SUMMARY OF CALIFORNIA WAGE AND HOUR LAWS

The following is a summary of some California wage and hour laws that apply generally to most employers, as of August 2004. PLEASE NOTE that the information contained in this summary covers a complex legal subject. This summary does not address all wage and hour laws and regulations, and the requirements applicable to your organization may vary depending on the industry in which you work. Please consult the California Industrial Welfare Commission Wage Order applicable to your business and labor and employment counsel for further guidance and to be sure that you are in compliance with all the rules and regulations applicable to your organization. PLEASE ALSO NOTE that this summary does not address wage and hour laws and regulations in any state other than California, nor does it address federal wage and hour laws. Recent changes in federal overtime laws generally do not affect most California employers, who continue to be subject to the laws described in this summary and the California Wage Orders applicable to the relevant industry.

1. MINIMUM WAGE

Under California law, except in limited circumstances, employees must be paid at least the minimum wage for all hours worked. The minimum wage in California is currently $6.75 per hour.

Some employees are "exempt" from minimum wage pay requirements if their duties meet certain detailed requirements, discussed below.

2. OVERTIME

Both California and federal law have provisions that require non-exempt employees to be paid an overtime premium if they work more than a specified number of hours in a workday or a workweek.

With limited exceptions, under California law, non-exempt employees must be paid overtime at a rate of no less than 1½ times their regular rate of pay for:

- Hours worked in excess of 8 (but less than 12) hours in one day,
- Hours worked in excess of 40 hours in one workweek, and
- The first 8 hours worked on the seventh day of work in a given workweek.

Also, non-exempt employees must be paid overtime at a rate of no less than twice their regular rate of pay for:

- Hours worked in excess of 12 hours in one day, and
- Hours worked in excess of 8 hours on the seventh consecutive day of work in a workweek (regardless of the total number of hours worked in that workweek).

A penalty may be imposed against an employer (or other person acting on behalf of his or her employer) for each non-exempt employee not receiving overtime wages, for each
pay period that employee has been underpaid. A first time violator may be fined $50.00 per employee per pay period. The penalty increases to $100.00 per employee per pay period for subsequent violations.

Some employees are "exempt" from overtime pay requirements if their duties meet certain detailed requirements, discussed below.

3. EXEMPTIONS FROM OVERTIME PAY AND MINIMUM WAGE REQUIREMENTS

Certain employees are exempt from both the overtime and minimum wage provisions of all the California Wage Orders. These exempt employees include individuals employed in administrative, executive, or professional capacities, outside salespersons and certain members of the employer's family.

An employee is not "exempt" from the payment of overtime and the minimum wage simply because he or she is paid a salary rather than an hourly wage. Instead, detailed requirements must be met for an employee to be exempt. Below is a brief summary of the most frequently used exemptions from minimum wage and overtime pay requirements under California law:

- **Executive (Managerial), Administrative and Professional**

  For an executive, administrative or professional employee to qualify as exempt, the employee must:
  1. Earn a monthly salary equivalent to no less than two times the state minimum wage for full-time employment (currently, $2,340.00 per month),
  2. Customarily and regularly exercise discretion and independent judgment, and
  3. Spend more than one-half of his or her work time devoted to exempt duties as described for each category below (including work that is directly and closely related to those duties).

  **Executive**

  - Duties and responsibilities involve the management of the enterprise in which the employee is employed, or a department or subdivision thereof, and
  - The employee customarily and regularly directs the work of two or more full time employees or the equivalent (80 hours of subordinate time each week), and
  - The employee has the authority to hire or fire other employees (or the employee’s recommendations as to the hiring or firing, the advancement and promotion, or other change of status of other employees are given particular weight).

  **Administrative**

  - Duties and responsibilities involve either:
(1) the performance of office or non-manual work directly related to management policies or general business operations of the employer or the employer’s customers, or 
(2) the performance of functions in the administration of a school system, or educational institution, in work directly related to academic instruction or training, and
- The employee regularly and directly assists the proprietor or another executive or administrative employee, or performs under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge, or performs under only general supervision other special assignments and tasks.

**Professional**

- Employee is engaged in the practice of one of the following recognized professions: law, medicine, dentistry, optometry, architecture, engineering, teaching, or accounting for which he or she is licensed or certified by the State of California; or
- Employee is engaged in an occupation commonly recognized as a learned or artistic profession.

For more details on the tests to determine whether an executive, administrative or professional employee is exempt from the minimum wage and overtime provisions, and for definitions of terms used in this section, see Appendix A

**Outside Salesperson**

Outside salespersons are excluded from the minimum wage and overtime provisions of the wage orders. An outside salesperson is defined as any person, 18 years of age or older, who customarily and regularly works more than half the working time away from the employer's place of business, selling tangible or intangible items or obtaining orders or contracts for products, services, or use of facilities.

**Other Exemptions**

Other exemptions from overtime requirements exist under California law, including, but not limited to, exemptions for certain commissioned employees, employees covered by a collective bargaining agreement if the agreement provides certain premium wage rates, highly compensated computer professionals, employees whose hours of service are regulated by the United States Department of Transportation, and certain members of the employer's family. Please consult the California Wage Orders and/or Labor Code for further information about applicable exemptions.

4. **MAKE UP TIME REQUESTS**

An employee can be allowed to work more than 8 hours in one day to "make up" for taking off time on another day in the same work week without being paid overtime for the hours worked over 8 hours on the "make up time" day if:
the employee makes a signed, written request to the employer to make up work time that is lost as a result of a personal obligation;

- the make up time hours are worked in the same workweek in which the time was lost; and

- the make up time does not result in the employee working more than 11 hours in one workday or 40 hours in one workweek.

An employer is prohibited from encouraging or otherwise soliciting an employee to make a request to work make up time.

5. ALTERNATIVE WORK WEEKS

An employer may propose, and employees may adopt, an alternative workweek schedule that permits work for no longer than 10 hours per day within a 40-hour workweek without the payment of overtime. Alternative workweeks must be approved by secret ballot by at least two-thirds of the affected employees in a work unit. The results of alternative workweek elections must be reported to the Division of Labor Statistics and Research within 30 days of the election. Additional requirements for alternative workweek elections and the payment of overtime when an employee works beyond the regularly scheduled alternative workweek can be found in California Labor Code §511 and in the Wage Orders.

6. HOURS WORKED

Employees who are not exempt from minimum wage requirements must be paid for all hours worked. “Hours worked” means the time during which an employee is subject to the control of an employer, and includes all of the time the employee is suffered or permitted to work, whether or not required to do so. Certain required work activities meet the definition of “hours worked” under California law and must be compensated. Below are some examples of activities that are considered to be "hours worked" for which compensation must be provided to employees:

- Set-up and Clean-up Time

  Time spent changing clothes, washing up on the employer’s premises, or setting up for work is compensable if it is compelled by the necessities of the employer’s business.

- Training, Lectures, and Meetings

  Employees who spend time attending training programs, lectures and meetings related to work are required to be compensated for such time unless the attendance is voluntary on the part of the employee and all the following criteria are met:

  1. Attendance must be outside regular working hours;

  2. Attendance must be voluntary (attendance is not voluntary if the employee is led to believe that present working conditions or the continuation of employment would be adversely affected by nonattendance);
(3) The course, lecture, or meeting must not be directly related to the employee’s job (training is directly related to an employee’s job if it is designed to make the employee handle his job more effectively as distinguished from training him for another job or to a new or additional skill); and

(4) The employee must not perform any productive work during such attendance.

- **Restricted Standby Time**

Generally, an employee must be paid for all hours he or she is required to remain at the employer’s place of business or another location and respond to calls, even if the employee is doing nothing more than waiting for a call. If the employee’s time is so restricted that he or she cannot pursue personal activities and come and go as he or she desires, the employee is considered to be under the control of the employer and entitled to compensation for those hours as “hours worked.”

**7. MEAL AND REST BREAKS**

- **Meal Breaks**

Employees may not work for a period of more than 5 hours without an unpaid meal period of at least 30 minutes. Accordingly, an employee working an 8 hour shift would be entitled to one 30 minute unpaid meal break; an employee working an 11 hour shift would be entitled to two 30 minute unpaid meal breaks.

When an employee works 6 hours or less, the meal period may be waived by mutual consent of the employer and the employee if the total hours worked is no more than 12 hours. The second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

Unless an employee is relieved of all duty during a 30-minute meal period, the meal period is considered an “on duty” period and counted as time worked. An “on duty” meal period is permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement must state that the employee may, in writing, revoke the agreement at any time.

California law requires that employers ensure that employees take the required meal break. It is not enough merely to offer one to employees. Employers must keep written records of when non-exempt employees take their meal breaks.

- **Rest Breaks**

Employees must be authorized and permitted to take a paid 10 minute rest period for each 4 hours worked or major fraction thereof. The break should occur in the middle of the 4-hour period. However, a rest period does not need to be authorized for employees whose total daily work time is less than 3½ hours.
Although there is no requirement that employers track rest breaks, it is recommended that they do so, in case employees later claim that they were not provided with the requisite breaks.

- **Penalties for Missed Meal and Rest Breaks**

  Under California law, employers owe employees a penalty for missed meal and rest breaks. For each day a meal break or rest break is missed, the employer must pay the employee a penalty equal to one hour of the employee’s pay.

8. **PAYMENT AT TERMINATION OF EMPLOYMENT**

California law requires that all employees be paid all wages due at the time of their termination, including wages for accrued, unused vacation time. A discharged or laid off employee’s final paycheck is due at the time of the discharge or layoff, at the place of discharge. If an employee resigns, his or her wages are due no later than 72 hours after the resignation, unless the employee has given at least 72 hours notice of his or her intention to quit, in which case the final payment of all wages is due on the last day of employment.

If an employer willfully fails to pay all wages to an employee pursuant to the above requirements, the California Labor Code provides that the employee’s daily wages will continue as a penalty from the date that the wages were due until they are paid or an action is commenced by the employee, but for no more than 30 days. This penalty is incurred on all calendar days, not just working days, up to 30 days.

With certain exceptions, California law prohibits employers from making deductions from an employee’s wages at termination without the employee’s written consent at the time of termination.

9. **USEFUL LINKS**

Below are links to websites that provide useful information about California and federal wage and hour requirements, including the California Wage Orders applicable to each industry and the manual used by the Division of Labor Standards Enforcement to interpret state wage and hour laws. The websites also provide instruction regarding how to make and respond to a claim that an employer has violated California wage laws.

California Division of Labor Standards Enforcement: [http://www.dir.ca.gov/dlse/dlse.html](http://www.dir.ca.gov/dlse/dlse.html)
