THE LAW ON COMMISSION-BASED PAY FOR SALES EMPLOYEES IN CALIFORNIA

Commissioned employees in California must be paid every commission they earn, on time and in full: this guide explains the rules and how to enforce them.

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Kyle D. Smith is a California employment lawyer and the author of the articles on WorkLawyers.com. He represents employees in disputes with their employers, from unpaid wages and misclassification to wrongful termination.

He writes these guides to put the state’s labor laws into plain English, in neutral terms, with a citation for every claim.

Employees can be paid for their work in several ways. Hourly wages and fixed salaries are the most common examples. Some employees are paid on a *commission* basis.

In California, a commission is compensation for sales-related work, measured by the amount or value of what the employee sells.[1]

Commissions are wages. An employee who earns them has the right to a written commission agreement, to be paid every commission they have earned, to be paid it on time, to earn at least the minimum wage for all hours worked, and, unless an exemption applies, to be paid overtime.[2]

This article explains the rights of employees paid on a commission basis in California. Since each situation is different and the law can be complex, employees should seek the advice of an employment lawyer if they believe that a commission has not been properly paid.

CH. 01

Definition of “Commission”

In California, a **commission** is a type of compensation paid to a person for sales-related services they render. In a commission-based arrangement, the size of the employee's compensation depends on the amount or value of the thing that was sold.[3]

The amount of the employee's commissions is usually based on:

- A percentage of sales or profits made from sales,[4] or
- The number of sales made.

1.1 Commissions are Not Discretionary

Commissions are wage payments that an employee is *entitled* to receive by virtue of making sales. A *discretionary* payment that an employer can choose to pay or withhold, such as a performance bonus, is **not** a commission even if it is computed as a percentage of sales or profits.[5]

1.2 Measuring Pay: Amount vs. Value

To constitute a commission, the employee's wage must be directly tied to either:

- The *amount* of the goods or services sold, or
- The *value* of the goods or services sold.[6]

The term *amount* can refer to the quantity of goods or services sold, without regard to cost or value of the thing being sold.[7] The term *value* refers to monetary value as opposed to other measures of value (such as merit or importance).[8]

> EXAMPLE #1
>
> A car salesperson is paid a flat rate for each vehicle sold. His pay constitutes a commission because it is determined by the amount of goods sold.[9]

> EXAMPLE #2
>
> A grocery store employee earns reward points for each shopping cart they bring back to the store. The reward points do not directly reflect the cost or amount of goods or services sold. The employee's compensation does *not* meet the definition of a commission.

1.3 Commissions are Paid for Sales

Commissions are earned by *selling* a product or service.[10] Employees who are not involved in sales do not earn commissions, even if their compensation is based on a percentage of a customer's payment or on the amount of an employee's production.[11]

An employee is involved in **sales** when they are involved in exchanging a product or service for money or something else of value. The definition of *sales* also includes sales-related activity, like when an employee attempts to influence customers or clients to purchase a product or service.[12]

EXAMPLE #1

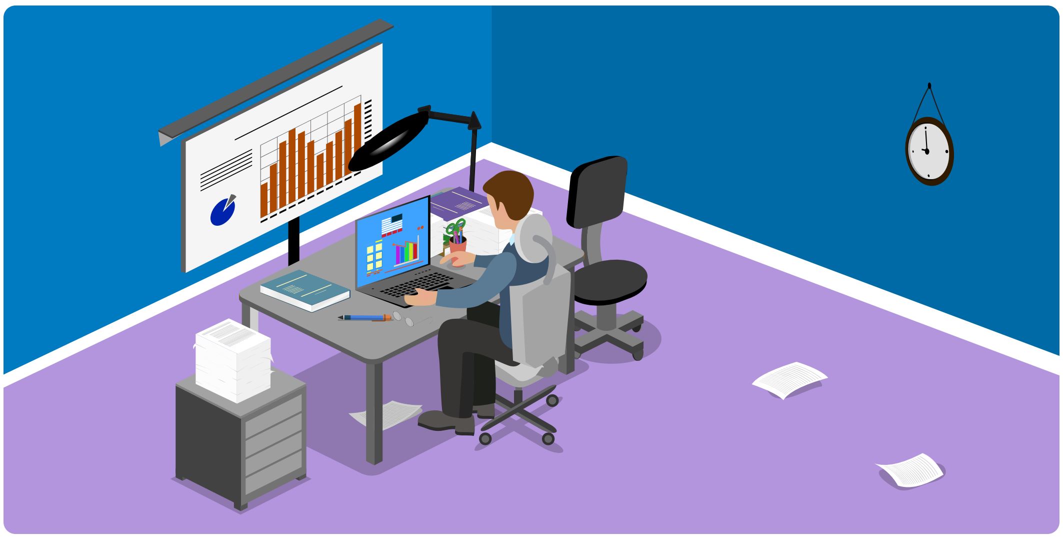
A mechanic is paid a percentage of an hourly rate that the customer pays to the mechanic's employer. This is *not* a commission because the mechanic is not selling his or her service but merely performing it.[13]

EXAMPLE #2

A worker at an employee-placement service is paid a percentage of the placement fee the employer receives when job candidates are hired by clients. This arrangement meets the definition of “selling” because persuading a client to hire candidates is “sales-related activity.”[14]

CH. 02

California Law on Commission Agreements



The terms under which commissions are earned are established by an agreement between the employer and the employee. That agreement is often part of a broader employment contract.[15]

2.1 General Rules

When some or all of a California employee's compensation is based on commissions, California law requires the compensation agreement to be in writing.[16] The agreement must specify the way the commissions will be computed and paid.[17]

The employee must be provided with a copy of the written commission agreement. And the employer must ask the employee to sign a receipt as proof that the employee was given a copy of the agreement.[18]

2.2 Changes to the Contract

An employer can usually decide to implement a new commission agreement and can condition *future* employment upon the employee's acceptance of the new agreement.[19]

But once a commission has been earned under an existing agreement, the employee has a right to be paid the earned commission. This is true regardless of how a new agreement treats commissions that the employee has not yet earned.[20]

When a commission agreement expires and the employee continues to make sales, the agreement is presumed to remain in effect. In other words, the employer must continue to pay commissions as provided in the contract until a new contract is made or employment is terminated.[21]

2.3 "Earned" Commissions

Under California law, the definition of *wages* includes sales commissions.[22] Wages that have been *earned* must be paid.[23]

As explained by one California court:

> [T]here is in this state a fundamental and substantial public policy protecting an employee's wages . . . .
>
> — *Phillips v. Gemini Moving Specialists*
> (1998) 63 Cal.App.4th 563, 574

The conditions that must occur before a commission is "earned" are defined by the terms of the commission agreement.[24] Once those conditions have been fulfilled, the commission is considered a wage and the employer is legally obligated to pay it the same way they would any other wage.[25]

For example, an agreement might provide that the commission is earned when a customer executes a sales agreement to purchase goods or services.

Other agreements might provide that a commission is earned when the customer *pays* for the goods that were sold, particularly when the salesperson's duties include following through with the customer to assure that payment is made.[26]

Whatever the case, the commission agreement *must* specify when and how a commission is earned. Earned commissions must be paid within the time otherwise set by California law.[27]

2.4 Forfeiture Provisions

As mentioned above, the way a commission is "earned" will be defined by the commission agreement.[28] If the employee performs all the actions required to "earn" the commission under the agreement, they generally have a right to receive it.

Conflicts arise, however, when the employee quits or is terminated before their right to receive the commission has fully vested. In general, termination does *not* impede an employee's right to receive a commission where no other action is required on the part of the employee to complete the sale leading to the commission payment.[29]

Some agreements, however, state that the employee must be currently employed by the employer in order to receive the commission. This is sometimes referred to as a *forfeiture provision* (because the commission might be forfeited if the employee quits or is fired).[30]

These provisions can be harsh. An employee might put in substantial work toward a sale and still lose the commission by leaving before the sale is complete. California law, however, limits how far a forfeiture provision can reach.

California courts tend to be skeptical of forfeiture provisions. As a general contract principle, a "condition involving a forfeiture must be strictly interpreted against the party for whose benefit it is created."[31] In a commission agreement, that party is normally the employer.

Even so, forfeiture provisions can sometimes be enforced. Because remaining employed is treated as a condition the employee must satisfy before the commission is earned, an employee who quits or is fired before satisfying that condition is at risk of losing the commission, even if the employee has already done all of the sales work.[32] The employer may not, however, fire an employee in bad faith to prevent that condition from being met. A discharge that is a mere pretext to cheat the employee out of compensation they had effectively earned violates the implied covenant of good faith and fair dealing, and the employee may recover.[33]

And even a clear forfeiture provision is unenforceable if it is unconscionable, which requires both procedural unfairness (in how the agreement was presented) and substantive unfairness (in how harsh the forfeiture is). One court refused to enforce a forfeiture that was sprung on the employee two weeks after he started work, after he had relocated in reliance on an oral offer that never mentioned it, and that stripped him of a commercially unreasonable amount; another court enforced a forfeiture where the agreement was presented before hire, reviewed by the employee's attorney, and negotiated.[34]

As a practical matter, employees who are considering signing a commission agreement should carefully read the language to determine what steps they must take to fully earn their commission. If the agreement includes a forfeiture provision, it might be worth negotiating with the employer to remove that provision.

CH. 03

How Commissions are Calculated

There are many ways in which commissions can be computed. Examples include:

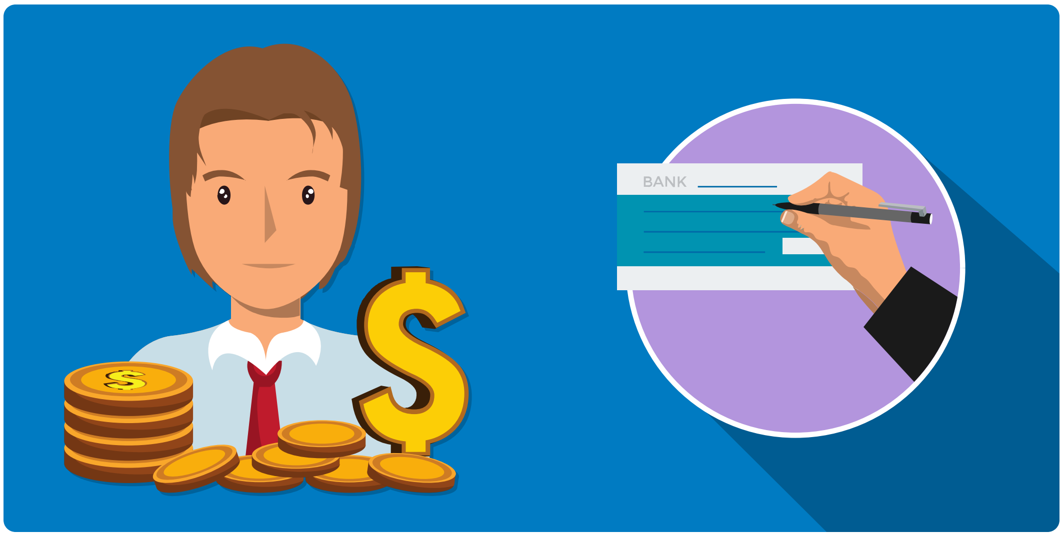
- **Price Percentage.** A commission might be based on a percentage of the price the consumer pays for products or services.
- **Profit Percentage.** A commission might instead be based on profit. This could motivate salespeople to sell a product for the highest possible price.[35]
- **Fixed Amount Per Sale.** A commission agreement might provide for a flat rate payment based on the number of products sold.[36]
- **Fixed-Floor.** A commission agreement might provide for a minimum payment that the employee will receive on every sale. For example, a car salesperson might receive $300 for every car sold or 25% of the profit on the sale, whichever is higher.
- **Mixed Agreement.** Some commission agreements call for varying percentages that are tied to total sales, or total number of sales.

As can be seen, a salesperson can receive varying commissions, depending on the product sold or the geographical area in which the sale is made.

Whatever method is used to calculate the commission, the method must be specified in the commission agreement.

CH. 04

Deductions, Advances, and Draws from Commissions



California law prohibits employers from making deductions from the wages of employees for most expenses that are incurred during the regular course of business.[37] In most situations, employers may not make deductions from wages for business losses unless the employer can establish one of two things:

- The business loss was caused by a dishonest or willful act, or
- The business loss was caused by the culpable negligence of the employee.[38]

This powerful rule means that California employers usually must bear their own losses for mistakes that resulted from their employees' simple negligence. Employers *cannot* make deductions from their employees' paychecks for cash shortages, breakages, losses of equipment, or other business losses if the losses resulted from acts of mere negligence on the part of the employee.[39]

In the context of commissions, however, this rule is much less clear. First, a commission agreement *may* require an employee's commission to be reduced by costs that are directly related to the sale.[40]

EXAMPLE

An employer can make deductions for things like shipping, the cost of the product being sold, or the cost of free products offered by the salesperson to induce the sale, but only if those costs are directly tied to the same sale.

An employer *cannot*, however, make deductions for things that are only remotely related to the sale.[41] Nor can an employer use deductions as a way of shifting their cost of doing business to the employee.[42] So, for example, an employer may not deduct the cost of the business's electricity or the business's general overhead from the employee's commission.

LEGAL DEVELOPMENTS

At least one court in California has suggested that an employee's commission may not be reduced by the cost of a credit card fee or for the employee’s usage of a company telephone. The court reasoned that those types of penalties serve only to shift the employer's cost of doing business to the employee.[43]

Although it remains to be seen whether other courts will adopt this interpretation, employers would be wise to carefully avoid shifting generalized business expenses to commissioned employees.

Finally, if the employer wishes to make deductions from an employee's commissions, those deductions must be clearly stated in writing.[44]

4.1 Merchandise Returns

In general, it is legal for a commission agreement to make the payment of a commission contingent on events that occur after a sale. This means that a commission agreement can require an employee to payback a commission for merchandise that was returned.[45] Likewise, the agreement can require that any wages advanced to the employee be deducted at a later date if the sale is reversed for some reason (like, say, a bounced check).[46]

A commission agreement may not, however, make deductions from an employee's commissions for merchandise returns that are not directly attributable to the employee. So, unless the employer can specifically identify a sale as having come from a specific employee, the employer may not make deductions for a return from that sale.[47]

4.2 Advances and Draws

Some commission agreements require the employer to pay a salesperson an advance toward commission wages that have not yet been fully earned. For example, a commission agreement might provide for a commission to be paid to an employee before a sale is final.[48] Similarly, some agreements treat an advance (or a “draw”) as the minimum compensation if commissions earned are less than a certain amount.

In general, commission agreements may require the employee to repay advances if the employee does not earn sales commissions that equal or exceed the amount advanced. In that case, the advance is treated as a loan.[49]

If the advanced commission is treated as a loan, the employee may be required to pay some or all of it back to the extent it isn't fully earned.[50]

Advances are prohibited, however, if the amount the employee is likely to earn from commissions is unpredictable and the factors related to a lost sale would be beyond the employee's control.[51] Nor can an employer require an employee to pay back an advance if the employer is merely trying to shift the costs of doing business to the employee.[52]

If the agreement does not require the employee to repay an advance that is not covered by earned commissions, the advance is treated as wages rather than a loan and the employee is not required to repay it.[53]

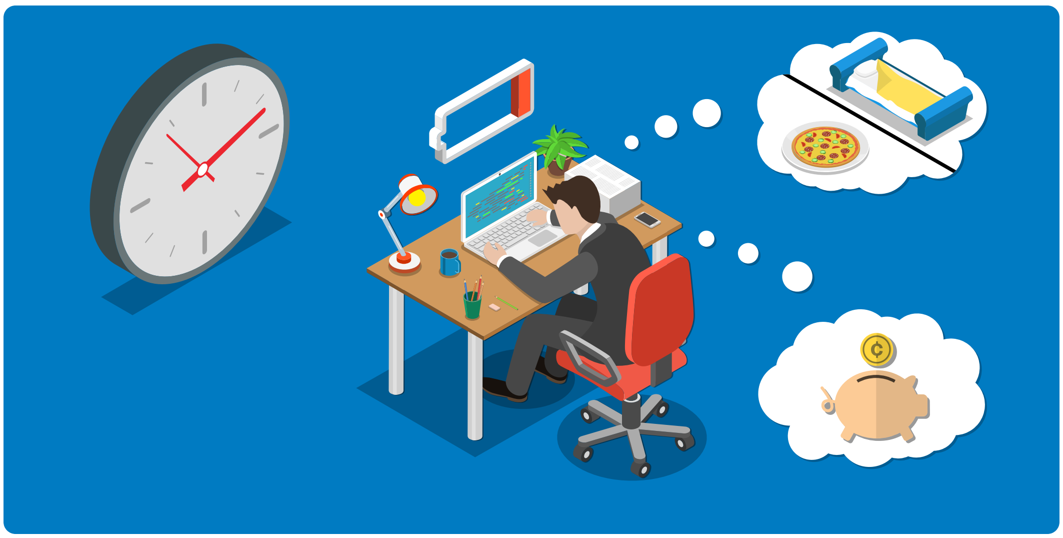
As mentioned above, California law requires commission agreements to be in writing.[54] So, a court is unlikely to require an employee to repay an employer's advance unless the employee's agreement to do so is in writing.[55]

4.3 Minimum Wage Considerations

Importantly, most employees who are paid on a commission basis are entitled to be paid minimum wage for hours worked.[56] Thus, an employer may *not* require an employee to repay advances or earned commissions if doing so would cause the employee's wages to fall below the minimum wage (unless the employee is exempt from minimum wage requirements).[57]

CH. 05

Overtime Compensation and Minimum Wage



With the exception of outside salespersons (which are defined below), employees who are paid a commission are generally entitled to be paid minimum wage for hours worked.[58]

Unless the employee is exempt, employers must keep a record of hours that employees work to ensure they are paid a minimum wage.[59] And time spent on tasks unrelated to the earning of a sales commission must be separately compensated at a rate that is equal to at least California's minimum wage.[60]

Along these same lines, most non-exempt commissioned employees in California are entitled to be paid overtime when they work:

- More than eight hours in one day,
- More than 40 hours in one week, or
- More than six consecutive days in the same workweek.[61]

An employee's overtime rate will usually be *one-and-a-half times* their regular rate of pay.[62] This is sometimes referred to as “time and a half” pay.

But, if the employee works more than 12 hours in a single day or more than eight hours on the seventh consecutive day of work in the workweek, their overtime rate is *twice* their regular rate of pay.[63]

There are several types of employees that are exempt from overtime requirements. When any of the exemptions apply, the employee is not entitled to overtime.

5.1 Generally-Exempt Employees

Certain employees are classified "exempt" under California law, regardless of whether they earn a commission. An exempt employee is someone who occupies a job that is not subject to one or more sets of wage and hour laws.[64]

Employers are only entitled to claim an exemption when an employee "plainly and unmistakably" meets the standard required for the exemption.[65] When doubt exists, the law generally requires the employee to be classified as nonexempt.

To meet the requirements of a generally-exempt employee, the employee must meet *all* of the following requirements:

- Be paid on a salary basis,[66]
- Be paid a monthly salary of at least *twice* the state minimum wage for full-time employment,[67] and
- Be primarily engaged in the duties of white-collar employees that are professionals, administrators, or executives.[68]

The general exemptions that apply to all California employees are discussed in more detail here.

5.2 Commissioned Sales Exemption

California also exempts employees that fall under the "commissioned sales" exemption. This exemption applies to employees who:

- Earn more than one-and-a-half times the minimum wage,
- Earn more than half their income in the form of commissions,[69] and
- Work in the mercantile industry (which includes retail jobs), or work in certain professional, technical, clerical, mechanical, and similar

occupations.[70]

The commissioned sales exemption only exempts employees who satisfy both conditions *during a pay period*. If an employee's earnings do not exceed one-and-one-half times the minimum wage during a pay period, the employee must be paid overtime compensation for overtime hours worked during that pay period.[71]

If an employee is regularly paid an hourly wage in one pay period and a combination of hourly wages and commissions in the next pay period, the employee cannot be classified as exempt during the pay period in which no commissions are paid.[72]

This last rule is important for salespeople who do not collect a commission until the customer pays for a purchase. They may be exempt during pay periods in which customers pay for purchases but nonexempt during pay periods when they collect no commissions.

5.3 Outside Salesperson Exemption

Outside salespersons are excluded from minimum wage and overtime laws.[73] The outside salesperson exemption applies to employees who:

- Spend more than half their work time away from the employer's place of business, and
- Earn commissions from sales of products, services, or use of facilities.

The employer's **place of business** is any business location maintained by the employer, not just its principal place of business or administrative headquarters.[74]

Whether an employee spends more than half of his or her working time “selling” is not always clear. For example, an employee may sell products to a customer and later deliver those products to the customer.

When the employee devotes more time to delivering than selling, the employee cannot be classified as an exempt outside salesperson.[75]

CH. 06

Meal and Rest Break Rights for Commissioned Employees

6.1 General Rule

California employers are usually required to provide their employees with meal breaks and rest periods.[76]

- **Meal Breaks.** California employers must give employees who work more than five hours per day an unpaid 30-minute meal break. Employees who work more than 10 hours per day are entitled to a second 30-minute meal break.[77]

- **Rest Periods.** California employers must give non-exempt employees a ten-minute rest break during the middle of each 4-hour work period. Employers are not allowed to make a deduction from wages for the time employees spend on a rest break that is required by law.[78]

The California Court of Appeal has held that employers who pay employees solely on a commission basis must separately compensate them for time they spend on their rest breaks.[79]

Rest periods, like other types of “nonproductive” time, do not contribute to the employee's commission earnings. So, to comply with California's minimum wage and break laws, employers are required to separately compensate employees for that time.[80]

6.2 Exemptions

As was the case with overtime wages, however, certain employees are *exempt* from rest period requirements. Employees that are generally-exempt or that fall into the “outside salespersons” exemption described above are not entitled to rest periods.[81]

But, unlike the overtime exemptions, the commission sales exemption described above does *not* apply in the context of rest periods.[82]

6.3 Penalties

The penalties for failing to provide required meal and rest breaks can be substantial.

When employers fail to provide an employee a meal break, they are required to pay the employee an extra one hour of pay at the employee's regular rate of compensation, which for a commissioned employee includes the commissions they earn.[83] The employee may only earn one extra hour per workday for their employer's failure to provide them with missed meal breaks.

CH. 07

Commission Laws Governing Specific Industries

In addition to the rules described above, certain workers are subject to specific rules, namely car salespeople and cosmetologists. We will address those special circumstances in this chapter.

7.1 Car Sales Employees

Unlike most employees, people that are employed by a licensed vehicle dealer can be paid their commissions once during each calendar month. That payday must be designated in advance by the employer as the regular payday.[84]

Additionally, employees that sell products or services for a licensed vehicle dealer are only considered to be paid on a commission-basis if they are paid a proportional amount of the value of their sale.[85]

This means that employees working for a car dealership who are paid a fixed amount for each sale that isn't tied to the value of the sale are *not* considered to be paid on a commission basis.[86] Instead, they would most likely be considered “piece rate” employees and subject to a number of other legal rules.[87]

Among other things, those legal rules require employers to be more accountable on the employee's pay stubs. We explain the paycheck and pay stub requirements for piece-rate employees in our article: *Wage Statement & Pay Stub Requirements in California*.

Of note, however, these car dealership rules do not apply to employees that are subject to a collective bargaining agreement (i.e., they are members of a union) that provides for the date on which wages shall be paid.[88]

7.2 Salon and Cosmetology Employees

Employees that are licensed under California's Barbering and Cosmetology Act[89] (“BCA”) are subject to special rules if they are paid on a commission basis.[90]

First, a wage is only a “commission” for these purposes if the following conditions are met:

- The services for which the employee is earning a commission require a cosmetology license under the BCA,
- The commission is paid as a percentage or a flat sum portion of the sums paid to the employer by the client receiving the service (or for selling goods), and
- The employee is paid a regular base hourly rate of at least two times the state minimum wage *in addition to* the commissions paid.[91]

The most important aspect of these requirements is the third item: the base rate of the employee's wages. Although the employee and employer may agree to a commission or hourly rate in addition to the base hourly rate, a wage is only a “commission” in this setting if they earn a base rate of double the applicable minimum wage for all hours worked in each pay period worked.[92]

In 2026, the applicable minimum wage for employees is $16.90.[93] So cosmetologists working for commissions must earn a base rate of at least $33.80 for their additional earnings to constitute a “commission.”[94]

In addition to the rules above, the base rate of the employee's wages must be paid at least *twice* during each calendar month on a day designated in advance by the employer as the regular payday.[95]

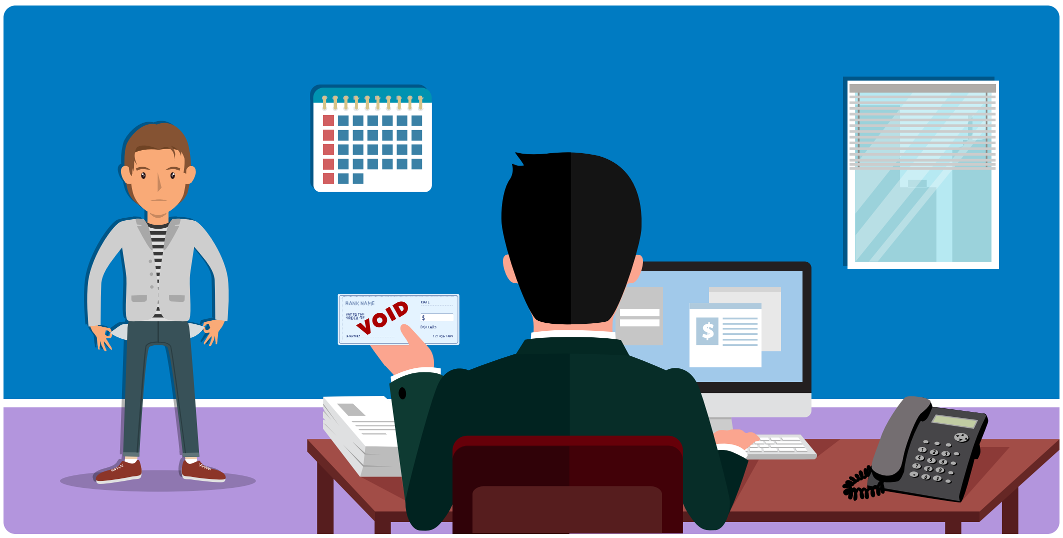
Finally, cosmetologists paid on a commission basis must be compensated for rest and recovery periods at a rate of pay not less than the employee's regular base hourly rate (which, as explained above, must be twice the state minimum wage).[96]

If any of these rules are not followed, the cosmetologists are not considered to be paid on a commission basis for legal purposes. Instead, they would most likely be considered “piece rate” employees and subject to a number of other legal rules.[97]

Among other things, those legal rules require employers to be more accountable on the employee's pay stubs. We explain the paycheck and pay stub requirements for piece-rate employees in our article: *Wage Statement & Pay Stub Requirements in California*.

CH. 08

The Law on Unpaid or Late-Paid Commissions



As noted above, the employment contract determines when a commission is earned. But once it is earned, California law determines when it must be paid.

With limited exceptions,[98] earned commissions must be paid at least *twice* during each calendar month.[99]

Commissions must generally be paid during the first pay period in which the earned commission can reasonably be calculated. The Division of Labor Standards Enforcement takes the position that commissions are not "earned" until the information from which they can be calculated becomes available.[100]

When an employee is terminated or discharged, the wages earned and unpaid at that time are due and payable immediately.[101]

Immediate payment at the end of employment must also be given to employees who quit after giving notice at least 72 hours before their last day of work. Employees who do not give that notice must be paid their final wages within 72 hours after they quit.[102]

Again, these requirements are subject to the rule that commissions are not payable until they can be reasonably calculated.

If the failure to pay commissions on time after employment ends is willful, the employee is entitled to wages as if the employee had continued to work for a limited period.[103] That period begins on the date when payment was first due and continues until the date it is paid, for up to 30 days.[104]

CH. 09

Wage Claims Seeking Unpaid Commissions

Employees have rights when it comes to commission-based payments. If their employer violates their commission agreement, they can file a wage claim with the State of California's Division of Labor Standards Enforcement.

Aggrieved employees might also have the right to file a lawsuit against their employer. An employment lawyer can evaluate those claims to determine an employee's available remedies.

References

1 Labor Code, § 204.1.

2 Labor Code, §§ 200, subd. (a) [commissions are wages], 204, subd. (a), 2751, subd. (a), 510, subd. (a); Cal. Code of Regs., tit. 8, §§ 11040, subd. 4(B), 11070, subd. 4(B).

3 Labor Code, § 204.1, defines *commissions* as follows: “Commission wages are compensation paid to any person for services rendered in the sale of such employer's property or services and based proportionately upon the amount or value thereof.”

4 See Labor Code, § 2751, subd. (c)(3) [referring to “a fixed percentage of sales or profits as compensation for work to be performed”].

5 See Labor Code, § 2751, subd. (c) [excluding short-term productivity bonuses, bonus and profit-sharing plans that are not based on a fixed percentage of sales or profits, and “[t]emporary, variable incentive payments that increase, but do not decrease, payment under the written contract” from the statutory definition of a commission].

6 Labor Code, § 204.1.

7 *Burden v. SelectQuote Ins. Services* (N.D. Cal. 2012) 848 F.Supp.2d 1075, 1080 [“A commission is based proportionately upon an 'amount' where an employer pays an employee a uniform fee for each unit of property or service sold.”].

8 *Harris v. Investor's Business Daily, Inc.* (2006) 138 Cal.App.4th 28, 38; *Ramirez v. Yosemite Water Co.* (1999) 20 Cal.4th 785, 804 [“[T]he amount of their compensation must be a percent of the price of the product or service.”], quotation marks omitted.

9 See *Areso v. CarMax, Inc.* (2011) 195 Cal.App.4th 996, 1007–1009.

10 Labor Code, § 204.1.

11 *Keyes Motors, Inc. v. Division of Labor Standards Enforcement* (1987) 197 Cal.App.3d 557, 563 ["[T]he employees must be involved principally in *selling* a product or service, not making the product or rendering the service."], emphasis in original; *Areso v. CarMax, Inc.* (2011) 195 Cal.App.4th 996, 1003.

12 *Muldrow v. Surrex Solutions Corp.* (2012) 208 Cal.App.4th 1381, 1392 [describing sales as "persuad[ing] or influenc[ing] [clients] to a course of action or to the acceptance of something"], quotation marks omitted.

13 *Keyes Motors, Inc. v. Division of Labor Standards Enforcement* (1987) 197 Cal.App.3d 557, 563.

14 *Muldrow v. Surrex Solutions Corp.* (2012) 208 Cal.App.4th 1381, 1392.

15 California law defines an employment contract as "a contract by which one, who is called the employer, engages another, who is called the employee, to do something for the benefit of the employer or a third person." (Labor Code, § 2750.)

16 Labor Code, § 2751, subd. (a) ["Whenever an employer enters into a contract of employment with an employee for services to be rendered within this state and the contemplated method of payment of the employee involves commissions, the contract shall be in writing . . . ."].

17 Labor Code, § 2751, subd. (a) ["[T]he contract shall . . . set forth the method by which the commissions shall be computed and paid."].

18 Labor Code, § 2751, subd. (b) ["The employer shall give a signed copy of the contract to every employee who is a party thereto and shall obtain a signed receipt for the contract from each employee. In the case of a contract that expires and where the parties nevertheless continue to work under the terms of the expired contract, the contract terms are presumed to remain in full force and effect until the contract is superseded or employment is terminated by either party."].

19 See Labor Code, § 2922 ["An employment, having no specified term, may be terminated at the will of either party on notice to the other. Employment for a specified term means an employment for a period greater than one month."].

20 See Labor Code, §§ 201, subd. (a) [requiring payment of earned wages after discharge], 204, subd. (a) [requiring payment of earned wages at

least twice monthly], 221 [prohibiting employers from deducting amounts from an employee's wages].

21 Labor Code, § 2751, subd. (b).

22 Labor Code, § 200, subd. (a); *Sciborski v. Pacific Bell Directory* (2012) 205 Cal.App.4th 1152, 1166 [“[S]ales commissions are considered 'wages.'”].

23 See, e.g., Labor Code, §§ 201, subd. (a), 204, subd. (a), 221; see also Labor Code, § 203 [penalty for failing to pay wages on time].

24 *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.”].

25 *Sciborski v. Pacific Bell Directory* (2012) 205 Cal.App.4th 1152, 1167 [“[O]nce the express contractual conditions are satisfied, the commission is considered a wage and an employer cannot recoup the commission once it has been paid to the employee.”].

26 See, e.g., *Powis v. Moore Machinery Co.* (1945) 72 Cal.App.2d 344, 354 [“It was not illegal to provide that commissions would be paid when and if the goods were delivered and paid for.”].

27 See, e.g., Labor Code, §§ 204 [general rule for timely payment of wages], 204.1 [commissioned car salespersons are due and payable once each calendar month].

28 *Koehl v. Verio, Inc.* (2006) 142 Cal.App.4th 1313, 1335.

29 *Schachter v. Citigroup, Inc.* (2009) 47 Cal.4th 610, 622.

30 *Schachter v. Citigroup, Inc.* (2009) 47 Cal.4th 610, 612 [describing a similar provision of an employment agreement as a “forfeiture provision”].

31 Civ. Code, § 1442.

32 *Schachter v. Citigroup, Inc.* (2009) 47 Cal.4th 610, 622; *American Software, Inc. v. Ali* (1996) 46 Cal.App.4th 1386, 1394–1395.

33 *Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 353, fn. 18 ["the covenant might be violated if termination of an at-will employee was a mere pretext to cheat the worker out of another contract benefit to which the employee was clearly entitled, such as compensation already earned"].

34 Compare *Ellis v. McKinnon Broadcasting Co.* (1993) 18 Cal.App.4th 1796, 1803–1807 [unconscionable] with *American Software, Inc. v. Ali* (1996) 46 Cal.App.4th 1386, 1392–1395 [not unconscionable]; see Civ. Code, § 1670.5 [defining unconscionable contracts]; DLSE Enforcement Policies and Interpretations Manual (2002 rev.) § 34.5.

35 For example, an employee who sells cars for a dealership might be paid 25% of the difference between the dealer's cost and the price paid by the buyer.

36 A car dealership might, for example, pay their employees $300 per car sold.

37 See Labor Code, § 221 ["It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee."]; *Prachasaisoradej v. Ralphs Grocery Co., Inc.* (2007) 42 Cal.4th 217, 241 ["But sections 221 through 224, in combination with other statutes, establish a public policy against any deductions, setoffs, or recoupments by an employer from employee wages or earnings, except those deductions specifically authorized by statute."].

38 *Hudgins v. Neiman Marcus Group, Inc.* (1995) 34 Cal.App.4th 1109, 1111 ["sections 221 and 400 through 410 prohibit deductions from wages for business losses unless the employer can establish that the loss was caused by a dishonest or willful act, or by the culpable negligence of the employee"].

39 *Hudgins v. Neiman Marcus Group, Inc.* (1995) 34 Cal.App.4th 1109, 1118 ["section 221 has long been held to prohibit deductions from an employee's wages for cash shortages, breakage, loss of equipment, and other business losses that may result from the employee's simple negligence"]; see also Cal. Code of Regs., tit. 8, § 11070, subd. (8) ["No employer shall make any deduction from the wage or require any reimbursement from an employee for any cash shortage, breakage, or

loss of equipment, unless it can be shown that the shortage, breakage, or loss is caused by a dishonest or willful act, or by the gross negligence of the employee.”].

40 *Davis v. Farmers Ins. Exchange* (2016) 245 Cal.App.4th 1302, 1332–1333.

41 *Davis v. Farmers Ins. Exchange* (2016) 245 Cal.App.4th 1302, 1332–1333.

42 *Sciborski v. Pacific Bell Directory* (2012) 205 Cal.App.4th 1152, 1171 [“the conditions must relate to the sale and cannot merely serve as a basis to shift the employer's cost of doing business to the employee.”].

43 See *Aguilar v. Zep Inc.* (N.D. Cal., Aug. 27, 2014, No. 13-CV-00563-WHO) 2014 WL 4245988, at *16 [“Penalties for phone orders and credit card fees are not 'tools' to maximize the employee's sales, but rather shift the cost of business to the employee.”].

44 See *Marr v. Bank of Am., NA* (9th Cir. 2013) 506 F.App'x 661, 661 [“Deductions from such commissions are permitted, however, when (1) the deductions are tied to the employee's sales rather than general business expenses, and (2) the employee agrees to the deductions by contract.”].

45 *Davis v. Farmers Ins. Exchange* (2016) 245 Cal.App.4th 1302, 1332 [“Under California law, the obligation to pay a commission may be contingent on events that occur after the sale (such as the customer returning the merchandise) . . . .”].

46 *Davis v. Farmers Ins. Exchange* (2016) 245 Cal.App.4th 1302, 1332 [“[A]mounts advanced to the salesperson may be deducted at a later date if the contingencies are not satisfied.”].

47 See *Hudgins v. Neiman Marcus Group, Inc.* (1995) 34 Cal.App.4th 1109.

48 See *Steinhebel v. Los Angeles Times Communications, LLC* (2005) 126 Cal.App.4th 696, 704 [“[A]n employer may legally advance commissions to its employees prior to the completion of all conditions for payment and, by agreement, charge back any excess advance over commissions earned against any future advance should the conditions not be satisfied.”].

49 *Agnew v. Cameron* (1967) 247 Cal.App.2d 619, 622 [“it is clearly the law in California that a salesman is required to repay the excess of advances

made over commissions earned when there is an express agreement on the part of the salesman to repay such excess"].

50 See, e.g., *Korry of California v. Lefkowitz* (1955) 131 Cal.App.2d 389, 393 [holding employee to his agreement to repay advances].

51 See *Sciborski v. Pacific Bell Directory* (2012) 205 Cal.App.4th 1152, 1168 ["Where a deduction is 'unpredictable, and is taken without regard to whether the losses were due to factors beyond the employee's control,' an employer 'cannot avoid a finding that its [sales commission policy] is unlawful simply by asserting that the deduction is just a step in its calculation of commission income.'"].

52 *Sciborski v. Pacific Bell Directory* (2012) 205 Cal.App.4th 1152, 1168 ["[A]n employer may not require an employee to agree to a wage deduction in the guise of recouping an advance based on conditions that are unrelated to the sale and/or that merely reflect the employer's attempt to shift the cost of doing business to an employee."].

53 *Agnew v. Cameron* (1967) 247 Cal.App.2d 619, 624 ["in the absence of express stipulation or convincing circumstances indicating a contrary arrangement, advances to an employee will be presumed to constitute payment in lieu of salary and to fix the employee's minimum compensation"].

54 Labor Code, § 2751, subd. (a).

55 *Sciborski v. Pacific Bell Directory* (2012) 205 Cal.App.4th 1152, 1167 ["Because of the strong public policy protecting wages, an employer's right to recoup an advance commission generally requires a showing that the employee agreed in writing to the specific condition . . . ."].

56 Cal. Code of Regs., tit. 8, § 11040, 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."]; Cal. Code of Regs., tit. 8, § 11070, subd. (4)(B) [same].

57 See Labor Code, § 1182.12, subd. (b).

58 Cal. Code of Regs., tit. 8, § 11040, 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."]; Cal. Code of Regs., tit. 8, § 11070, subd. (4)(B) [same].

59 Cal. Code of Regs., tit. 8, §§ 11040, subd. (7), 11070, subd. (7).

60 *Vaquero v. Stoneledge Furniture, LLC* (2017) 9 Cal.App.5th 98, 110; *Balasanyan v. Nordstrom, Inc.* (S.D.Cal. 2012) 913 F.Supp.2d 1001, 1007 ["employees must be directly compensated at least minimum wage for all time spent on activities that do not allow them to directly earn wages."].

61 Labor Code, § 510, subd. (a).

62 Labor Code, § 510, subd. (a) ["Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee."]; see also Labor Code, §§ 511, 514, 515.

63 Labor Code, § 510, subd. (a) ["Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee."].

64 See Cal. Code of Regs., tit. 8, § 11040, subd. (1)(A).

65 *Nordquist v. McGraw-Hill Broadcasting Co.* (1995) 32 Cal.App.4th 555, 562 ["Exemptions are narrowly construed against the employer and their application is limited to those employees plainly and unmistakably within their terms."].

66 Cal. Code of Regs., tit. 8, § 11040; see also *Negri v. Koning & Associates* (2013) 216 Cal.App.4th 392, 400.

67 Labor Code, § 515, subds. (a), (c).

68 Labor Code, § 515, subd. (a) ["The Industrial Welfare Commission may establish exemptions from the requirement that an overtime rate of compensation be paid pursuant to Sections 510 and 511 for executive,

administrative, and professional employees, if the employee is primarily engaged in the duties that meet the test of the exemption, customarily and regularly exercises discretion and independent judgment in performing those duties, and earns a monthly salary equivalent to no less than two times the state minimum wage for full-time employment.”].

69 Cal. Code of Regs., tit. 8, §§ 11040, subd. (3)(D), 11070, subd. (3)(D).

70 The commissioned sales exemption applies only in industries that are covered by certain Wage Orders issued by California's Industrial Welfare Commission. Specifically, the exemption applies to employees covered by Wage Order No. 4 (the mercantile industry, which includes retail sales) and Wage Order No. 7 (“Professional, Technical, Clerical, Mechanical, and Similar Occupations”). Other than outside salespersons, any employee who is paid a commission and who is *not* employed in one of those industries and is not otherwise exempt must be paid for overtime hours worked. (Cal. Code of Regs., tit. 8, §§ 11040, subd. (3)(D), 11070, subd. (3)(D).)

71 *Peabody v. Time Warner Cable, Inc.* (2014) 59 Cal.4th 662, 670 [“[A]n employer satisfies the minimum earnings prong of the commissioned employee exemption only in those pay periods in which it actually pays the required minimum earnings”].

72 *Peabody v. Time Warner Cable, Inc.* (2014) 59 Cal.4th 662, 668.

73 Labor Code, § 1171 [exempting “outside salesman” from Industrial Welfare Commission coverage]; Cal. Code of Regs., tit. 8, §§ 11040, subd. (1)(C), 11070, subd. (1)(C).

74 See DLSE Opinion Letter 1998.09.08 (Sept. 8, 1998) [“The ’employer’s place of business’ is not limited . . . to a principal place of business or an administrative headquarters.”].

75 *Ramirez v. Yosemite Water Co.* (1999) 20 Cal.4th 785.

76 Labor Code, § 512, subd. (a); Cal. Code of Regs., tit. 8, §§ 11040, subd. (11), 11070, subd. (11).

77 Labor Code, § 512, subd. (a); Cal. Code of Regs., tit. 8, §§ 11040, subd. (11), 11070, subd. (11).

78 Cal. Code of Regs., tit. 8, §§ 11040, subd. (12), 11070, subd. (12).

79 *Vaquero v. Stoneledge Furniture, LLC* (2017) 9 Cal.App.5th 98, 108.

80 *Vaquero v. Stoneledge Furniture, LLC* (2017) 9 Cal.App.5th 98, 110.

81 Labor Code, § 1171 [exempting "outside salesman" from Industrial Welfare Commission coverage]; Cal. Code of Regs., tit. 8, §§ 11040, subd. (1)(C), 11070, subd. (1)(C).

82 See Cal. Code of Regs., tit. 8, §§ 11040, subd. (3)(D), 11070, subd. (3)(D) [exempting certain inside sales employees from entitlement to overtime compensation].

83 Labor Code, § 226.7, subd. (c); Cal. Code of Regs., tit. 8, §§ 11040, subds. (11), (12), 11070, subds. (11), (12); *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858 [the meal or rest premium is owed at the "regular rate of compensation," which is the same as the overtime "regular rate of pay" and includes all nondiscretionary payments, such as commissions].

84 Labor Code, § 204.1 ["Commission wages paid to any person employed by an employer licensed as a vehicle dealer by the Department of Motor Vehicles are due and payable once during each calendar month on a day designated in advance by the employer as the regular payday."].

85 Labor Code, § 204.1 ["Commission wages are compensation paid to any person for services rendered in the sale of such employer's property or services and based proportionately upon the amount or value thereof."].

86 Labor Code, § 204.1.

87 See Labor Code, § 226.2.

88 Labor Code, § 204.1 ["The provisions of this section shall not apply if there exists a collective bargaining agreement between the employer and his employees which provides for the date on which wages shall be paid."].

89 See Bus. & Prof. Code, § 7301 et seq.

90 See Labor Code, § 204.11.

91 Labor Code, § 204.11.

92 Labor Code, § 204.11 ["For any employee who is licensed pursuant to the Barbering and Cosmetology Act (Chapter 10 (commencing with Section 7301) of Division 3 of the Business and Professions Code), wages that

are paid to that employee for providing services for which such a license is required, when paid as a percentage or a flat sum portion of the sums paid to the employer by the client recipient of such service, and for selling goods, constitute commissions, provided that the employee is paid, in every pay period in which hours are worked, a regular base hourly rate of at least two times the state minimum wage rate for all hours worked in addition to commissions paid.”].

93 Labor Code, § 1182.12, subd. (b).

94 Labor Code, § 204.11.

95 Labor Code, § 204.11 [“Commission wages paid to any employee who is licensed pursuant to the Barbering and Cosmetology Act (Chapter 10 (commencing with Section 7301) of Division 3 of the Business and Professions Code) are due and payable at least twice during each calendar month on a day designated in advance by the employer as the regular payday.”].

96 Labor Code, § 204.11 [“An employee may be compensated for rest and recovery periods at a rate of pay not less than the employee’s regular base hourly rate.”].

97 See Labor Code, § 226.2.

98 See, e.g., Labor Code, § 204.1 [commissioned car salespersons are due and payable once each calendar month].

99 Labor Code, § 204, subd. (a); *Peabody v. Time Warner Cable, Inc.* (2014) 59 Cal.4th 662, 668.

100 DLSE Opinion Letter 2002.12.09-2 (Dec. 9, 2002).

101 Labor Code, § 201, subd. (a).

102 Labor Code, § 202, subd. (a).

103 Labor Code, § 203.

104 Labor Code, § 203.