CALIFORNIA
EMPLOYMENT LAW GUIDE

Federal, state and local governments adopt labor and employment laws to protect the rights, health and compensation of workers.

As a general rule, federal laws supersede state and local laws. However, state and local laws can supplement or provide additional protections to employees and impose additional requirements that employers must follow. When a conflict exists between federal and local requirements, the U.S. Department of Labor instructs employers to follow the law that provides the highest protection or greater benefit to the employee.

This Employment Law Guide provides employers a reference of key state labor and employment laws. Employers can use the content in this guide to learn more about their obligations and liability under state law. When possible, this guide includes direct links to agency guidance and official posters, notices and forms.

Please note that this guide provides a high-level overview of labor and employment standards in the state. Additional requirements may apply or be adopted. Employers are encouraged to consult with knowledgeable legal professionals or to contact stage agencies for legal advice, authorized guidance and official interpretations of these or other employer requirements.

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RECRUITING AND HIRING

JOB APPLICATION AND INTERVIEW RULES

Both federal and state laws generally prohibit certain types of pre-employment discrimination. In California, the Fair Employment and Housing Act (FEHA) places limits on employers' job advertising, application procedures and pre-employment questioning and medical examinations.

Duty Not to Discriminate

All employers have a duty to conduct recruitment activities in a non-discriminatory manner. This duty applies not only to recruitment activities for paid employment, but also for activities to recruit unpaid interns and participants in other unpaid, limited-duration positions. The FEHA bars employers from discriminating on the basis of **race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age (40 and over), sexual orientation, or military or veteran status.**

In general, employers are prohibited from conducting activities that:

- Restrict, exclude or classify individuals on the basis of a protected class;
- Express a preference for individuals on the basis of a protected class;
- Communicate or use advertising methods to communicate the availability of a job or employment benefit on the basis of a protected class.

Prohibited Inquiries

FEHA prohibits employers from making any inquiry, either verbally or through the use of an application, that is not job-related or that directly or indirectly discriminates on the basis of a class protected under FEHA.

Prohibited pre-employment inquiries include, but are not limited to, questions regarding an applicant's:

- Nationality, lineage, ancestry, national origin, descent or parentage (or that of the applicant's spouse, parent or relative);
- Race, color, complexion, color of eyes or hair, or sexual orientation;
- Religion or religious days observed;
- General health, medical condition or mental or physical disabilities;
- Pregnancy, childbirth or birth control;
- Sex, marital status or number or ages of children or dependents;
- Age, birthdate, date of attendance or completion of school or questions that tend to identify applicants over age 40;
- Arrest records (other than convictions that are not sealed, expunged, or statutorily eradicated); and
- Military service (other than relevant skills obtained).

Applications and Interviews

FEHA prohibits employers from requiring photographs as part of an application and from administering, separating or coding application forms in a manner that discriminates on the basis of any characteristic covered by FEHA. In particular, employers may not refuse to provide, accept or consider applications from only individuals of one sex, individuals with disabilities or individuals over the age of 40.

In addition, all personal interviews must be free of discrimination, and employers must make reasonable accommodations for the needs of persons with disabilities in interviewing situations.

Job Advertising

Under FEHA, employers may not print or circulate any publication or advertisement that expresses any limitation, specification or discrimination against members of any class protected by the FEHA.

Specific unlawful advertising practices include, but are not limited to:

- Creating separate listings of job openings under male and female classifications;
- Advertising a position or employment benefit in a manner the discourages applicants with disabilities from applying for the position; and
- Expressing a preference for individuals under age 40 or expressing a limitation against individuals over age 40.

Medical and Psychological Examinations

FEHA forbids employers from requiring a medical or psychological examination of any applicant. Inquiries regarding whether an applicant has a mental or physical disability or medical condition or regarding the nature and severity of a mental or physical disability or medical condition are also prohibited. However, employers may inquire into the ability of an applicant to perform **job-related functions**. The FEHA's prohibition on medical examinations does not include testing for illegal drug use.

Once an employment offer has been made to an applicant, but prior to the commencement of employment duties, employers may require a medical or psychological examination, provided that:

- The examination or inquiry is job-related and consistent with business necessity; and
- All entering employees in the same job classification are subject to the same examination or inquiry.

An employer may withdraw an offer of employment based on the results of a medical or psychological examination or inquiry only if it is determined that:

- The applicant is unable to perform the essential job duties with or without reasonable accommodation; or
- The applicant's performance of job duties would endanger the health or safety of the applicant or others.

Requiring applicants or employees who have reached the age of 40 to meet physical or medical examination standards that are higher than those standards applied to applicants or employees below that age is also unlawful.

Prohibited Waivers

California law prohibits employers from requiring, as a condition of employment, continued employment, or the receipt of any employment-related benefits, any job applicant or employee to waive any right, forum or procedure for a violation of the FEHA.

Hiring Decisions

As long as age is not a factor in the decision, employers are not barred from selecting an individual who is more qualified or experienced than other applicants. The FEHA allows employers to give candidates who have a record of seniority or prior service with that employer preference over a candidate who has no such record. However, where candidates have an equal record of seniority or time in prior service, employers may not discriminate in hiring on the basis of age.

SALARY HISTORIES

California employers are generally prohibited from:

- Seeking salary history information—including information on compensation and benefits—about an applicant either orally or in writing.
- Relying on an applicant's salary history information as a factor in determining whether to offer employment to an applicant or what salary to offer him or her.

BACKGROUND CHECKS

Ban the Box (Criminal History Inquiries)

California's ban the box law applies to public and private employers with **five or more employees** in the state (with limited exceptions). Prior to Jan. 1, 2018, the law applied only to state and local agencies.

Prohibited Actions

California's ban the box law does **not** prohibit employers from conducting conviction history background checks on job applicants. However, the law **does prohibit all subject employers from:**

- Asking about an applicant's conviction history on an employment application;
- Asking about or considering an applicant's conviction history before making a conditional employment offer;
- Considering, distributing or disseminating certain information about an applicant while conducting a conviction history background check; and
- Interfering with, restraining or denying the exercise of, or the attempt to exercise, any right under the law.

Information about an applicant that an employer may not consider, distribute or disseminate while conducting a criminal history background check includes any:

- Arrests that did not result in a conviction (with limited exceptions);
- Referrals to or participation in pretrial or post-trial diversion programs;
- Convictions that have been sealed, dismissed, expunged or statutorily eradicated; and
- Convictions for which the convicted person has received a full pardon or has been issued a certificate of rehabilitation (effective Jan. 1, 2019).

Fair Chance Requirements

If an employer subject to California's ban the box law intends to deny employment to an applicant based on his or her conviction history (even if only in part), the employer must first perform an **individualized assessment** of whether the applicant's conviction history has a direct and adverse relationship with the specific duties of the job. For this assessment, the employer must consider:

- The nature and gravity of the offense or conduct;
- The amount of time since the offense or conduct and completion of the sentence; and
- The nature of the job held or sought.

If the employer makes a **preliminary decision** that the applicant's conviction history disqualifies him or her from employment, the employer must **notify the applicant in writing.** This notification does not have to justify or explain the reasoning behind the preliminary decision. However, the written notice **must include:**

- The disqualifying conviction upon which the employer based the preliminary decision;
- A copy of the conviction history report, if any; and
- An explanation of the applicant's right to respond before the decision becomes final and the deadline for his or her response.

As part of the explanation of an applicant's rights, the notice must also inform the applicant that his or her response may include:

- Evidence challenging the accuracy of the conviction history report; and
- Evidence of any rehabilitation or mitigating circumstances.

After providing its preliminary decision notice, the employer must give the applicant **at least five business days** to submit a written response. If the applicant submits a timely response indicating that he or she challenges the accuracy of the conviction and is taking specific steps to obtain supporting evidence, the employer must give him or her **at least five additional business days** to submit his or her complete response. During these time periods, the employer may not make any final decisions regarding the applicant's employment. Employers are also prohibited from making final decisions before they consider any evidence that an applicant submits within the applicable time periods.

If an employer's final decision is to deny employment, the employer must give **written notice to the applicant**. This notification **must include** information about:

- Any existing procedure the employer has for the applicant to challenge or request reconsideration of the decision; and
- The applicant's right to file a complaint with the California Department of Fair Employment and Housing.

Exceptions

The prohibitions and requirements under California's ban the box law do not apply for:

- Positions within a criminal justice agency;
- Farm labor contractor positions;
- Positions for which a state or local law requires a public agency to conduct conviction history background checks; or
- Employers that are subject to state, federal or local laws that require them to conduct background checks or to restrict employment based on criminal history.

Social Media Privacy

Employers are prohibited from requiring or requesting that an employee or applicant do any of the following:

- Disclose a username or password for the purpose of accessing personal social media.
- Access personal social media in the presence of the employer.
- Divulge any personal social media, except in the limited circumstances explained below.

"Social Media" is defined as an electronic service or account, or electronic content, including, but not limited to, videos, still photographs, blogs, video blogs, podcasts, instant and text messages, email, online services or accounts, or internet web site profiles or locations.

The law does not affect an employer's existing rights and obligations to request that an employee divulge personal social media reasonably believed to be relevant to an investigation of allegations of employee misconduct or employee violation of applicable laws and regulations, provided that the social media is used solely for purposes of that investigation or a related proceeding. The law also does not prohibit an employer from requiring or requesting an employee to disclose a username, password, or other method for the purpose of accessing an employer-issued electronic device.

IMMIGRATION AND EMPLOYMENT ELIGIBILITY VERIFICATION

California employers are generally required to:

- Provide a **notice** (English, Spanish) to each current employee of any inspections of federal Forms I-9 or other employment records conducted by an immigration agency **within 72 hours** of receiving notice of the inspection.
- Upon request, provide an affected employee a copy of the Notice of Inspection of Forms I-9 received from a federal agency.
- Provide to each affected employee a **copy of the immigration agency notice** that provides the inspection results **within 72 hours** of receipt. In addition, the employer must also provide to each affected employee **written notice** of the employer's and affected employee's obligations arising from the inspection results.

California employers are generally prohibited from:

- Requesting more or different documents than are required under federal law;
- Refusing to honor documents tendered that on their face reasonably appear to be genuine;
- Refusing to honor documents or work authorization based upon the specific status or term of status that accompanies the authorization to work;
- Using the federal E-Verify system to check the employment authorization status of a person at a time or manner not required under federal law;
- Threatening to contact or contacting any government or police authority regarding an employee's immigration status; or
- Reverifying whether a current employee is authorized to work in the United States, if the reverification process violates federal law (United States Code, Title 8, Section 1324a(b)). However, employers are permitted to review an employee's work authorization if the employer finds out the employee is, or has become, unauthorized to be employed in the United States.

NEW HIRES

New Hire Forms

In addition to the forms required by federal law, California employers must provide the following forms to new hires:

- Form DE 4, Employee's Withholding Allowance Certificate
- Workers' Compensation Pamphlet (Spanish)
- Programs for the Unemployed (DE 2320) (Spanish)
- Disability Insurance Provisions (DE 2515) (Spanish)
- Paid Family Leave (DE 2511) (Spanish)
- Either the sexual harassment Poster (Spanish) or Fact Sheet (Spanish) - click here for additional languages.
- Wage Theft Prevention Act (DLSE-NTE) (Spanish)
- Notice of Rights of Victims of Domestic Violence, Sexual Assault, and Stalking (Spanish)

New Hire Reporting

California employers generally must report the following information for each newly hired employee **within 20 days** of the date of hire:

- Employee's name (first name, middle initial, last name), home address, Social Security number, and start-of-work date.
- Employer's business name and address, contact person and phone number, California employer payroll tax account number, Federal Employer Identification Number (FEIN), and Branch Code (if applicable).

Employers can most easily submit this information one of two ways:

- Online through California's e-Services for Business; or
- By faxing or mailing Form DE 34 to the California Employment Development Department.

EMPLOYEE COMPENSATION AND WAGES

MINIMUM WAGE

Federal minimum wage law is governed by the Fair Labor Standards Act (FLSA). The current federal minimum wage rate is **$7.25 per hour** for nonexempt employees. California law complements federal law and, in some cases, prescribes more stringent or additional requirements that employers must follow. Whenever employers are subject to both state and federal laws, the law most favorable to the employee will apply.

The Division of Labor Standards Enforcement (DLSE), part of the California Department of Industrial Relations, enforces and investigates minimum wage violation claims.

Minimum Wage Rates

California has adopted a schedule that will increase the minimum wage rate for the state to $15 per hour as shown in the table below. Thereafter, the state will adjust the rates annually to reflect inflation. The table below outlines the scheduled rate changes.

Minimum Wage Rate		Effective Date
26 or more employees	25 or fewer employees	
$13 per hour	$12 per hour	Jan. 1, 2020
$14 per hour	$13 per hour	Jan. 1, 2021
$15 per hour	$14 per hour	Jan. 1, 2022
Adjustment for inflation	$15 per hour	Jan. 1, 2023

However, California law allows the governor to temporarily suspend a rate increase if the state's economic condition does not support it. Under a temporary suspension, the implementation schedule would be delayed by one year.

Tipped Employee Wages

California law does not allow employers to deduct any tip credits from their employees' wages or to pay tipped employees less than the state minimum wage rate. Tip payments include any tip, gratuity, money or other gift a patron gives an employee over and above the actual amount of the goods, food, drink, items or services the patron received from that business.

Minimum Wage Rate Exemptions

California's minimum wage rate requirements do not apply to employees in certain occupations and industries. Separate specific minimum wage rate and payment requirements, described in a series of minimum wage orders, apply for these employees. Other exceptions to California's minimum wage rate requirements include individuals who are closely related to their employer (parent, spouse or child) and outside sales personnel.

Notice and Postings

Employers must post and maintain updated information on the state's minimum wage rate in their employees' workplaces. Employers may use this poster to satisfy these requirements. Employers covered under one of California's industry-specific wage orders must also display a copy of the applicable wage order.

COMPENSABLE TIME

Generally, employers must pay their employees for every hour of compensable time. Compensable time usually includes every hour (or portion of an hour) an employee is required or allowed to be on duty. An employee is on-duty when the employer controls how he or she uses his or her time, including:

- Any time the employee is permitted or required to work;
- Any periods the employee must wait for an assignment; and
- Mandated recovery periods.

In certain circumstances, compensable time may include periods of time when an employee was not performing any activities but was still engaged to wait.

Compensable time does not include off-duty periods, where the employee is completely relieved from all work responsibilities or assignments and is free to pursue his or her own interests.

Security Screenings

With its decision in Frlekin v. Apple, Inc. (Frlekin) the California Supreme Court clarified that, under state law, compensable time includes the time an employee spends on the employer's premises waiting for, and undergoing, mandatory exit searches of bags, packages, or personal technology devices (such as iPhones) that are voluntarily brought to work purely for personal convenience.

In Frlekin, the plaintiffs sued their employer, Apple Inc. (Apple), for unpaid minimum and overtime wages for the time they spent waiting for and undergoing Apple's exit searches. Apple required its employees to clock out before submitting to thorough security screenings at the end of their work shift and leaving Apple's premises. The screenings could be lengthy and required employees to wait for extended periods of time.

Under California's Wage Order 7 (the controlling law in this case), "hours worked" is defined as "the time during which an 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." (Emphasis added.)

The court in this case concluded that an employer is controlling an employee's time when it requires the employee to submit to an exit search before exiting the employer's premises. As a result, the court determined that the time employees spend undergoing exit searches is compensable as "hours worked" under California labor law.

Even though security screening cases are uncommon under federal law, this court decision seems to contradict the U.S. Supreme Court's decision in Integrity Staffing Solutions, Inc. v. Busk, holding that time spent awaiting bag checks was not compensable time under the Fair Labor Standards Act (FLSA). Employers will want to understand the difference between these two cases and determine whether state or federal law applies, based on their specific circumstances.

Finally, the California Supreme Court also indicated that the *Frlekin* decision applies retroactively, meaning that employers that adjust their security screening and other off-the-clock practices may also need to go back a few years to determine whether they are liable for unpaid wages to their employees.

Traveling Time

An employee's commute, or regular home-to-work travel time, is generally not compensable time. Home-to-work travel is a normal incident of employment, regardless of whether the employee works at a fixed location or at different job sites. This is the case even if employees commute in a vehicle that is owned, leased or subsidized by the employer and is used for ridesharing (as defined by the California Vehicle Code).

Workday and Workweek

A workweek in California is a fixed period of **168 hours, or seven consecutive 24-hour workdays**.

The workweek can begin on any day of the week and at any hour of the day, without coinciding with a calendar week. A workday is any consecutive 24-hour period commencing at the same time each calendar day. California recognizes the eight-hour workday as a full day's work.

Maximum Work Hours

For certain industries, state law regulates the maximum number of hours an employee can work per workday, per workweek or before a prolonged rest break becomes mandatory.

Maximum work hour restrictions apply for employees in the following industries:

- Trains and railroads (operators can work up to 12 hours per workday, while individuals who dispatch, report, transmit, receive or deliver orders affecting train movements can work up to nine hours in any 24-hour period);
- Underground mines, smelters and plants used for reducing or refining ores or metals (employees can work up to eight hours within any 24-hour period); and
- Pharmacies (employees, except registered pharmacists, cannot work more than an average of nine hours per day, 108 hours during two consecutive workweeks or 12 days in any two consecutive workweeks).

In general, employers that violate these industry-specific regulations are subject to a variety of penalties that include **criminal charges**, **fines**, **imprisonment** and **administrative sanctions**. However, some exceptions apply for certain exempted individuals, in cases where controlling bona fide collective bargaining agreements exist and during a state of emergency.

OVERTIME

In California, the overtime wage rate depends on *when* the overtime work takes place, as described below. Because overtime calculations depend on the number of hours worked per day or per week, employers cannot average the hours an employee works during one day or one week with the hours the employee works on any other workday or workweek.

Overtime Rate	Hours of Work
1.5 times the regular wage rate	More than 40 during a workweek (45 for domestic work employee)
	More than 8 during a workday (more than 9 for domestic work employee)
	During the first 8 hours of the 7th workday
Twice the regular wage rate	More than 12 during workday
	More than 8 during 7th workday

Alternative Work Schedules

Employers and their employees can agree on an alternative work schedule that permits employees to work **up to 10 hours** during a workday without accruing overtime. However, overtime regulations still apply for any hours employees work over 40 during an alternative work schedule week.

Before adopting an alternative work schedule, employers must propose the alternative schedule to their employees. The proposal can consist of:

- A single work schedule for all affected employees; or
- Several work schedule options that each employee can choose from.

A proposal can only be approved if **at least two-thirds** of all affected employees vote to adopt it. The results of any election to adopt an alternative schedule must be reported to the DLSE **within 30 days** of when the results are final.

Under an alternative work schedule, employers must pay their employees overtime wages for certain hours worked outside of the alternative work schedule, as shown in the table below:

Hours Worked	Overtime Wage Rate
Over 8 hours, up to 12 hours, during a regularly scheduled workday	One and one-half the employee's regular rate
Over 12 hours during a regularly scheduled workday	Twice the employee's regular rate
Over 8 hours during any day beyond the employee's regularly scheduled workday	Twice the employee's regular rate

Employers may not reduce an employee's regular wage rate solely because an alternative work schedule has been adopted, repealed or nullified. Employers must also make reasonable efforts to find a work schedule that does not exceed **eight hours in a workday** to accommodate affected employees who are unable to work the alternative schedule hours (for example, because of the employee's religious beliefs or observances that conflict with the adopted alternative work schedule).

Calculating the Regular Rate of Pay

An employee's regular wage rate is the actual rate of pay he or she receives for a standard, non-overtime workweek. Employers must calculate their employees' regular rate before they can determine applicable overtime wages. An employee's regular rate can vary from week to week and may be different from the employee's contractual rate of pay.

An employee's regular rate for a specific work period is calculated by dividing the employee's **entire compensation** for a workweek by the **number of hours the employee worked** during that period. An employee's entire compensation is all compensation paid to the employee. Generally, this includes the employee's hourly rate, shift differential, non-discretionary bonuses, production bonuses and commissions, and excludes reimbursements for business expenses, bona fide gifts, discretionary bonuses, employer-investment contributions and payment for non-working hours (for example, pay for vacation, sick leave or jury duty).

A workweek in California is a fixed period of **168 hours**, or **seven consecutive 24-hour workdays**. The workweek can begin on any day of the week and at any hour of the day, without coinciding with a calendar week. To determine the number of hours an employee works during a workweek, the employer must consider any time during which the employee was subject to the employer's control. This includes any time the employee is:

- Allowed to work (regardless of whether he or she is required to work);
- Waiting for a job assignment;
- Waiting to begin work;
- Cleaning or performing other "off the clock" duties; and
- Traveling under the request, control or direction of the employer (excluding normal commuting time to and from work).

Exemptions

California's overtime wage payment laws do not apply to:

- Bona fide executive, administrative and professional employees;
- Hourly employees in the computer software field who meet certain requirements;
- State and political subdivision employees (including city, county or special district employees);
- Outside sales personnel;
- Individuals closely related to their employers (parent, spouse, child and adopted child);
- Individuals participating in a national service program such as AmeriCorps;
- Teachers at a private elementary or secondary academic institution (except tutors, teaching assistants, instructional aides, student teachers, day care providers, vocational instructors or other similar employees);
- Licensed physicians and surgeons who primarily engage in duties that require a license and meet the DLSE's minimum wage qualification;
- Drivers subject to regulation by the U.S. Department of Transportation;
- Drivers who work in the transportation industry;
- Employees excluded from overtime provisions by a collective bargaining agreement (agreement must specify wages, work hours and working conditions for employees, including specific overtime compensation);
- Employees whose earnings are more than half derived from commission (excludes minors, and earnings must be higher than one and one-half the state's minimum wage rate);
- Student nurses attending an accredited school;
- Taxicab drivers;
- Airline employees who work between 40 and 60 hours per week due to a temporary modification in their normal work schedule requested by the employee and not required by the employer;
- Full-time carnival ride operators employed by a traveling carnival;
- Crew members employed on a commercial fishing boat;
- Professional actors;
- Motion picture projection employees;
- Announcers, news editors or chief engineers employed by a radio or television station in a city or town with a population of 25,000 or less;
- Any employee engaged in work that:
- Is primarily intellectual, managerial or creative;
- Requires the exercise of discretion and independent judgment; and
- For which compensation is at least twice the state's monthly minimum wage for full-time employment.
- Sheepherders;
- Irrigators;
- Personal attendants; and
- Minors who are employed as babysitters working at their employer's home.

In addition, California's has published the following chart as an overview of overtime wage exemptions under the state's Industrial Welfare Commission (IWC) wage orders.

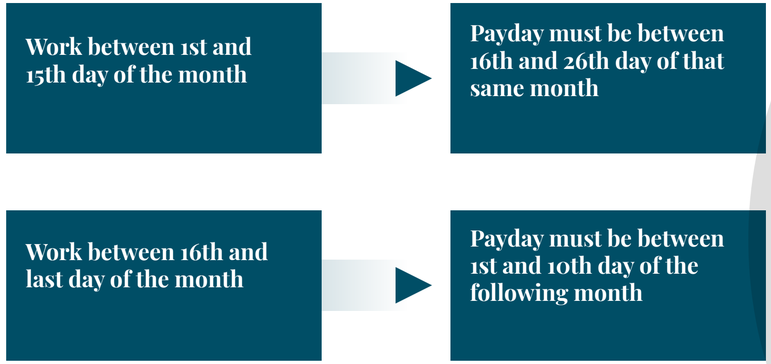
IWC Order	Affected Employees	Exemption Under IWC Order
All orders, Section 1	Executive, administrative and professional employees	Sections 3 through 12 of the orders (3 through 11 for Order 16-2001) do not apply.
All orders, Section 1, except Orders 14 and 16	Employees in the computer software field who are paid on an hourly basis and meet all of the other requirements set forth in the Orders.	Exempt from orders (under "Professional" employee classification).
All orders, Section 1, except Orders 14 and 15	Employees directly employed by the state or any political subdivision thereof, including any city, county or special district.	Exempt from orders, except Sections 1, 2, 4, 10 and 20.
All orders by operation of law (see Labor Code Section 1171)	Outside salespersons	Exempt from orders
All orders, Section 1	Any individual who is the parent, spouse, child or legally adopted child of the employer.	Exempt from orders
All orders	Any individual participating in a national service program, such as AmeriCorps.	Exempt from orders
All orders, except Orders 11, 12, 15, and 16	Drivers whose hours are regulated by the U.S. Department of Transportation Code of Federal Regulation, Title 49, Sections 395.1 to 395.13, Hours of Service of Drivers	Exempt from overtime provisions
All orders, except Orders 11, 12, 15, and 16	Drivers whose hours are regulated by Title 13 of the California Code of Regulations, subchapter 6.5, section 1200 et seq.	Exempt from overtime provisions
All orders	Employees covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work and working conditions, and if the agreement provides premium wage rates for all overtime hours worked and a regular hourly rate of pay for those employees of not less than 30% more than the state minimum wage.	Exempt from overtime provisions
Orders 4 and 7	Employees (except minors) whose earnings exceed one and one-half times the minimum wage and more than half their compensation represents commissions.	Exempt from overtime provisions
Order 5	Student nurses in a school accredited by the California Board of Registered Nursing or by the Board of Vocational Nurse and Psychiatric Technician Examiners.	Exempt from Order 5, except Sections 1, 2, 4, 10, and 20.
Order 9	Employees who have entered into a collective bargaining agreement under the Railway Labor Act.	Exempt from Order 9, except Sections 4, 10, 11, 12, 20, and 22
Order 9	Taxicab drivers	Exempt from overtime provisions
Order 9	Airline employees who work over 40 but not more than 60 hours during the workweek due to a temporary modification in their normal work schedule not required by the employer and arranged at the request of the employee	Exempt from overtime provisions
Order 10	Full-time carnival ride operators employed by a traveling carnival	Exempt from Order 10, except Sections 1, 2, 4, 10, and 20
Order 10	Crew members employed on a commercial fishing boat (Fish and Game Code Section 7920 et seq.)	Exempt from overtime provisions
Orders 10, 11, and 12	Professional actors	Exempt from orders, except Sections 1, 2, 4, 10, and 20
Order 10	Employees whose duties are exclusively those of a motion picture projectionist	Exempt from overtime provisions
Order 11	An announcer, news editor or chief engineer employed by a radio or television station in a city or town with a population of 25,000 or less	Exempt from overtime provisions
Order 14	Any employee who is engaged in work that is primarily intellectual, managerial or creative, and which requires exercise of discretion and independent judgment, and for which the remuneration is not less than two times the monthly state minimum wage for full-time employment. Note: This exemption in Wage Order 14 would have to be harmonized with Labor Code section 515(a) for overtime purposes.	Exempt from order
Order 15	Personal attendants not covered under the Domestic Worker Bill of Rights	Exempt from order, except Sections 1, 2, 4, 10, and 15
Order 15	Any person under the age of 18 who is employed as a babysitter for a minor child of the employer in the employer's home.	Exempt from order

WAGE PAYMENT

California law requires employers to pay wages in lawful United States currency with cash, check, direct deposit (requires voluntary employee authorization), pay card (such as a pre-paid debit card) or any other means of payment that pose no cost to the employee. The Division of Labor Standards Enforcement (DLSE), part of the California Department of Industrial Relations, enforces wage payment standards throughout the state.

Frequency of Payment

Employers must pay employee wages **at least twice per month,** on established, regular paydays.



Employers are permitted to pay wages at earlier days or at more frequent intervals.

Exceptions

Frequency-of-payment regulations do not apply to all types of wages. For example, overtime wages must be paid by the following regular period's payday and wages paid due to layoff, temporary work, employee resignation and commissions may be paid at different times.

In addition, certain employees are exempt, including:

- Salaried executive, administrative and professional employees covered by the FLSA (may be paid once per month, on or before the 26th day of the month during which the labor was performed if the entire month's salaries, including the unearned portion between the date of payment and the last day of the month, are paid at that time);
- Employees covered by a valid collective bargaining agreement;
- Employees paid on a weekly basis;
- Licensed vehicle dealer employees (may be paid once per month on a day designated in advance by their employers); and
- Domestic and agricultural employees (may be paid once per month on a previously determined payday, if they receive board and lodging from their employers; paydays may not be more than 31 days apart). "Agricultural employees" includes individuals who work with crops, vineyards, stock and poultry. However, those employed by farm labor contractors do not qualify for this exception. Farm labor contractors must pay wages at least once per week.

Regular Pay Day Notice

California law requires employers to post a notice, conspicuously and in a place where employees frequently pass by and can see it, indicating the date, time and place of payment (if applicable). Failure to post this notice will be considered prima facie evidence of a wage payment violation.

Payroll Deposit

Employers in the following industries are required to maintain a deposit in a bank or other financial institution of sufficient size and liquidity to cover all of their payroll obligations:

- Mining (except for petroleum, persons with a free and unencumbered title to the property and partners of a mining partnership);
- Logging (logging and sawmill operation contractors, except for persons with a free and unencumbered title to the property);
- Door-to-door selling or telephone solicitation; and
- Theatrical enterprises (except persons with a free and unencumbered title to the property on which the theatrical enterprise is produced). A theatrical enterprise is the production of any circus, vaudeville, carnival, revues, variety shows, musical comedies, operettas, opera, drama, theatrical, endurance contest, walkathon, marathon, derby or other entertainments, exhibitions or performances.

Employers subject to the payroll deposit requirement must display a notice that indicates the name and address of the bank or trust company that holds the payroll deposit. Failure to display this information in a conspicuous place will be considered prima facie evidence of a violation.

Disputed wages

If a dispute over the amount of wages due to an employee arises, employers must pay any undisputed amount according to the requirements described above. An employee that accepts undisputed wages does not waive any right to pursue collecting the disputed portion.

If the DLSE determines any wages are owed to the employee, it will issue a notification to the employer. Employers must pay those wages within 10 days of receiving a notification. Employers that are able but willfully fail to pay these wages within the 10-day period may be required to pay **three times the amount of any damages**, in addition to any other applicable penalty.

WITHHOLDINGS AND DEDUCTIONS

Employers may not withhold an employee's wages (in whole or in part), unless the withholding or deduction is authorized (by law or by the employee.

Common deductions authorized by law include taxes, union dues, FICA contributions, garnishments and court-ordered deductions (such as child support). Common deductions authorized by employees include funds for employee participation in hospitalization and medical insurance plans, savings plans and deposits to financial institutions, stock purchases, charitable donations, retirement plans, supplemental retirement plans, loan payments, loan or wage advances, employer goods or services and employer equipment or property. These authorizations must be made through a valid and legal agreement.

Employers must record each withholding with accuracy. In general, wage deductions and withholdings cannot reduce an employee's gross wages below the minimum wage rate, unless authorized by law. Employers may not derive any financial gain from wage deductions.

Wage Assignments

A wage assignment occurs when an individual gives another party the right to collect his or her future wages. Wage assignments do not include deductions made at the employee's request for:

- Life, retirement, disability or unemployment insurance premiums;
- Taxes owed by the employee;
- Contributions to death, retirement, disability, unemployment or other benefit funds, plans or systems;
- Employer goods or services; or
- Charitable, educational, patriotic or similar purposes.

Valid wage assignments must be made in writing and signed by the wage earner, and must include written statements from the employee specifying:

- His or her marital status;
- Whether he or she is an adult; and
- That no other assignment exists in connection with the same transaction.

Assignments made by a married person must include either the spouse's written consent or a written statement that the spouses are legally separated or divorced and living separately. Assignments made by a minor must include a parent or guardian's written consent.

A notarized copy of the assignment must be filed with the employer. Employers may rely on the employee's statements in the assignment without incurring any liability, and without having to verify whether they are true. When making a wage assignment, an employee may not:

- Assign more than **50 percent** of his or her wages;
- Assign wages while an earnings withholding order is in force;
- Have more than one wage assignment in force; or
- Assign wages that they have not yet earned, unless the assignment is made to cover for life necessities (certain restrictions may apply).

Wage assignments may be revoked at any time.

Wage Statements

Employers must provide each employee with an itemized wage statement at the time wages are paid. The itemized wage statement must show:

- Gross wages earned;
- The employee's applicable wage rate (or rates);
- The number of hours the employee worked for each applicable rate;
- The total number of hours worked (unless the employee is salaried and is exempt from overtime wage payment provisions);
- The number of piece-rate units earned and any applicable piece rate, if the employee is paid on a piece-rate basis;
- All withholdings and deductions for that pay period (must be printed in indelible ink);
- Net wages earned;
- The inclusive dates of the pay period;
- The employee's name and the last four digits of his or her Social Security (or other identification) number; and
- The employer's name and address.

Employers must keep copies of these records for **at least three years**, and must allow current and former employees to inspect or copy their own statements **within 21 days of receiving a request**. Employers may take reasonable steps to protect the identity of a current or former employee. Employees are responsible for the cost of copying their statements.

LAST PAYMENT OF WAGES

Unless a valid collective bargaining agreement applies, the table below outlines the requirements for paying an employee's last wages.

Discharge	At the time of discharge
Resignation*	At least 72 hours' notice: at the time of resignation
	No notice: no later than 72 hours after resignation
	*Does not include agreements to work for a definite term
Layoff	Employment in oil drilling industry: no later than 24 hours after layoff (excluding weekends and holidays)
	Employment in canning, curing or drying perishable fruit, fish or vegetables: no later than 72 hours after layoff
Any Reason	Employment in motion picture production or broadcasting
	By the next regular payday

When calculating an employee's last wages, employers must include any unused vacation time and other vested employment benefits. In general, an employee's last wages may be paid by mail, if the employee requests it and provides a mailing address. Payments that are mailed must be postmarked within the required payment period.

MEAL AND REST BREAKS

Day's Rest

Employers may not require employees to work more than six days per workweek if the employee's work schedule is for **more than 30 hours** per week or **six hours** per day. However, this restriction does not apply to agricultural occupations. The DLSE may also exempt any employer or employees from this restriction during times of emergency or hardship, including situations where work is performed to protect life or property from loss or destruction.

When an exception applies, employees may be entitled to receive the accumulated number of rest days they were unable to use during that time. Violations of this restriction constitute a misdemeanor.

Recovery Period

Unless an exemption applies, employers cannot require employees to work during a **recovery period**. A recovery period is a break provided to certain employees to prevent heat illness. The prohibition on employers applies to recovery periods mandated by law or required by:

- The Industrial Welfare Commission;
- The Occupational Safety and Health Standards Board; or
- The Division of Occupational Safety and Health.

Employers must count mandated recovery periods as compensable time and must compensate their employees accordingly. Employers that fail to provide a required recovery period to their employees must compensate their employees with an additional hour of work, at the employee's regular wage rate, for each workday when the recovery period is not provided.

Meal Breaks

Employers cannot allow their employees to work more than **five hours** without taking a **30-minute meal break**. The meal break requirement can be waived by the employee's and the employer's mutual consent if the employee's shift lasts fewer than six hours. A second 30-minute meal period is required if the employee's shift is longer than 10 hours. The second meal period can also be waived by mutual consent if the employee's shift lasts fewer than 12 hours and the first meal period was not waived.

In certain industries, state law also dictates when employers must provide this meal break. For example, employers must provide a meal break between the third and fifth hour of the shift for employees that operate a sawmill, shakemill, shinglemill, logging camp, planing mill, veneer mill, plywood plant or any

other type of plant or mill which processes or manufactures any lumber, lumber products or allied wood products. Violations of this requirement constitute a misdemeanor, punishable by a fine of between $100 and $400.

Employers are generally not required to compensate their employees for this 30-minute break, unless it is impractical for the employees to take an uninterrupted meal break because of the nature of the business activity or other circumstances. In these cases, employees must also be allowed to consume a meal while "on the job." The DLSE may allow some exceptions to this rule if it determines that the exception will not jeopardize the health and welfare of the affected employees.

Meal break requirements do not apply to:

Wholesale Baking	Employee must be: • Subject to a California wage order; • Covered by a collective bargaining agreement that requires a 35-hour workweek of five 7-hour workdays; • Paid at least one and one-half their regular wage rate for any overtime hours worked; and • Allowed to take at least one 10-minute break every two hours.
Motion Picture or Broadcasting	Employee must be covered by a valid collective bargaining agreement that: • Provides for meal periods; and • Includes a monetary remedy if the employee is not allowed meal breaks.
Construction, Commercial Driving, Security Services and Electric, Gas or Local Publicly Owned Electric Utilities	Employee must be covered by a valid collective bargaining agreement that: • Specifies employee wages, work hours and working conditions; • Specifies employee meal periods; • Requires final and binding arbitration for disputes related to meal periods and overtime wage rates; and • Guarantees a regular hourly wage rate of at least 130 percent of the state minimum wage rate.

Nursing Breaks

California law requires employers to provide nursing mothers with **reasonable time each day** to express breast milk for her infant child. The break can run concurrently with any other break already provided to affected employees. Break times that do not run concurrently with a rest time required by a wage order must be unpaid.

Employers must make reasonable efforts to provide a location close to the employee's work area, other than a toilet stall, where the employee may take this break in privacy. This may include the employee's work area, if all the criteria are met.

In addition, effective as of **Jan. 1, 2020**, the lactation room must:

- Be safe, clean and free of hazardous materials;
- Contain a surface for a breast pump and personal items;
- Contain a place to sit; and
- Have access to electricity or alternative devices (extension cords, charging stations) needed to operate breast pumps.

Also effective as of Jan. 1, 2020, employers must:

- Provide lactating employees with access to a sink with running water and a suitable place for storing expressed milk, such as a refrigerator. Water and storage access must be in close proximity to the employee's workspace; and
- Implement a lactation policy (with required specified information) and include it in their employee handbook or other set of policies made available to employees. The policy must be distributed to new employees upon hiring and when an employee asks about or requests parental leave.

Employers with **fewer than 50 employees** may qualify for an exemption from one of the requirements listed above if they can prove that providing the accommodation would cause the employer significant difficulty or expense in relation to the size, financial resources, nature or structure of the employers' business. Click here for more information about lactation accommodations.

Employers that fail to provide a break for nursing mothers are subject to a **fine of $100** for each violation and a citation from the DIR.

MANDATED DISABILITY BENEFITS

California State Disability Insurance (SDI) is a partial wage-replacement insurance plan for California workers consisting of two programs: Disability Insurance and Paid Family Leave. The SDI programs are state mandated and funded through employee payroll deductions.

- The **Disability Insurance (DI) Program** provides short-term benefits (for a maximum of 52 weeks) to eligible employees unable to work due to a non-work-related illness or injury, or pregnancy or childbirth.
- The **Paid Family Leave (PFL) Program** provides up to six weeks (eight weeks, effective July 1, 2020) of partial pay within a 12-month period to employees who take time off to care for a seriously ill child, spouse, parent, parent-in-law, grandparent, grandchild, sibling, or registered domestic partner, or to bond with a new child.

Employer Requirements

California employers are required by law to:

- Withhold and remit SDI contributions;
- Inform their employees of SDI benefits; and
- Respond to the California Employment Development Department notice triggered when one of its employees files a claim.

2021 Withholding Rate: The SDI withholding rate for 2021 is **1.20%**, the taxable wage limit is **$128,298** per employee for the year, and the maximum withholding amount for each employee is **$1,539.58**. For more information, please click here.

Posters and Notices: Employers are responsible for providing information on SDI to their employees by posting and providing the following:

- Notice to Employees: Unemployment Insurance/Disability Insurance/Paid Family Leave (DE 1857A)
- Disability Insurance Provisions (DE 2515)
- Paid Family Leave Benefits (DE 2511)

Voluntary Plans

California law allows an employer to apply to the California Employment Development Department (EDD) for approval of a private, Voluntary Plan for the payment of Disability Insurance and Paid Family Leave benefits in place of the mandatory State SDI coverage. Voluntary Plans must provide all the benefits of SDI, at least one benefit that is better than SDI, and it cannot cost employees more than SDI.

MANDATED RETIREMENT BENEFITS

CalSavers is a state-run retirement plan for private sector employees. Under state law, many California employers are, or will be, **required** to offer a retirement plan to their employees or provide their employees with access to CalSavers.

The effective date of the requirement depends on the size of the employer, as follows:

- Employers with **100 or more employees** were required to either offer a retirement plan or provide their employees with access to CalSavers by Sept. 30, 2020 (extended from June 30, 2020, due to the COVID-19 outbreak).
- Employers with **50 or more employees** are required to either offer a retirement plan or provide their employees with access to CalSavers by June 30, 2021.
- Employers with **5 or more employees** are required to either offer a retirement plan or provide their employees with access to CalSavers by June 30, 2022.

The law specifies an employer's responsibilities as follows:

- Employers **are responsible** for adding employees to CalSavers and submitting employee contributions to CalSavers via post-tax payroll deductions.
- Employers **are not required** to pay fees to support CalSavers.
- Employers are note able to make contributions to their employees' CalSavers accounts.
- Employers do not have any fiduciary responsibility for their employees' CalSavers accounts.

EMPLOYEE LEAVE

Employers may provide their employees with various types of paid or unpaid leave as part of their overall compensation packages. This may include vacation time, personal leave and sick leave.

Employers have some flexibility when it comes to establishing or negotiating employee leave policies. However, federal laws such as the Family and Medical Leave Act (FMLA) require covered employers to provide employees with job-protected leave in certain situations. California law also provides a number of leave entitlements to employees, as described below.

Finally, in response to the COVID-19 health emergency, California has enacted state and local laws (not addressed in this overview) requiring employers to provide leave to employees for reasons related to the coronavirus. Due to the rapid and numerous legislative changes adopted in response to this pandemic, COVID-19 leave laws and requirements will not be addressed in this document.

STATE LEAVE REQUIREMENTS

Jury Duty, Witness and Crime Victim Leave

All employers are prohibited from discharging or in any way discriminating against employees who take time off from work to serve on a jury, comply with a valid subpoena or attend judicial proceedings related to a felony crime. Leave is unpaid. Notice requirements apply.

Voting Leave

All employers must allow employees who do not have sufficient time outside of working hours to vote in a statewide election to, on an election day, take enough time off from work in order to vote. Employers must pay employees for up to two hours of leave for voting purposes. Notice requirements apply.

Victim Leave

All employers must grant unpaid leave to employees:

- Who are victims of crime or abuse that caused physical injury or mental injury;
- Who are victims of crime or abuse that caused mental injury and the threat of physical injury;
- Who are victims of domestic violence, sexual assault, or stalking; or
- Whose immediate family member was killed in a crime.

The purpose of the leave is to obtain any relief (such as a restraining order) to help ensure the health, safety or welfare of either themselves or their children. Employee notice and certification requirements apply.

Employers with at least 25 employees must grant leave, up to the amount of FMLA leave available, to employees who are victims of domestic violence, sexual assault or stalking, or who are victims of crime or abuse that caused physical injury or mental injury and the threat of physical injury, or whose immediate family member was killed in a crime, so that they can:

- Seek medical attention for related injuries;
- Obtain services from a domestic violence shelter, program or rape crisis center;
- Obtain psychological counseling; or
- Participate in safety planning and take other actions to increase their safety.

Employer notice requirements upon hire and upon request apply. Employee notice and certification requirements also apply.

Employers are not required to provide this leave over or in addition to FMLA leave but may require an employee to use vacation, personal leave or compensatory time off that is otherwise available to him or her, unless a collective bargaining agreement provides otherwise. These leave protections apply equally to men and women.

Military and Military Spouse Leave

In addition to federal law, California law provides employment protections for California and U.S. military members. All employers must provide temporary unpaid leave to military members for periods of military duty, as follows:

- Up to 17 days per year for U.S. Reserve members; and
- Up to 15 days per year for State Military Reserve members.

Employers with five or more employees must provide employees eligible for leave under the California Family Rights Act with up to 12 weeks of unpaid leave under that statute for a qualifying exigency related to the covered active duty or call to covered active duty of an employee's spouse, domestic partner, child, or parent in the Armed Forces.

Employers with 25 or more employees must provide up to 10 days of unpaid leave to eligible spouses of military service members when their spouses are on leave from deployment. Notice and certification requirements apply.

All employers must reemploy National Guard members of any state following a period of state military service.

School Activity Leave

Employers with 25 or more employees must provide employees with up to 40 hours of unpaid leave per year to attend or otherwise be involved with their child's school or day care facility. Notice and certification requirements apply.

The school activity leave law specifically allows a parent to take this leave for the following child-related activities:

- To find, enroll or reenroll his or her child in a school or with a licensed childcare provider, or to participate in activities of the school or childcare provider, limited to eight hours per month; or
- To address a school emergency or childcare provider emergency (including a situation where a child cannot stay at school or with a childcare provider due to behavioral or discipline problems).

This law extends leave protections to nontraditional family relationships. The law defines a "parent" as a parent, guardian, stepparent, foster parent, or a grandparent of, or a person who stands in loco parentis to, a child.

Finally, all employers must permit employees to take time off from work to appear at their child's school after the child has been suspended. Notice requirements apply.

Alcohol or Drug Rehabilitation Leave

Employers with 25 or more employees must reasonably accommodate any employee who wishes to voluntarily enter and participate in an alcohol or drug rehabilitation program, unless the accommodation would impose an undue hardship on the employer.

Volunteer Firefighter, Reserve Police and Emergency Rescue Personnel Leave

All employers must permit an employee who is a volunteer firefighter, reserve peace officer or emergency rescue personnel to be absent from or late for work to perform emergency duty.

Employers with 50 or more employees must permit an employee who is a volunteer firefighter, reserve peace officer or emergency rescue personnel to take up to 14 days per year off from work to engage in fire, law enforcement or emergency rescue training.

Civil Air Patrol Leave

Employers with more than 15 employees must provide employees who are Civil Air Patrol (CAP) members with leave to respond to an emergency operational mission of the California Wing of the CAP.

An employee is eligible for CAP leave if he or she:

- Has been employed for at least 90 days before beginning leave;
- Is a volunteer member of the California Wing of the CAP; and
- Is responding to an emergency operational mission of the California Wing of the CAP.

An employer may not require an employee to exhaust any other type of leave before providing CAP leave. Leave is unpaid. Notice and certification requirements apply.

Organ and Bone Marrow Donor Leave

Employers with 15 or more employees must provide employees who are organ or bone marrow donors with:

- Up to 30 business days of paid leave per year and an additional 30 business days of unpaid leave per year to donate an organ; and
- Up to five business days of leave per year to donate bone marrow.

Notice and certification requirements apply.

Leave may not run concurrently with FMLA or California disability leave, but an employer may require employees to take up to two weeks' accrued sick leave, paid time off or vacation leave for organ donation or five days for bone marrow donation. Public employees must first exhaust paid sick leave before taking the unpaid leave.

Pregnancy Disability Leave

Employers with five or more employees must provide a reasonable period of leave of up to four months per pregnancy to female employees who are disabled by pregnancy, childbirth or a related medical condition.

Leave runs concurrently with FMLA leave and is unpaid. Notice and certification requirements apply.

Other job protections also apply to employees taking pregnancy disability leave.

Family Sick Leave

All employers that provide sick leave for employees must permit employees to use their accrued sick leave to care for an ill child, parent, spouse or domestic partner of the employee. Leave is limited each year by the amount of sick leave the employee would accrue in six months. Leave runs concurrently with leave under the California Family Rights Act and the FMLA.

The definition of "family member" includes a child, parent, spouse, domestic partner, stepparent, parent-in-law, grandparent, grandchild or sibling. An employee must be permitted to use family sick leave for the same purposes as required under the paid sick leave law, including for the preventive care of a family member.

A San Francisco ordinance requires employers to provide paid sick leave to all employees, including temporary and part-time employees.

Family and Medical Leave

Under the California Family Rights Act (CFRA), employers with five or more employees must provide eligible employees with family and medical leave.

To be eligible for family and medical leave, an employee must:

- Have at least a total of 12 months of service with the employer; and
- Have worked at least 1,250 hours in the 12-month period prior to the date of the requested leave.

Eligible employees may take up to 12 weeks of CFRA leave in a 12-month period for:

- Childbirth;
- Adoption;
- Care for the serious health condition of the employee or of the employee's child, grandchild, parent, grandparent, sibling, spouse, registered domestic partner or partner's child; or
- A qualifying exigency related to the covered active duty or call to covered active duty of an employee's spouse, domestic partner, child, or parent in the Armed Forces of the United States.

Leave runs concurrently with FMLA leave and is unpaid. Notice and certification requirements apply.

Other job protections also apply to employees taking family and medical leave.

Paid Sick Leave

All employers must provide eligible employees with 24 hours (or three workdays) of paid sick leave per year. Employees may use this leave for preventative care for, or the diagnosis, care or treatment of an existing health condition of, the employee or a family member. Employers are also required to provide paid sick leave to employees who are victims of domestic violence, sexual assault or stalking.

To be eligible for paid sick leave, an employee must work in California for 30 or more days for the same employer within a year from the start of his or her employment. Eligible employees may use accrued sick days beginning on their 90th day of employment.

SPECIAL CONSIDERATIONS FOR EMPLOYERS

California has a paid family leave insurance program that provides **up to eight weeks** of wage replacement benefits to eligible employees who take time off from work to care for a newborn, a newly adopted child or foster child, or a seriously ill family member. Under this program, employees may receive a percentage of their wages during their absence, up to a certain maximum per week. Workers are eligible for the program if they contribute to the State Disability Insurance (SDI) fund. The program is separate from the federal FMLA and California's family and medical leave laws, which govern the terms of employee family and medical leaves.

In addition, **San Francisco** enacted a Paid Parental Leave Ordinance, which requires employers in that city to provide "supplemental compensation" to employees who receive wage replacement under California's paid family leave insurance program. Employers subject to this ordinance must pay employees the difference between their normal gross weekly wage and the weekly amount they receive from the SDI, so that they receive 100 percent of their regular wages (rather than a lower percentage).

More information on SDI is available on the California Employment Development Department's website.

Employers should also be aware that many California localities have their own paid leave laws that apply to covered employers in addition to state leave laws.

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DISCRIMINATION

FAIR EMPLOYMENT

In addition to the workplace discrimination protections provided to employees under federal law, California law affords broad workplace discrimination protections under the state's Fair Employment and Housing Act (FEHA).

Covered Employers

The FEHA generally applies to all California employers with **five or more employees**. However, an exception to the five-employee minimum applies whenever **harassment** is at issue. The FEHA's prohibition against harassment applies to **every entity** that:

- Employs one or more people; or
- Receives the services of one or more independent contractors, unpaid interns or volunteers.

Exemptions

Religious employers and nonprofit organizations are generally exempt from the FEHA. Certain religious employers that operate health care facilities or educational institutions are only partially exempt.

Protected Traits

The FEHA protects individuals from employment discrimination and harassment based on their:

- Race (including hairstyles associated with race);
- Color;
- Religion;
- Sex (including pregnancy, childbirth and related medical conditions);
- Gender, gender identity, gender expression and sexual orientation (heterosexuality, homosexuality and bisexuality);
- Marital status;
- National origin and ancestry;
- Physical disability (including AIDS and HIV), mental disability and medical conditions;
- Genetic information;
- Age (40 or older); and
- Military or veteran status.

The FEHA also protects individuals who:

- Are perceived to be a member of a class protected by the FEHA; or
- Associate with members of a protected class.

For example, an employer may **not** discriminate against an individual because the employer perceives him or her to be a member of a certain religion even if he or she is not actually a member of that religion.

Prohibited Actions

Under the FEHA, employers may **not** take any of the following actions against an individual based on a protected trait:

- Refuse to hire or employ, discharge, or otherwise discriminate against the individual in compensation, terms, conditions or privileges of employment;
- Refuse to select then individual for or bar or discharge the individual from any apprenticeship training program, training program leading to employment, unpaid internship or other limited-duration program to provide unpaid work experience; and
- Print or circulate any publication or make any inquiry (either verbal or through the use of an application form) that expresses a limitation, specification or discrimination.

In addition, the FEHA prohibits employers from:

- Harassing or permitting their employees or agents to harass any person based on a protected trait; and
- Failing to take all reasonable steps necessary to prevent unlawful discrimination or harassment from occurring.

The FEHA's protections against harassment extend not only to employees and applicants, but also to unpaid interns, volunteers, independent contractors and any individuals providing services pursuant to a contract in an employer's workplace. An employer may be held liable for acts of sexual harassment against any of these individuals even if the person who commits the acts is not an employee or an agent of the employer.

Finally, the FEHA prohibits all employers from retaliating, discharging, expelling or otherwise discriminating against an individual because he or she:

- Opposes a practice that is forbidden under the FEHA; or
- Files a complaint, testifies or assists in any proceeding under the FEHA.

Reasonable Accommodation Requirements

The FEHA requires employers to provide reasonable accommodations for an employee or applicant's:

- Disability;
- Religious beliefs and practices; and
- Pregnancy, childbirth or related medical conditions.

Reasonable accommodations are changes made to a job or workplace that enable an employee or applicant to successfully perform the essential duties of a position or to enjoy the same employment rights and privileges as other employees.

An employer may be excused from the accommodation requirements if it can show that a requested accommodation would cause **undue hardship** on its business. The determination of whether undue hardship exists involves consideration of the following factors:

- The nature and net cost of the accommodation;
- The overall financial resources of the employer;
- The employer's type of operation; and
- The geographic separateness of facilities.

Notice Posting Requirement

The FEHA requires all employers to display a notice regarding the law's protections. The notice must be conspicuously posted in hiring offices, on employee bulletins boards, in employment agency waiting rooms and in other places where employees gather. If more than ten percent of an employer's workforce at a particular facility or establishment does not speak English, the employer must post the notice in the appropriate language for these individuals.

SEXUAL HARASSMENT PREVENTION AND TRAINING

California workers are protected against workplace sexual harassment under both federal and state law. While Title VII of the federal Civil Rights Act applies to only to employers with 15 or more employees, California's prohibitions against sexual harassment in the workplace, under the California Fair Employment and Housing Act (FEHA), apply to all employers with **one or more employees** in the state.

The FEHA's protections extend to employees, job applicants, independent contractors, unpaid interns, volunteers and participants in other limited-duration training programs that provide unpaid work experience.

Definition of Sexual Harassment

The FEHA defines "sexual harassment" as harassment that is **based on sex** or that is **of a sexual nature**. The term includes gender harassment and harassment based on pregnancy, childbirth or related medical conditions.

Regulations issued by the California Department of Fair Employment and Housing (DFEH), which enforces the FEHA, further define sexual harassment as unwanted sexual advances, or visual, verbal or physical conduct of a sexual nature. This definition encompasses a broad range of behaviors, including (but not limited to):

- Offering employment benefits in exchange for sexual favors;
- Making or threatening reprisals after a negative response to sexual advances;
- Leering, making sexual gestures or displaying sexually suggestive objects, pictures, cartoons or posters;
- Making or using derogatory comments, epithets, slurs or jokes;
- Graphic verbal commentaries about an individual's body;
- Using sexually degrading words used to describe an individual;
- Sending suggestive or obscene letters, notes or invitations; and
- Physical touching or assault, including impeding or blocking movements.

Employer Liability

The FEHA's anti-harassment provisions impose an affirmative duty on **all employers** in California, regardless of their size, to take all reasonable actions to prevent, stop and correct workplace harassment. Under the law, an employer may be held liable for:

- Any harassment committed by its supervisors or agents; and
- Any harassment that occurs in its workplace.

Both supervisory and nonsupervisory individuals may also be held **personally** liable if they harass employees or co-workers or if they assist other people in carrying out harassing actions. Even if an individual is personally liable, however, an employer may not avoid liability for workplace sexual harassment **unless**:

- The harasser is either not an employee or is a non-supervisory employee;
- The employer had no knowledge of the harassment;
- The employer had a harassment prevention program in place; and
- Once made aware of the harassment, the employer took immediate and appropriate corrective action to stop it.

Individuals who believe they have been sexually harassed may file a complaint with DFEH **within one year** of the alleged harassment. Once a complaint is filed, DFEH will investigate the complaint and attempt to resolve the dispute. If DFEH finds evidence of sexual harassment and settlement efforts fail, DFEH may file a formal accusation or lawsuit against the employer and harasser.

Employers found liable for sexual harassment may face a variety of penalties. Specifically, the DFEH may:

- Levy fines up to $150,000;
- Demand back pay be issued;
- Require the hiring, promotion or reinstatement of an employee or job applicant;
- Order changes in the policies or practices of the involved employer;
- Mandate additional sexual harassment training; and
- Impose other obligations.

In addition, civil courts may order unlimited monetary damages against an employer that is found liable for sexual harassment.

Employer Obligations

The FEHA requires every employer to develop and implement a **written policy** regarding workplace harassment, discrimination and retaliation.

An employer's policy should include, among other provisions, information about:

- The rights, and any obligations necessary to secure them, of a person who experiences or reports harassment;
- The employer's process for investigating harassment complaints; and
- Corrective actions the employer will take if harassment allegations are proven.

When an individual reports workplace sexual harassment, the employer must:

- Take appropriate action to stop the harassment and to ensure it will not continue;
- Communicate to the complainant that action has been taken to stop the harassment from recurring;
- Conduct a thorough, objective and complete investigation;
- Communicate the results of the investigation to the complainant, to the alleged harasser, and as appropriate, to all others directly concerned; and
- Take appropriate steps to remedy any damages resulting from the harassment.

Mandatory Training for All Employees

As of Jan. 1, 2019, every California employer with **five or more employees** must provide:

- Each **supervisory employee** with at least **two hours** of sexual harassment training; and
- Each **non-supervisory employee** with at least **one hour** of sexual harassment training.

Both types of training must be provided **within six months** of the date each employee assumes his or her position. For existing employees (as of Jan. 1, 2019), the initial training must have been provided **on or after Jan. 1, 2019**, but **before Jan. 1, 2021** (the original deadline was extended for one year to help maximize employer compliance). Thereafter, each employee must receive the training again **once every two years**.

Exception for Seasonal Employees

Beginning Jan. 1, 2021, different requirements apply for seasonal employees, temporary employees and any employees who are hired to work for less than six months (the original effective date was extended for one year). For these employees, employers must provide the required training within **30 calendar days** after the employees' hire dates or before the employees have worked **100 hours**, whichever occurs first.

Exception for Employees Previously Trained

Under additional changes to the law that became **effective Sept. 28, 2020**, an employee does not have to receive the required training within the standard six-month period if:

The employee either:

- Received the required training within the prior two years from a current, prior, alternate or a joint employer; or
- Received a valid work permit from the California Labor Commissioner that required him or her to receive the required training within the prior two years; and

The employer:

- Provides the employee with a copy of its anti-harassment policy within the standard six-month period;
- Requires him or her to read and acknowledge receipt of the policy; and
- Puts him or her on a two-year tracking schedule based on his or her last training.

An employer that uses this exception must be able to prove that an employee's prior training complied with all requirements under the law.

Training Program Presentation

The supervisory and non-supervisory employee training may be provided in conjunction with other training an employer provides, and employees may complete it either individually or as part of a group presentation. Employees may also complete the one- or two-hour training in shorter segments as long as the applicable total requirement is met.

The DFEH offers online training courses that employers may use to comply with the training requirements.

Notice and Posting Requirements

All employers must distribute a either a copy of the DFEH's fact sheet on sexual harassment or this DFEH poster on sexual harassment (both available in Spanish and other languages here) to all employees. These publications describe the forms of sexual harassment, its illegality, the internal and external complaint processes and the legal remedies under FEHA. Employers may elect to distribute their own information packets with equivalent information in place of distributing the fact sheet or poster. The law specifies that the information must be delivered "in a manner that ensures distribution to each employee, such as including it with an employee's pay."

EQUAL PAY

The federal Equal Pay Act (EPA) requires that men and women receive equal pay for equal work in the same establishment. In addition to the federal EPA, many states, including California, have enacted their own equal pay laws prohibiting wage discrimination based upon gender.

The California Equal Pay Law prohibits employers from discriminating on the basis of **sex, race or ethnicity** in the payment of wages. It also prohibits employers from seeking information about job applicants' past salaries and restricts how they may use any salary history information they obtain about an applicant.

Unequal Pay Prohibition

Subject to limited exceptions, employees of different genders, races or ethnicities are **entitled to equal pay for substantially similar work**. Substantially similar work is determined by evaluating the level of skill, effort, responsibility and performance under similar working conditions.

Exceptions

Employers may pay different wages for employees of the opposite sex or of different races or ethnicities when the wages are based on:

- A seniority system;
- A merit system;
- A system that measures earnings by quantity or quality of production; or
- A differential based on any **bona fide factor** other than sex, race or ethnicity.

A bona fide factor other than sex, race or ethnicity, such as education, training or experience, exists only when the employer demonstrates that the factor is:

- Not based on or derived from a sex-, race- or ethnicity-based differential in compensation;
- Job-related (with respect to the position in question); and
- Consistent with a **business necessity**.

"Business necessity" means an overriding legitimate business purpose. Business necessity does not exist when the employee can demonstrate that the employer could have implemented or used an existing alternative practice that would have avoided a wage differential while serving the same business purpose.

Amendments to the law that went into effect on Jan. 1, 2019, clarify that an employer may make a compensation decision based on a **current employee's existing salary** as long as any wage differential resulting from that decision is justified by one or more of the above factors. However, prior salary may not justify any disparity in compensation.

Salary History Inquiries and Use

As of Jan. 1, 2018, all employers are prohibited from:

- Relying on an applicant's salary history to determine whether to offer employment or what salary to offer; and
- Seeking salary history information, including compensation and benefits, about an applicant.

In addition, employers must provide an applicant who requests it with a salary or hourly wage range for the position being considered. This obligation generally applies only if an applicant requests the pay scale after completing an initial interview for a position.

These restrictions and obligations do not apply to applicants who are current employees, and employers are not prohibited from asking applicants about their **salary expectations** for the positions they applied for. Also, if an applicant voluntarily, without prompting, provides salary history information to a prospective employer, that employer may rely on and consider that information when determining the salary offer for that applicant.

Recordkeeping Requirement

Under the California Equal Pay Law, employers are required to maintain records of the wages and wage rates, job classification, and other terms and conditions of employment for all employees for a **minimum of three years**.

DRUG TESTING AND LEGALIZED MARIJUANA

TESTING FOR DRUGS

While California does not have a comprehensive law regulating the use of drug or alcohol testing by private employers, court decisions have established the following parameters for testing:

- Employers are permitted to conduct pre-employment drug screenings as long as they ensure that:
  - Job applicants receive notice of the drug testing requirement.
  - The collection process minimizes intrusiveness.
  - The test is administered in a reasonable fashion, such as part of a lawful pre-employment medical examination required of all job applicants.
  - Access to test results is restricted.
- Employers may generally test current employees only if they have a compelling safety reason.
- Random testing is generally permissible only where an employee holds a safety- or security-sensitive position.
- Employers must keep the results of any drug or alcohol test confidential.
- Employers can establish and enforce workplace policies on marijuana use.

LEGALIZED MARIJUANA

California enacted laws that legalized the use of marijuana for medical purposes in 1996 and for recreational purposes in 2017. Neither of these laws affect an employer's rights to establish or enforce workplace policies pertaining to marijuana.

This means that, under state law, not only can employers perform testing without any specified limitations, but they may also take adverse employment actions against an individual solely on the basis of his or her positive test for marijuana. This is the case even if the state has authorized that individual to use marijuana for medical purposes.

The California Supreme Court confirmed this in its 2008 decision in *Ross v. Raging Wire Telecommunications*. In this case, the court held that an employee who was authorized to use marijuana for medical purposes did **not** have the right to sue his employer for terminating his employment based on his off-duty medical marijuana use. The court ruled that the state's Fair Employment and Housing Act, under which the employee brought a disability discrimination claim, does not require employers to accommodate an employee's use of drugs that are illegal under federal law.

PRIVACY ISSUES

In most cases involving disputes over drug or alcohol testing and employment issues, California courts will assess the employer's testing policy to determine whether it violates an individual's rights to privacy under the California Constitution.

Specifically, courts apply a balancing test that weighs an employer's legitimate interests in regulating the conduct of its employees against the intrusion the employer's drug test has on an employee or applicant's reasonable expectation of privacy.

In this analysis, courts may consider several factors, such as:

- The nature of the drug or alcohol test (including the extent to which a person is monitored while supplying urine);
- The equipment used for testing;
- The manner in which the test was administered; and
- The reliability of the test.

California laws governing the use of medical information also require employers to keep the results of any drug or alcohol test **confidential**. In general, employers may not disclose an applicant or employee's test results without first obtaining valid authorization from the individual. Under the state's labor laws, employers must also pay for any workplace testing they require.

PRE-EMPLOYMENT VS. CURRENT EMPLOYEE TESTING

California courts have determined that job applicants have a reduced expectation of privacy because they necessarily must disclose personal information to prospective employers during the application process. Therefore, employers in California are permitted to conduct pre-employment drug screenings as long as they ensure that:

- Job applicants receive notice of the drug testing requirement;
- The collection process minimizes intrusiveness;
- The test is administered in a reasonable fashion, such as part of a lawful pre-employment medical examination required of all job applicants; and
- Procedural safeguards restrict access to the test results.

In order to conduct testing on current employees without violating privacy rights, an employer must identify compelling reasons why its interests in testing would be increased or why the employee's privacy expectations would be reduced. For example, an employer's reasonable belief that an employee is intoxicated at work would strengthen its argument that its testing did not violate the employee's privacy rights.

RANDOM TESTING

Random tests are those performed when an employer has no individualized suspicion that an employee is impaired by or has used drugs or alcohol at work. Although the California Supreme Court has not addressed whether employers may require employees to submit to random testing, lower courts in the state have ruled that random testing may be permissible only in limited circumstances, such as where an employee holds a safety- or security-sensitive position.

However, employers in certain California cities may be prohibited from conducting any random employee drug tests. For example, a San Francisco ordinance prohibits employers from requesting, requiring, or conducting random or companywide drug tests under any circumstances. Employers should become familiar and comply with all laws that apply where their employees' workplaces are located.

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NOTICES AND POSTERS

Employers must display required posters in a public place where employees can easily access them. While most posters apply to all employers within the state, some may **apply** to specific industries or employers. Employers can review each poster description to determine whether they are required to display that particular poster. Employers must also comply with all applicable federal posting requirements.

ALL CALIFORNIA EMPLOYERS

The following posters are required for all employers in California:

- Minimum wage poster – English | Spanish
- Paid sick leave poster – English
- Payday notice – English
- Emergency contact poster– English
- Whistleblower protection poster. This poster must be at least 8.5 inches by 11 inches in size, have margin of 0.5 inches or smaller, and use 14-point or larger font – English
- Smoking notice(s): California law requires employers to indicate areas where smoking is prohibited or allowed in the workplace. Employers must obtain adequate signage to designate these areas from their local law enforcement agencies
- Discrimination and harassment poster – English
- Transgender rights in the workplace poster – English | Spanish
- Unemployment insurance registration notice – English | Spanish
- Unemployment insurance benefit poster – English | Spanish | Vietnamese
- Time off to vote notice: employers must post this notice at least **10 days** before statewide elections – English | Spanish | Chinese | Vietnamese
- Rights of victims of domestic violence, sexual assault, and stalking poster – English | Spanish
- Notice of inspection by immigration agencies: employers must post this notice within **72 hours** after receiving notice of any inspection of employment records by an immigration agency – English | Spanish
- Sexual harassment poster – English | Spanish | Chinese | Korean | Tagalog | Vietnamese
- Sexual harassment fact sheet – English | Spanish | Chinese | Korean | Tagalog | Vietnamese
- Right to vote notice – English | Spanish | Chinese | Hindi | Japanese | Khmer Korean | Tagalog | Thai | Vietnamese

POSTERS THAT DEPEND ON EMPLOYER SIZE

The following posters affect only employers with the number of employees specified below:

- Pregnancy leave poster: required for all employers that have **between five and 49 employees** – English
- Family care and medical leave and pregnancy disability leave poster: required for all employers with 50 or more employees, and all public agencies – English | Spanish | Chinese | Korean | Tagalog Vietnamese
- COVID-19 paid sick leave for food sector workers poster: required for all employers covered by specified state wage orders and that have **more than 500 employees** nationwide. Affected individuals includes food sector workers, not just employees who perform work for or through the employer – English

EMPLOYERS SUBJECT TO SPECIFIC LAWS

Employers must display the following posters only if they are affected by the laws, conditions or requirements specified below:

- State OSHA poster: required for all employers subject to Cal/OSHA – English | Spanish
- Workers' compensation notice: required for all employers subject to California's **workers' compensation** laws. **Employers must obtain the "Notice of Workers' Compensation Carrier and Coverage" from their insurance carrier**
- Medical record access notice: required for all employers that use **hazardous** or **toxic** substances – English | Spanish
- Industrial trucks poster: required for employers that have workers operating forklifts or other industrial **trucks or tow tractors** – English | Spanish
- Workplace injuries poster: required for all California employers that offer **workers' compensation** insurance – English/Spanish
- Farm labor contractor pay notice: required for **labor contractors** licensed by the Division of Labor Standards Enforcement. The notice must be at least 12 inches high and 10 inches wide – English/Spanish
- Human trafficking public notice: required for farm labor contractors – English
- Required workplace posting for all California barbering and cosmetology licensees – English | Spanish | Vietnamese | Korean

INDUSTRIAL WAGE ORDERS

California wage orders regulate work conditions in certain industries. Employers in these industries must display the appropriate industry-specific poster.

- Wage order #1: manufacturing industry
  #1-2001 (English)
  #1-2001 (Spanish)
  #1-2001 (Chinese)
- Wage order #2: personal services industry
  #2-2001 (English)
  #2-2001 (Spanish)
  #2-2001 (Chinese)
- Wage order #3: canning, freezing and preserving industry
  #3-2001 (English)
  #3-2001 (Spanish)
  #3-2001 (Chinese)
- Wage order #4: professional, technical, clerical, mechanical and similar occupations
  #4-2001 (English)
  #4-2001 (Spanish)
  #4-2001 (Chinese)
- Wage order #5: public housekeeping industry
  #5-2001 (English)
  #5-2001 (Spanish)
  #5-2001 (Chinese)
- Wage order #6: laundry, linen supply, dry cleaning and dyeing industry
  #6-2001 (English)
  #6-2001 (Spanish)
  #6-2001 (Chinese)
- Wage order #7: mercantile industry
  #7-2001 (English)
  #7-2001 (Spanish)
  #7-2001 (Chinese)
- Wage order #8: industries handling products after harvest
  #8-2001 (English)
  #8-2001 (Spanish)
  #8-2001 (Chinese)
- Wage order #9: transportation industry
  #9-2001 (English)
  #9-2001 (Spanish)
  #9-2001 (Chinese)
- Wage order #10: amusement and recreation industry
  #10-2001 (English)
  #10-2001 (Spanish)
  #10-2001 (Chinese)
- Wage order #11: broadcasting industry
  #11-2001 (English)
  #11-2001 (Spanish)
  #11-2001 (Chinese)
- Wage order #12: motion picture industry
  #12-2001 (English)
  #12-2001 (Spanish)
  #12-2001 (Chinese)
- Wage order #13: industries preparing agricultural products for market, on the farm
  #13-2001 (English)
  #13-2001 (Spanish)
  #13-2001 (Chinese)
- Wage order #14: agricultural occupations
  #14-2001 (English)
  #14-2001 (Chinese)
  #14-2001 (Spanish)
- Wage order #15: household occupations
  #15-2001 (English)
  #15-2001 (Spanish)
  #15-2001 (Chinese)
- Wage order #16: certain on-site occupations in the construction, drilling, logging and mining industries
  #16-2001 (English)
  #16-2001 (Spanish)
  #16-2001 (Chinese)
- Wage order #17: miscellaneous employees
  #17-2001 (English)
  #17-2001 (Chinese)
  #17-2001 (Spanish)

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RECORDKEEPING REQUIREMENTS

Federal laws, such as the Federal Insurance Contribution Act, the Fair Labor Standards Act (FLSA), the Equal Pay Act and the Civil Rights Act, impose recordkeeping duties on employers. Recordkeeping duties include creating, updating and preserving information.

California law also imposes several recordkeeping requirements. These operate in addition to or in conjunction with the federal requirements. The summary below provides a general overview of state recordkeeping requirements for employers in California.

Additional state and federal recordkeeping requirements may exist for specific industries. Consult with local state agencies for more information about recordkeeping requirements that may affect your business.

PERSONNEL RECORDS

Employers must maintain personnel records **for at least three years** after separation from employment at the location where employees report for work, or at another location agreeable to the employer and those authorized to review or inspect them.

Employees have the right (or can authorize another) to inspect their own records. Inspection requests must be in writing. Employers must make these records available to the employee **within 30 days** after he or she requests them.

Exceptions

The requirements outlined above do **not** apply to:

- Records relating to the investigation of a possible criminal offense;
- Letters of reference;
- Ratings, reports or other records obtained prior to a worker's employment and prepared by identifiable examination committee members or in connection with a promotional examination;
- Employees working for an agency subject to the Information Practices Act; or
- Employees covered under a valid collective bargaining agreement that prescribes:
- The wages, hours of work and working conditions for the employees;
- A procedure for the inspection and copying of personnel records;
- Premium wage rates for all overtime hours worked; and
- A regular rate of pay of at least 30% higher than the state minimum wage rate.

PAYROLL AND EARNINGS STATEMENTS

Employers must create employee payroll records and maintain them **for at least three years** at the place where employees work or at a central location within the state. Each employee payroll record must include:

- The employee's name and address;
- Proof of the employee's age (if a minor);
- Gross wages earned (including accurate records of all gratuities received);
- Total hours worked by the employee (unless an exception applies a fixed salary or overtime exemption);
- The number of piece-rate units completed and any applicable piece wage rate if the employee is paid on a piece-rate basis;
- All deductions (they can be aggregated and shown as one item);
- Net wages earned;
- The inclusive dates of the period for which the employee is paid;
- The employee's name and his or her identification number (or the last four of the Social Security number if employees are not assigned an employee number);
- The employer's name and address (and the legal entity that secured the services of the employer if the employer is a farm labor contractor); and
- All hourly rates that apply to each employee during each pay period.

In addition, temporary service employers must also keep records of the rate of pay and the total hours each employee works for a temporary service assignment.

Under the law, employees have the right to inspect and receive their payroll records from an employer **within 21 calendar days** after requesting them. Employers that fail to provide access to payroll records within the 21-day period may be fined up to $750 per infraction.

If an employer fails to create or keep the records as required, the California Department of Labor Standards Enforcement (DLSE) may order it to pay fines of up to $4,000. A noncompliant employer may also be ordered to pay court costs, attorney's fees, and the amount of any damages a violation caused to an employee.

EQUAL PAY

Employers must maintain sufficient records to prove to the DLSE that they pay similar wage rates to employees that perform work that requires similar levels of skill, effort and responsibility under similar working conditions. If there is a variation in wage rates, the records must justify a difference based on seniority, merit, performance (quality or quantity of production) or any other system that takes into account bona fide factors other than sex.

If an investigation ensues and an employer fails to furnish adequate records, it may be required to pay back wages, interest on back wages, court costs, attorney's fees and damages (usually an amount equal to back wages). California law requires employers to keep these records **for at least two years**.

CHILD LABOR

Employers must keep record of the safety training they provide to minors for the operation of tractors and machinery. Safety training records must be part of each minor's personnel file. In addition, personnel files for minors must identify the name of the minor and contain copies of any certificates or documents authorizing the minor to work for the employer.

UNEMPLOYMENT COMPENSATION

The California Employment Development Department (CEDD) requires employers to keep true and accurate record of any information it may need to assess individual eligibility for benefits, including records to show each employee's status (employed, on layoff, on leave) and wages. If an employer fails to keep and furnish the records required, the CEDD will assume that the employee is entitled to receive the maximum benefit payable under the law and the employer's account will be charged accordingly.

When a claimant worked for more than one employer, additional assessments will be charged only to those employers that fail to keep or furnish adequate records.

WORKING WITH CONTRACTORS

Employers must keep record of contractor agreements in the construction, farm labor, garment, janitorial, security guard or warehouse industries **for at least four years**.

The records must prove that, at the time of contract, employers had sufficient funds to allow the contractors to comply with all applicable local, state and federal laws. Specifically, the record must include:

- The employer's name, address, telephone number and identification number;
- The contractor's name, address and telephone number;
- The contractor's workers' compensation insurance policy number and the name, address and telephone number of its insurance carrier;
- A description of services the contractor will provide (including beginning and completion dates);
- The amount of commission or other payment made to the contractor for services rendered under the contract;
- The total number of workers to be employed under the contract, and the total amount of all wages to be paid and pay dates;
- The address of any real property that will be used to house workers in connection with the contract of service;
- The vehicle identification number of any vehicle the contractor will use in connection with the services it will provide to the employer;
- The number of the vehicle liability insurance policy that covers the vehicles mentioned above and the name, address and telephone number of the insurance carrier;
- A list of any independent contractors the contractor may hire to provide its services to the employer along with the independent contractor's local, state and federal license identification numbers (if applicable); and
- The signature of all the parties to the contract and the date the contract was signed.

WORKERS' COMPENSATION

The California Division of Workers' Compensation (DWC) requires all employers to record and report every occupational injury or illness that causes an employee to seek medical treatment beyond first aid or lose working time beyond the date of the injury or illness.

Self-Insured Employers

The DWC requires self-insured employers to record and report:

- The amount of all compensation claims;
- The amount of benefits paid to date;
- An estimated amount of future liability on open claims under state and federal laws;
- The average number of employees and the total wages for each adjusting location;
- A list of all open indemnity claims; and
- The amount of security deposit made by the employer.

WORKPLACE VIOLENCE

The DLSE requires employers to keep track of any leave an employee takes because the employee or the employee's immediate family member or registered domestic partner was the victim of a violent felony, a serious felony, felony theft or embezzlement. These records must remain confidential.

In addition, employers must keep record of any violence committed against a community health care worker they employ. A copy of these records must be filed with the DIR.

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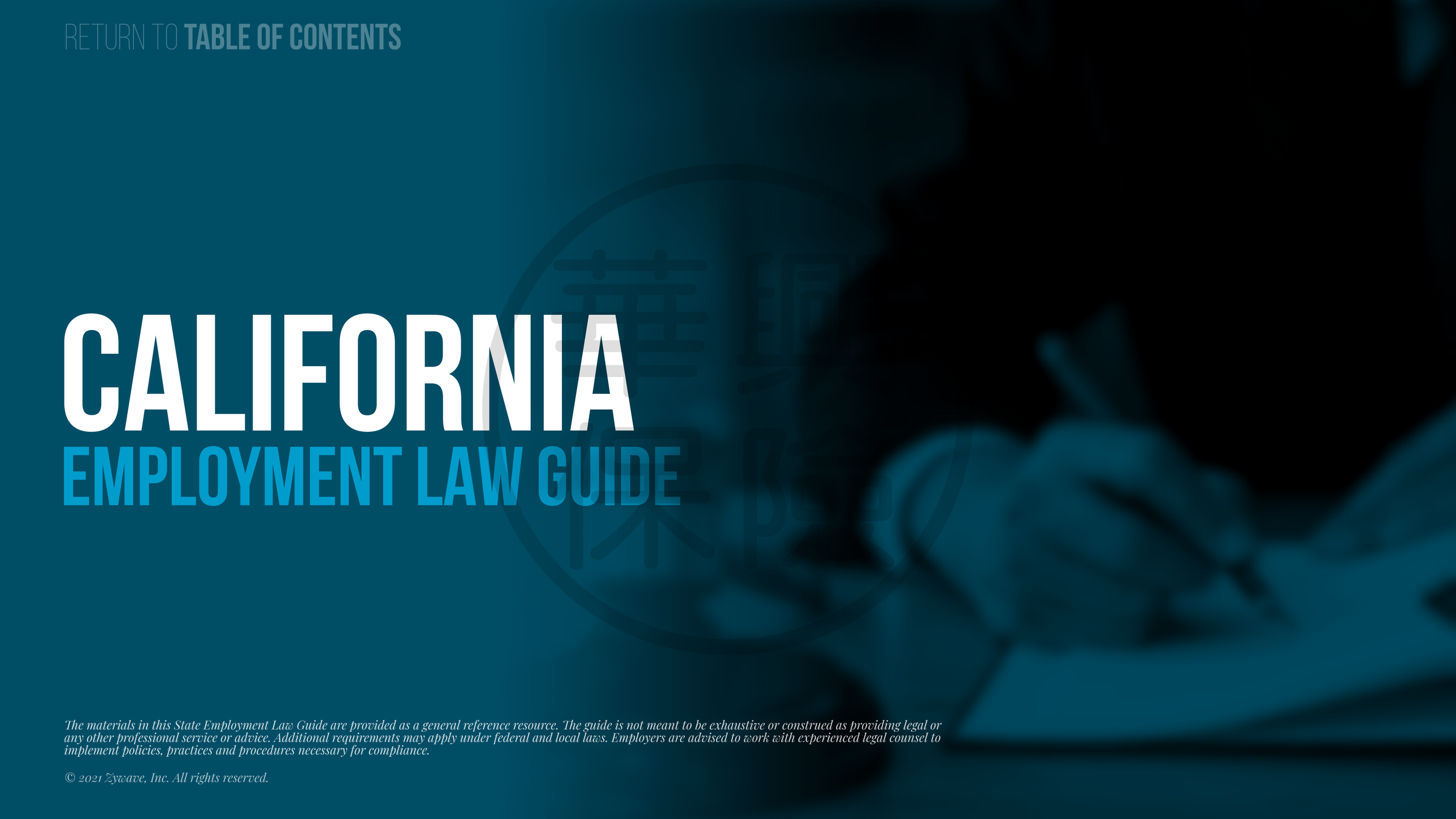

The materials in this State Employment Law Guide are provided as a general reference resource. The guide is not meant to be exhaustive or construed as providing legal or any other professional service or advice. Additional requirements may apply under federal and local laws. Employers are advised to work with experienced legal counsel to implement policies, practices and procedures necessary for compliance.