

MINIMUM WAGE LAW IN CALIFORNIA

Nearly all California employees are entitled to a single statewide minimum wage that rises each year. This guide explains the rate, who is covered, the exceptions, and how to enforce it.

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The *minimum wage* is the lowest hourly rate that nearly all California employees must be paid for their work. As of January 1, 2026, California requires that nearly all employees be paid a minimum wage of at least **\$16.90 per hour**, and the rate is the same for every employer, regardless of size.¹ California's minimum wage rises on January 1 each year, adjusted for inflation.²

The federal minimum wage is currently \$7.25 per hour.³ It applies to covered workers⁴ throughout the United States, unless the employee works in a state that has set a higher minimum wage, like California.⁵ Because California's minimum wage is higher than the federal minimum, most California employees are entitled to the wage set by California law.⁶

This article explores California's minimum wage laws in more detail.

California Minimum Wage Amounts



California law sets a minimum wage that applies statewide (although certain employees, who are discussed below, are exempt or are entitled to a lower minimum wage). California cities and counties also have the authority to set a higher minimum wage.

Some workers are entitled to a *higher* minimum wage set for their particular industry. Most fast-food employees at large national chains, for instance, must be paid at least \$20.00 per hour,⁷ and many health care employees are entitled to a higher minimum wage that depends on the type of facility where they work.⁸

1.1 State Minimum Wage

For years, California's minimum wage rose on a fixed schedule set by the Legislature, with each increase taking effect on January 1. That scheduled phase-in is now complete.⁹

During the phase-in, the rate depended on the size of the employer: businesses with 25 or fewer employees followed a slightly slower schedule than larger employers.

Since January 1, 2023, there has been a single statewide rate that applies to employers of every size.¹⁰

The most recent statewide rates are as follows:

California Minimum Wage	
Effective Date	Minimum Wage
2023	\$15.50
2024	\$16.00
2025	\$16.50
2026	\$16.90

Before 2023, the applicable rate depended on the size of the employer. The Department of Industrial Relations publishes the full history of California's minimum wage, including the separate rates that applied to smaller and larger employers before the two schedules merged.¹¹

Now that the phase-in is complete, the minimum wage is adjusted automatically each year. On or before August 1, the Director of Finance sets the next year's rate by increasing the current rate by the lesser of 3.5 percent or the change in the Consumer Price Index [☞](#) for Urban Wage Earners and Clerical Workers, with the new rate taking effect the following January 1.¹²

The rate does not go down. If the Consumer Price Index falls in a given year, the minimum wage stays the same rather than decreasing.¹³

1.2 Local Minimum Wages

The California Constitution allows local governments to set a minimum wage, applicable within that government's jurisdiction, that is higher than the state minimum wage.¹⁴ Several cities and counties have enacted ordinances that set a higher minimum wage for some or all employees who work within the boundaries of the local government.

The Minimum Wage Cannot Be Waived



A California employer must pay the California minimum wage to covered employees, even if an employee agrees to work for less.¹⁵ An employment agreement that attempts to pay a covered employee at a rate lower than the minimum wage is unlawful and will not be enforced.¹⁶

California's prohibition against waiving the minimum wage applies even to union members whose terms of employment are governed by a collective bargaining agreement.¹⁷

Which Employees Are Covered by the Minimum Wage



California's minimum wage law applies to all California employers with covered employees.¹⁸

Employer in this context is a broad term that means anyone who employs or exercises control over the wages, hours, or working conditions of any person. It includes individual employers, businesses, nonprofits, and state or local governments.¹⁹

The California minimum wage law generally protects all individuals who are employed in California, regardless of where they reside.²⁰ The minimum wage law even protects undocumented workers who are working in California without a green card.²¹

3.1 Minimum Wage Exceptions

A lower state minimum wage applies to certain California employees, and some employees are not entitled to any minimum wage at all. Those categories of employees include the following:



Learners are employees who are working a job in which they have no similar or related experience. They may be paid 85% of the minimum wage during their first 160 hours of employment.²²



Camp employees of an organized camp, including student employees, camp counselors, and program counselors, can be paid 85% of the minimum wage.²³



Immediate family members of an employer are not subject to California's minimum wage laws. Immediate family members include the employer's parent, spouse, child, or legally adopted child.²⁴



Outside salespersons are employees who spend more than half of their working time away from the employer's place of business selling goods or services.²⁵ Outside salespersons are generally exempt from California's minimum wage laws, but they must meet certain requirements.²⁶

California once allowed employers to pay a subminimum wage to workers with a disability under a special-license program, but that program has ended. No new licenses have been issued since January 1, 2022, and as of January 1, 2025, a worker with a disability must be paid no less than the applicable state or local minimum wage, whichever is higher.²⁷

Federal law has more exceptions to its minimum wage than those listed here, including an "opportunity wage" for newly hired employees who are under the age of 20.²⁸ But because California law is more favorable than federal law, those subminimum wage exceptions do not apply.²⁹

3.2 Independent Contractors

California's minimum wage law applies only to *employers* and thus only protects *employees*.³⁰ It does *not* protect independent contractors.

Importantly, the fact that a business labels a worker as an *independent contractor* does not make the worker one.³¹ For minimum-wage purposes, California uses the *ABC test*: a worker is presumed to be an employee unless the hiring business proves all three of the following, that (A) the worker is free from the business's control in performing the work, (B) the work falls outside the usual course of the business, and (C) the worker is customarily engaged in an independently established trade or business of the same kind.³² We explain how to tell an employee from an independent contractor in our article on independent contractor and employee classification in California.

3.3 A Note on Exempt Employees

Certain employees are exempt from many of California's labor laws based on their job classifications. Executive, administrative, and professional employment are the most common exempt classifications.³³

However, because California limits those classifications to employees who receive a monthly salary of at least twice the minimum wage for full-time employment (i.e., 40 hours per week),³⁴ it would be very unusual for an exempt employee in one of those classifications to receive less than the minimum wage.

Employees Who Are Not Paid Hourly



Unless an employee falls into one of the exceptions mentioned above, they must be paid minimum wage, even if they are not paid an hourly rate.³⁵

Confusion can sometimes result, however, when employees are paid on a non-hourly basis. Two common issues in these cases are discussed below: piece-rate compensation, and commission-based compensation.

4.1 Piece-Rate Compensation

Some employees are paid by the job, by the task, or by the number of pieces they work on or produce. Piece-rate workers are often required to remain at the place of employment to wait for new work to arrive even when there is no paid work to do.

EXAMPLE

A technician might be paid a flat rate for each item repaired. That technician is considered to be paid on a piece-rate basis.

In the example of a technician who is paid a flat rate for repairs, federal law would allow the employer to add up the piece-rate compensation earned during the week, to divide that sum by the number of hours that the employee was required to be at work during the week, and to pay nothing extra if the result equals more than the minimum wage.³⁶ This is known as *pay averaging*.

Most California courts have found that California law does not permit minimum wage compensation for piece-rate workers to be based on “pay averaging.”³⁷ Instead, they have held that a piece rate compensates the employee for time spent performing a specific task, but not for the other hours an employee is at work.³⁸

As such, California law entitles an employee to minimum wage for each hour an employee is required to be at work, even if the employee is paid a higher piece-rate wage for hours that the employee devotes to a specific task.³⁹

So, in California, for each hour of work that is not compensated by a piece-rate wage (that is, time spent waiting for work), the employee must receive additional compensation of no less than the minimum wage.

Since 2016, this rule has also been written into a specific statute. Labor Code section 226.2 requires employers to compensate piece-rate employees separately for rest and recovery periods and for other nonproductive time, on top of their piece-rate earnings.⁴⁰

4.2 Commission Compensation

With a few exceptions,⁴¹ employees who are paid by commission must be paid at least twice a month.⁴² Commissions, however, do not need to be paid until they have been earned.

When a commission has been *earned* is usually determined by the employment agreement.⁴³ The timing of when commissions are “earned” can create problems for the minimum wage: employees might go months without having “earned” their commission on a sale.

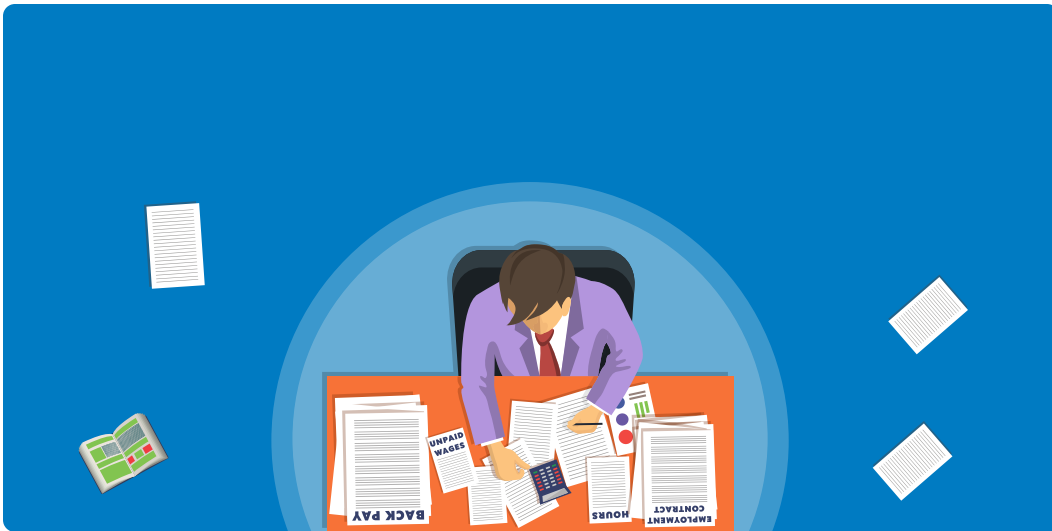
Employees must be paid at least the minimum wage in every pay period, even if the commissions they have earned that pay period fall below that amount.⁴⁴

In some pay periods, the payment of commissions will satisfy the requirement to pay minimum wage in that period, provided, of course, that the commissions at least equal the minimum wage times the number of hours worked in that pay period.

But if the commission earned in a given pay period does not satisfy the minimum wage, the employer will have to pay sufficient wages to make the employee's hourly wage consistent with California's minimum wage laws. A commission in one pay period cannot be used to cover shortfall in an earlier pay period.⁴⁵

The California Supreme Court has noted that this interpretation is consistent with the purpose of the minimum wage law. Allowing employers to pay less than minimum wage in any pay period would burden employees by forcing them to wait to receive the full wages they earned.⁴⁶

Credits and Deductions Against California's Minimum Wage



For the purposes of the minimum wage, the employee's wage refers to the employee's *gross* pay, meaning the amount the employee is paid *before* taxes or other deductions are taken from it. Deductions from gross pay that are authorized or required by law are *not* treated as reducing minimum wage payments.

In limited situations, non-cash compensation may satisfy the minimum wage obligation. In other words, an employer may receive a credit toward minimum wage payment in the amount of certain non-cash compensation provided to the employee.

This section takes a look at some common non-cash issues.

5.1 Tips Are Not Counted toward the Minimum Wage

California employers are not permitted to deduct tips received by employees from their hourly wages in order to pay less than minimum wage.⁴⁷ Under California law,

tips are the property of the employee to whom they are given and (since they never become the employer's property) may not be treated as wages.⁴⁸

5.2 Meals and Lodging

With an employee's consent, an employer may furnish meals or lodging to an employee as compensation, and that may count that compensation toward satisfaction of California's minimum wage law.⁴⁹

California regulations set limits on the value of a meal (depending on whether it is breakfast, lunch, or dinner) and lodging (depending on whether it is a room or apartment) that may be credited toward an employer's minimum wage obligation.⁵⁰

A meal will not be credited toward minimum wage unless it is "an adequate, well-balanced serving of a variety of wholesome, nutritious foods."⁵¹ The meal (whether breakfast, lunch, or dinner) must be consistent with the employee's work shift.⁵²

Lodging will not be credited toward minimum wage unless the accommodation (which cannot require the employee to share a bed) is available for full-time occupancy and is adequate, decent, and sanitary according to usual and customary standards.⁵³

Any meal not received and any lodging not used may *not* be deducted from minimum wage.⁵⁴

5.3 Resident Manager Rent Credit

The usual rule is that an employee must be paid for all time spent at work if the employee is subject to the employer's control. Certain employees, however, may be paid for the time spent carrying out assigned duties, rather than the time they spend at work, including resident managers and motel clerks who are required to reside on the employer's premises.⁵⁵

When a resident manager receives a place of lodging as part of his or her compensation, the employer may credit the value of the lodging against minimum wage, subject to these limits:



The credit may not be more than two-thirds of the lodging's ordinary rental value,



The credit may not exceed a certain flat amount specified in the currently applicable minimum wage poster (that amount increases each year with

inflation and depends on the type of accommodation provided), and



The agreement must be voluntary and in writing.⁵⁶

If an employer requires a resident manager to live in the employer's lodging as a condition of employment but *does not* credit any portion of the lodging's value toward minimum wage, the employer may charge the resident manager rent that does not exceed two-thirds of the lodging's rental value. The cap described in the second limitation above does not apply, provided that the employee voluntarily agrees in writing to pay the rent.⁵⁷

Split-Shift Compensation



An employee works a *split shift* when one workday is interrupted by unpaid, nonworking periods, other than meal and rest periods.⁵⁸ But the fact that an uninterrupted shift spans two consecutive calendar days does not transform the shift into a split shift.⁵⁹

An employee entitled to be paid the minimum wage has a right to an extra hour of pay (called a “split-shift premium”) if the employee works a split shift.⁶⁰ That “split-shift premium” means that an employee who works a total of eight hours over a split shift at minimum wage is entitled to nine hours of pay.

The split-shift premium also applies to employees who earn more than minimum wage unless they are paid a total amount greater than the minimum wage for all hours worked plus one additional hour.⁶¹ Thus, employees who work a split shift are entitled to the *greater* of: their regular pay for the hours they worked, *or* the minimum wage for the hours they worked plus one hour.

EXAMPLE

Suppose the minimum wage that applies to a particular employee is \$16.90 an hour. If they work two four-hour shifts in the same day, they should be paid at least \$152.10 for the day: their eight hours worked plus a one-hour split-shift premium, all at \$16.90 an hour (nine hours of pay in total).

A second employee is paid \$20 an hour. If they work the same split shift, they should be paid \$160.00 for the eight hours worked. They do *not* receive a split-shift premium, because \$160.00 already exceeds the \$152.10 a minimum-wage employee would earn for that shift.

A third employee is paid \$18 an hour. If they work the same split shift, they earn \$144.00 for the eight hours of work. Because that is less than \$152.10, they are owed an extra \$8.10 to bring their pay up to the split-shift floor.

How to Enforce the Minimum Wage in California



When an employer refuses to pay employees a minimum wage, employees generally have two options:

-  They can file a wage claim with a federal or state administrative agency, or
-  They can file a civil lawsuit.⁶²

In deciding which option to pursue, an employee (or their attorney) will have to consider several important factors. Those include: how valuable the claim is, whether the employer is likely to challenge the claim, and whether state or federal law should be applied.

An employee may be limited to making a claim under California law if the failure to pay minimum wage violated California, but not federal, law. When both state and federal law were violated, the employee will need to decide which law provides a better remedy.

7.1 Retaliation is Prohibited

Employees who do not receive a minimum wage payment have a right to bring the issue to their employer's attention and request full compliance with their minimum wage rights. Employers are legally prohibited from retaliating against employees who request a minimum wage.⁶³

Employees are also protected from retaliation if they file a complaint with a governmental agency or a lawsuit in court.⁶⁴ This means that an employee cannot be punished, fired, or treated unfairly for exercising the right to be paid a minimum wage.

7.2 Deadlines in State Law Cases

In many cases, it is important to act fast because claims based on minimum wage violations can expire. This expiration period is called a *statute of limitations*.

The statute of limitations for a minimum wage claim is generally *three years*.⁶⁵ If the employee is enforcing the breach of a written employment contract, the statute of limitations is *four years*.⁶⁶

In some cases, litigants seek to extend the statute of limitations in their wage and hour claim by bringing the claim under California's Unfair Competition Law.⁶⁷ Those claims must be brought within *four years*.⁶⁸ It is usually better, however, to bring claims earlier, if possible, so as to avoid relying on this kind of claim in case it turns out to be inapplicable.

7.3 Deadlines in Federal Cases

Under federal law, the applicable statute of limitations depends on whether the employer's minimum wage violation was willful or inadvertent. A claim alleging a *willful* violation of federal law must be brought within *three years* of the violation.⁶⁹ A claim that does not involve a willful violation of federal law must be brought within *two years* of the violation.⁷⁰

A violation is *willful* if the employer knew or showed reckless disregard for whether its conduct violated federal law.⁷¹

References

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|---|------------------------|
| 1 | Labor Code, § 1182.12. |
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| 2 | Labor Code, § 1182.12, subd. (c) [the Director of Finance adjusts the minimum wage each year by the lesser of 3.5 percent or the change in the U.S. CPI-W, effective the following January 1]. |
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| 3 | 29 U.S.C. § 206(a)(1)(C). |
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| 4 | Unless they are exempted, most employees are covered by the federal minimum wage law if they are “engaged in commerce or in the production of goods for commerce, or [are] employed in an enterprise engaged in commerce or in the production of goods for commerce.” (29 U.S.C. § 206(a).) Most employees meet that standard. |
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| 5 | 29 U.S.C. § 218(a) [“No provision of this Act or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this Act . . . ”]. |
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| 6 | 29 U.S.C. § 218; <i>Aguilar v. Ass’n for Retarded Citizens</i> (1991) 234 Cal.App.3d 21, 34 [“[F]ederal law does not control unless it is more beneficial to employees than the state law.”]. |
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| 7 | Labor Code, §§ 1474–1476 (AB 1228); Department of Industrial Relations, Fast Food Minimum Wage FAQ. The Fast Food Council sets this rate, and it is not tied to the statewide annual adjustment. |
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| 8 | Labor Code, §§ 1182.14–1182.15 (SB 525); Department of Industrial Relations, Health Care Worker Minimum Wage FAQ. These facility-based rates increase on a set schedule. |
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| 9 | Labor Code, § 1182.12, subd. (b). |
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| 10 | Labor Code, § 1182.12, subd. (b). The minimum wage applies to “all industries” and to “any occupation,” except outside salespersons and |
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individuals participating in certain national service programs. (Labor Code, §§ 1171, 1182.12.)

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- 11 See Department of Industrial Relations, [California Minimum Wage](#) ¹⁹.
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- 12 Labor Code, § 1182.12, subd. (c).
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- 13 Labor Code, § 1182.12, subd. (c)(2).
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- 14 Cal. Const. art. XI, § 7 [“A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.”].
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- 15 Labor Code, § 1194, subd. (a); *Sanchez v. Western Pizza Enterprises, Inc.* ²⁰ (2009) 172 Cal.App.4th 154, 170 [“An employee’s statutory right to reimbursement of job expenses is unwaivable [citations], as is the statutory right to receive minimum wage [citations].”].
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- 16 Civil Code, §§ 1668 [“All contracts which have for their object, directly or indirectly, to exempt any one from responsibility for his own fraud, or willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law.”], 3513 [“Any one may waive the advantage of a law intended solely for his benefit. But a law established for a public reason cannot be contravened by a private agreement.”].
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- 17 See *Gordon v. City of Oakland* (9th Cir. 2010) 627 F.3d 1092, 1095 [construing similar provision under federal law].
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- 18 See Labor Code, § 1182.12, subd. (b) [applying to *employers*].
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- 19 Labor Code, § 1182.12, subd. (b)(3) [“For purposes of this subdivision, ‘employer’ means any person who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person. For purposes of this subdivision, ‘employer’ includes the state, political subdivisions of the state, and municipalities.”].
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- 20 *Sullivan v. Oracle Corp.* (2011) 51 Cal.4th 1191, 1197 [“[A] preambular section of the wage law . . . confirms that our employment laws apply to ‘all individuals’ employed in this state [citations].”].
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- 21 Labor Code, § 1171.5, subd. (a) [“All protections, rights, and remedies available under state law, except any reinstatement remedy prohibited by

federal law, are available to all individuals regardless of immigration status who have applied for employment, or who are or who have been employed, in this state.”].

- 22 Cal. Code of Regs., tit. 8, §§ 11010–11170, subd. 4 [“LEARNERS: Employees during their first 160 hours of employment in occupations in which they have no previous similar or related experience, may be paid not less than 85% percent of the minimum wage rounded to the nearest nickel.”].
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- 23 Labor Code, § 1182.4, subd. (a) [“No student employee, camp counselor, or program counselor of an organized camp shall be subject to a minimum wage or maximum hour order of the commission if the student employee, camp counselor, or program counselor receives a weekly salary of at least 85 percent of the minimum wage for a 40-hour week, regardless of the number of hours per week the student employee, camp counselor, or program counselor might work at the organized camp. If the student employee, camp counselor, or program counselor works less than 40 hours per week, the student employee, camp counselor, or program counselor shall be paid at least 85 percent of the minimum hourly wage for each hour worked.”].
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- 24 Cal. Code of Regs., tit. 8, §§ 11010–11170, subd. 1(D) [“The provisions of this order shall not apply to any individual who is the parent, spouse, child, or legally adopted child of the employer.”].
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- 25 Cal. Code of Regs., tit. 8, §§ 11010–11170, subd. 2(I) [“‘Outside salesperson’ means any person, 18 years of age or over, 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.”].
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- 26 Labor Code, § 1171.
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- 27 Stats. 2021, ch. 339 (SB 639), amending Labor Code section 1191 and amending and repealing Labor Code section 1191.5 [section 1191 became inoperative, and section 1191.5 was repealed, on January 1, 2025]; Division of Labor Standards Enforcement, [Sheltered Workshops and Special Minimum Wage Workers](#) .
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- 28 See, e.g., 29 U.S.C. § 206(g) [covering “[n]ewly hired employees who are less than 20 years old”].
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- 29 29 U.S.C. § 218; *Aguilar v. Ass’n for Retarded Citizens* (1991) 234 Cal.App.3d 21, 34 [“[F]ederal law does not control unless it is more beneficial to employees than the state law.”].
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- 30 See Labor Code, § 1182.12, subd. (b) [applying to *employers*].
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- 31 *Estrada v. FedEx Ground Package System, Inc.* (2007) 154 Cal.App.4th 1, 10–11 [“The parties’ label is not dispositive and will be ignored if their actual conduct establishes a different relationship.”].
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- 32 Labor Code, § 2775, subd. (b)(1) (AB 5); *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903. A number of occupations fall within statutory exceptions that are instead governed by the multifactor test of *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341. (Labor Code, §§ 2776–2785.)
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- 33 See Cal. Code of Regs., tit. 8, §§ 11010–11170, subd. 1(A).
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- 34 See, e.g., Cal. Code of Regs., tit. 8, §§ 11010–11170, subd. 1(A)(1)(f) [“Such an employee must also earn a monthly salary equivalent to no less than two (2) times the state minimum wage for full-time employment. Full-time employment is defined in Labor Code Section 515(c) as 40 hours per week.”].
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- 35 Cal. Code of Regs., tit. 8, §§ 11010–11170, subd. 4(b) [“Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”].
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- 36 See *United States v. Rosenwasser* (1945) 323 U.S. 360, 364 [65 S.Ct. 295, 297] [piece work payment “must be translated or reduced by computation to an hourly basis for the sole purpose of determining whether the [FLSA] requirements have been fulfilled”]. Federal courts have generally, but not always, interpreted *Rosenwasser* as permitting an employer to avoid minimum wage liability if the employee’s total compensation for a week of work equals the minimum wage the employee would have received if the employee had been paid on an hourly basis. (Compare *United States Dep’t of Labor v. Cole Enters., Inc.*

(6th Cir. 1995) 62 F.3d 775, 780 [“several courts have held that an employer meets the minimum wage requirements if the total weekly wage paid is equal to or greater than the number of hours worked in the week multiplied by the statutory minimum hourly rate”] with *Norceide v. Cambridge Health Alliance* (D. Mass. 2011) 814 F.Supp.2d 17 [employer may not avoid paying minimum wage for hours that employee worked for no pay by claiming that average weekly pay for all hours worked during the week exceeded minimum wage].)

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- 37 *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324 [“While the averaging method utilized by the federal courts to assess whether a minimum wage violation has occurred may be appropriate when considered in light of federal public policy, it does not advance the policies underlying California’s minimum wage law and regulations.”].
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- 38 *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 52 [“[E]arnings, for purposes of determining compliance with minimum wage requirements, should include not less than the minimum wage for waiting time hours not compensated by the piece rate.”].
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- 39 See *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324 [“The minimum wage standard applies to each hour worked by [employees] for which they were not paid.”]; *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 52 [applying reasoning of *Armenta* to piece-rate workers].
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- 40 Labor Code, § 226.2, subd. (a)(1) [codifying the rule of *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36]. Rest and recovery periods must be paid at the higher of an average hourly rate or the applicable minimum wage, and other nonproductive time at no less than the applicable minimum wage. (Labor Code, § 226.2, subds. (a)(3), (a)(4).)
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- 41 See, e.g., Labor Code, § 204.1 [commissioned car salesperson may be paid monthly].
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- 42 Labor Code, § 204, subd. (a) [“All wages . . . earned by any person in any employment are due and payable twice during each calendar month . . . ”].
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- 43 *Koehl v. Verio, Inc.* (2006) 142 Cal.App.4th 1313, 1335 [“A commission is ‘earned’ when the employee has perfected the right to payment; that is,

when all of the legal conditions precedent have been met. Such conditions precedent are a matter of contract between the employer and employee, subject to various limitations imposed by common law or statute.”]. We have explained when and how commissions must be paid in more detail in our article [The Law on Commission-Based Pay for Sales Employees in California](#).

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- 44 *Peabody v. Time Warner Cable, Inc.* (2014) 59 Cal.4th 662, 669 [“Whether the minimum earnings prong is satisfied depends on the amount of wages *actually paid* in a pay period.”].
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- 45 *Peabody v. Time Warner Cable, Inc.* (2014) 59 Cal.4th 662, 669 [“An employer may not attribute wages paid in one pay period to a prior pay period to cure a shortfall.”].
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- 46 *Peabody v. Time Warner Cable, Inc.* (2014) 59 Cal.4th 662, 669 [“This interpretation narrowly construes the exemption’s language against the employer with an eye toward protecting employees.”].
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- 47 Labor Code, § 351 [“No employer or agent shall collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deduct any amount from wages due an employee on account of a gratuity, or require an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer. Every gratuity is hereby declared to be the sole property of the employee or employees to whom it was paid, given, or left for.”].
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- 48 California courts have generally permitted “tip pooling,” or mandatory sharing of tips by employees, provided that the employer or the employer’s agent does not receive a share of the pool. (See, e.g., *Jameson v. Five Feet Restaurant, Inc.* (2003) 107 Cal.App.4th 138, 141 [“Tip pooling is permissible under California law if an employer or agent does not take any part of a gratuity given to an employee by a patron or otherwise violate section 351.”].) An *agent*, for the purpose of section 351, is someone who can hire, discharge, supervise, direct, or control the acts of an employee. (Labor Code, § 350, subd. (d) [“‘Agent’ means every person other than the employer having the authority to hire or discharge any employee or supervise, direct, or control the acts of employees.”].)
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- 49 Cal. Code of Regs., tit. 8, §§ 11010–11170, subd. 10(C) [“Meals or lodging may not be credited against the minimum wage without a voluntary written agreement between the employer and the employee.”].
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- 50 Cal. Code of Regs., tit. 8, §§ 11010–11170, subd. 10(C).
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- 51 Cal. Code of Regs., tit. 8, §§ 11010–11170, subd. 10(A).
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- 52 Cal. Code of Regs., tit. 8, §§ 11010–11170, subd. 10(D).
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- 53 Cal. Code of Regs., tit. 8, §§ 11010–11170, subd. 10(B).
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- 54 Cal. Code of Regs., tit. 8, §§ 11010–11170, subd. 10(D) [“Deductions shall not be made for meals not received or lodging not used.”].
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- 55 *Von Nothdurft v. Steck* (2014) 227 Cal.App.4th 524, 530 [citing Cal. Code of Regs., tit. 8, § 11050, subd. 10].
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- 56 *Von Nothdurft v. Steck* (2014) 227 Cal.App.4th 524, 530.
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- 57 Labor Code, § 1182.8 [“No employer shall be in violation of any provision of any applicable order of the Industrial Welfare Commission relating to credit or charges for lodging for charging, pursuant to a voluntary written agreement, a resident apartment manager up to two-thirds of the fair market rental value of the apartment supplied to the manager, if no credit for the apartment is used to meet the employer’s minimum wage obligation to the manager.”]; *Brock v. Carrion, Ltd.* (E.D.Cal. 2004) 332 F.Supp.2d 1320, 1328 [“[S]ection 1182.8 governs where an employer does not credit lodging against minimum wages, and Wage Order No. 5 applies when an employer does seek to impose such a credit.”].
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- 58 Cal. Code of Regs., tit. 8, §§ 11010–11170, subd. 2(M) [“‘Split shift’ means a work schedule, which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods.”].
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- 59 *Securitas Security Services USA, Inc. v. Superior Court* (2011) 197 Cal.App.4th 115, 122 [“A ‘split shift’ occurs only when an employee’s designated working hours are interrupted by one or more unpaid, nonworking periods established by the employer that are not bona fide rest or meal periods. The fact that a single continuous shift happens to begin during one ‘workday’ and end in another does not result in a ‘split shift.’ Thus, employees working uninterrupted overnight shifts on

consecutive days do not work a split shift and are not entitled to split-shift pay under the wage order.”].

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- 60 Cal. Code of Regs., tit. 8, §§ 11010–11170, subd. 4(C) [“When an employee works a split shift, one hour’s pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment.”].
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- 61 *Aleman v. Airtouch Cellular* (2012) 209 Cal.App.4th 556, 575.
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- 62 See Labor Code, § 1194, subd. (a) [“Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”].
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- 63 Labor Code, § 98.6, subd. (a) [“A person shall not discharge an employee or in any manner **discriminate**, retaliate, or take any adverse action against any employee or applicant for employment because . . . of the exercise by the employee or applicant for employment on behalf of himself, herself, or others of any rights afforded him or her.”].
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- 64 Labor Code, § 98.6, subd. (a).
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- 65 Code of Civ. Proc., § 338, subd. (a); *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1112.
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- 66 Code of Civ. Proc., § 337.
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- 67 See Bus. & Prof. Code, § 17200, et seq.
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- 68 Bus. & Prof. Code, § 17208 [“Any action to enforce any cause of action pursuant to this chapter shall be commenced within four years after the cause of action accrued. No cause of action barred under existing law on the effective date of this section shall be revived by its enactment.”].
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- 69 29 U.S.C. § 255(a).
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- 70 29 U.S.C. § 255(a).
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- 71 *McLaughlin v. Richland Shoe Co.* (1988) 486 U.S. 128, 133 [108 S.Ct. 1677, 1681].
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