation.

### **Payroll Deductions**

Common payroll deductions made by employers in other states are often unlawful in California. Examples of unlawful deductions include those taken for: uniforms, lost safety equipment, broken supplies and other business losses resulting from the employee's simple negligence. Penalties for employers are up to \$200, plus 25% of the amount unlawfully withheld, per employee, per payroll period.

### **Meal and Rest Periods**

Similar to the overtime rates, California has employee friendly break and lunch requirements for all nonexempt employees not heard of in other states and not required by federal law.

The timing and duration of breaks (rest) and meal (lunch) periods are very specific in California. If they are not provided as required, employers must self impose a penalty, payable to the employee, equal to one hour of the employees' regular rate of pay. These penalty payments are considered wages and employees may recover penalties for up to four years. And, if the employer fails to pay the penalty on the payday for the period in which the violation occurred, employees can seek additional penalties for each payday that was "underpaid".

### **Alternative Workweek Scheduling**

In California, employers may create Alternative Work Weeks which allow their employees to work four 10 hour shifts and avoid overtime penalties. However, implementing an alternative workweek schedule requires a strict adherence to state guidelines. Among other things, a secret ballot vote must be passed by 2/3 of the unit that would be affected by the alternative workweek schedule. Failure to follow the correct procedures when adopting an alternative workweek can invalidate the alternative work week schedule and result in penalties of up to four years of unpaid overtime pay, interest penalties and attorney fees.

## **Overtime Issues**

### **Overtime Pay Rates**

California's hourly overtime laws are much more employee friendly than other states. Not paying overtime correctly can lead to huge penalties for employers.

In addition to the Federal law requiring that overtime be paid after working 40 hours in a workweek, California employees are entitled to time-and-a-half (1.5 times their regular rate of pay) after working eight hours in a day and double overtime pay after working 12 hours in day. In addition, California has a 7<sup>th</sup> day overtime premium on the 7<sup>th</sup> consecutive day worked in a workweek. Many of these "employee friendly" overtime laws contrast with other states which only require overtime be paid after 40 hours have been worked in a workweek. No other state besides California requires double overtime pay for employees.

### **Misclassification of Employees**

Incorrectly classifying an employee as "exempt" can result in up to four years of back overtime pay, plus interest and penalties.

When analyzing overtime exemptions, federal law and most state laws focus on the tasks of the job and ask whether the “primary” duty is of an exempt nature. California instead uses two primary tests to determine whether someone is an exempt employee. First employers must use a salary test to ensure the employee earns at least two times the minimum wage. Second, they must ensure the employee spends more than 50% of his or her time performing “exempt” duties which must include a significant amount of independent judgment.

### **Wages for Employees in the Computer Industry**

As of 2012, Computer Software employees must now earn a minimum salary of \$38.89 per hour and, if the employee is paid on a salaried basis, an annual salary of at least \$81,026.59 to be exempt from California’s overtime laws. This salary is adjusted annually according to the consumer price index. Employers who believe their employees may qualify for the exemption need to review the requirements on the exemption worksheets to ensure both the duties and the salary test are passed. In contrast, in 2008 Federal law and most other state laws had a requirement of \$27.63 per hour (\$57, 471 per year). California computer professionals must be paid this hourly rate for all hours worked in the workweek. It is essential that detailed time records be kept so that the employer has proof of meeting this requirement.

### **Wages for Physicians and Surgeons**

California annually adjusts the overtime exemption “salary test” for licensed physicians and surgeons. To reflect the California Consumer Price Index for Urban Wage Earners and Clerical Workers. The minimum hourly rate of pay for licensed physicians and surgeons to qualify as exempt is \$70.86 (or a salary of \$147,388.80).

## **Leaves of Absence and Vacation Policies**

### **Leave of Absence Laws**

While most states have two or three required employee leaves of absence, California employers must provide over 20 leaves of absence to employees. Some unique examples of California Leave Laws Include:

- Military Leave which allows spouses of deployed military personnel who are granted leave from “combat zones” to take time off to be with their spouse.
- A San Francisco ordinance requires employers to provide paid sick leave to full-time, part-time and temporary employees working within the geographic boundaries of the County of San Francisco. One hour of paid sick leave must accrue for every 30 hours worked.
- Pregnancy Leave which grants four months of pregnancy disability leave to women of employers with five or more employees. Unlike FMLA, there is no one year service requirement.
- CA Family Rights Act which grants pregnant women up to seven months, if they are covered under FMLA.

### **Vacation**

When it comes to earned and accrued vacation, California does not allow “Use-It-Or-Lose-It” policies. Employers are allowed to put a reasonable “cap” or “cash out” policy in place. Vacation pay is considered “wages” under California laws, therefore, all accrued unpaid days must be paid out to an employee when the employment relationship ends. A final paycheck which does not include all vacation hours can result in waiting time penalties and up to 30 days of “late pay”.

## **Additional Regulations Exclusive to California**

### **Sexual Harassment Training**

For employers with 50 or more employees, California requires that employers provide two hours of sexual harassment training for all supervisors every two years. If an employer has at least 50 employees, those supervisors working in California must be trained even if there are less than 50 employees in California. This falls under Assembly Bill 1825. The definition of a supervisor is broad and includes anyone with the authority to direct the work of others.

### **Manager's Liability**

Managers in the State of California can be held personally responsible for allowing sexual harassment in the workplace to continue to occur after the harassment has been reported. Managers can also be held responsible for dangerous work environments. Any employer or manager who has actual knowledge of a concealed danger and fails to notify the affected employees and appropriate state agency can be fined or imprisoned or both.

### **Non-compete Agreements**

California employers cannot prevent ex-employees from working for competitors. Non-compete agreements in California are generally not valid. California courts view non-compete agreements as “against public policy” (against the public good). Most other states will enforce such covenants when they are reasonable as to duration and scope. However, under state law, employers may enforce reasonable confidentiality, intellectual property assignment, non-solicitation and non-disclosure agreements.

### **Arbitration Agreements**

Mandatory arbitration provisions covering wrongful termination or employment discrimination claims must satisfy certain requirements. California employees do have the right to require employers to sign arbitration agreements as a condition of employment, however, employers must take care that the arbitration agreement is not “unconscionable,” which would render it unenforceable. In addition, class action arbitration waivers are generally unenforceable and individual arbitration is favored by the courts.

### **WARN Act – Layoffs and Business Closures**

The federal Worker Adjustment and Retraining Notification Act (WARN) requires companies employing a certain number of employees to provide written notice prior to any mass layoffs or plant closings to specified entities. Employers can be liable for back pay, penalties up to \$500 a day for each day of violation for a maximum of 60 days, and liable for the cost of any medical expenses incurred by employees that would have been covered under an employee benefit plan for the period of the violation. California's version of the WARN Act is broader in scope and affects more employers than the federal version.

### **San Francisco**

The city of San Francisco has additional laws and mandates which often supersede both state and Federal Laws. Examples of these unique labor laws include:

- San Francisco Transportation Ordinance - employers with 20 or more employees, regardless of location, must provide certain commuter benefits to non exempt employees who perform at least 10 hrs of work in the City each week.
- San Francisco Health Care Ordinance - with passage of the Paid Sick Leave Ordinance, San Francisco became the first city in the state to require all employers to provide paid sick leave.

- San Francisco Minimum Wage Ordinance - \$10.24 per hour. The San Francisco minimum wage is adjusted once per year. All employers, regardless of where they are located, must pay at least this wage to any of their employees who perform work in the City and County of San Francisco. More specifically, any employee who performs at least two (2) hours of work in a week within the geographic boundaries of San Francisco is entitled to be paid no less than the San Francisco minimum wage. This minimum wage applies to both full time and part time employees.

## **In Conclusion**

California is a unique state when it comes to employment labor laws. Human Resource professionals in other states who are responsible for California employees can get the assistance they need to comply with our labor laws from HR experts like CEA.

## **About California Employers Association**

As one of California's leading state-wide providers of Human Resources support for businesses, CEA specializes in providing personalized consultation with a staff of dedicated employee relations experts who offer a combined 125 years of experience.

As a membership organization, CEA provides human resource and labor relations consulting services both over the phone and on-site. Our "hands on" approach includes assisting businesses in areas ranging from implementing proper hiring procedures to developing a comprehensive employee handbook to providing sexual harassment awareness training to representing an employer in union negotiations and before governmental agencies in unemployment, wage and discrimination claims.

The California Employers Association was founded in 1937 by a small group of business owners from a cross-section of industries as a cost-effective vehicle to provide solutions to employer-employee relations. More than 75 years later, the not-for-profit CEA has grown to become a statewide, member-owned organization that assists over 8000 private and public sector employers in promoting mutually beneficial relations between employers and employees.