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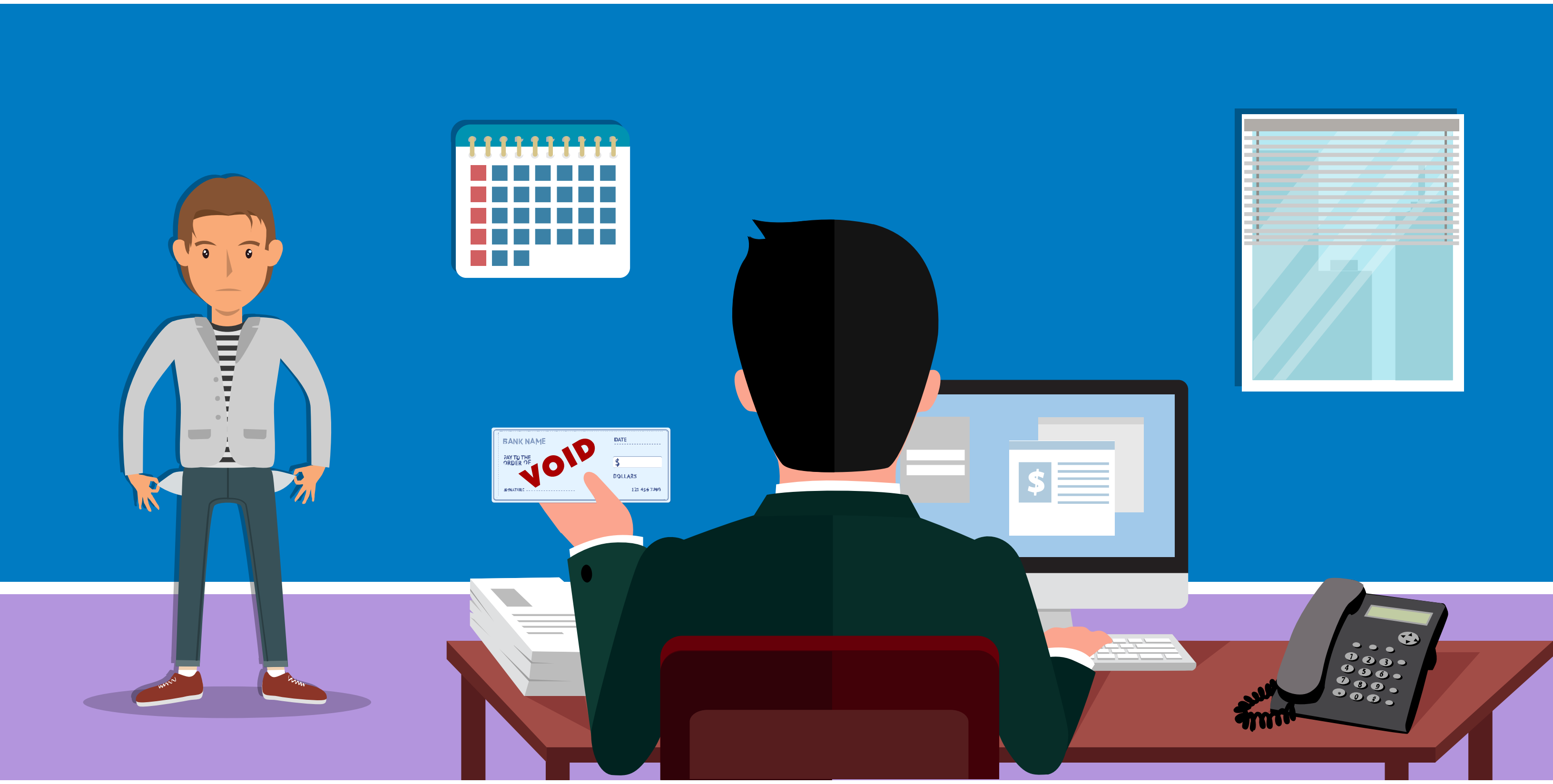

THE LAW ON LATE & UNPAID WAGES IN CALIFORNIA

California employees have a right to be paid in full and on time. This article explains that right and the penalties employers owe when wages are late.

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BY KYLE D. SMITH

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.

Employers have a legal obligation to pay the wages that their employees earn. They also have an obligation to pay those wages *on time*.[1] When wages are paid late or not at all, California law entitles employees to recover the unpaid wages, with interest.[2] The law often adds penalties on top: as much as 30 days of extra wages when a final paycheck is late,[3] and set dollar penalties when paychecks are late during employment.[4]

This article explains the payment obligations of California employers, as well as the solutions employees have when wages are not paid or are paid later than the law requires.

CH. 01

The Definition of “Wages”

California law defines a **wage** as payment for labor performed by an employee.[5] **Labor** in this context means work or services performed for an employer, not just physical labor.[6]

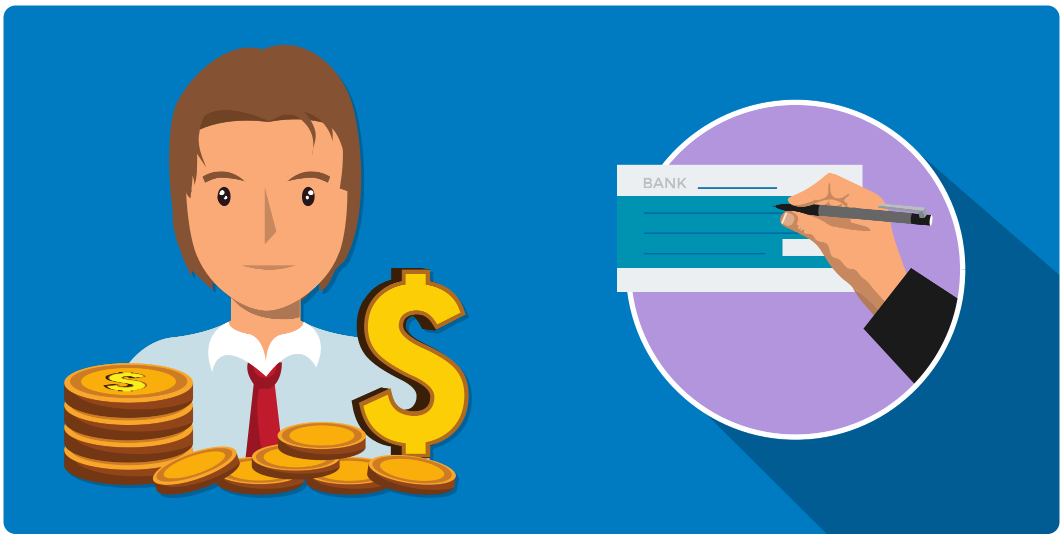
All forms of compensation for work are **wages**, including:

- Hourly pay,
- A fixed salary,
- Commissions,
- Piece-rate payments, and
- Payment that varies by project or task.[7]

The term *wages* also includes benefits that an employee receives as a part of his or her compensation, including money, room, board, clothing, vacation pay, and sick pay.[8] The extra hour of premium pay an employer owes for a missed meal or rest break counts as wages, too.[9]

CH. 02

The Right to Wage Payments Generally



Every person employed in California is entitled to be paid wages they have earned. In fact, the California legislature has declared it to be state policy that the right to be paid wages for work applies to all workers, regardless of their immigration status.[10]

An employee's right to be paid for work has two legal sources: contract law and the California Labor Code.[11]

2.1 Wages as a Contract Right

When a worker accepts employment at a promised wage, the worker and the employer have entered into a binding agreement.[12]

The promise to pay wages for work usually takes the form of a formal written contract. But an oral agreement is also enough to create an enforceable obligation to pay earned wages.[13]

2.2 Wages as a Labor Right

California's Labor Code provides a right for employees to earn certain wages, such as a minimum wage or, in the right circumstances, overtime wages.[14]

When California law gives an employee the right to receive a minimum wage or overtime, an employment contract providing for a lesser wage is not valid or enforceable.[15]

2.3 Distinguish: Payments to Independent Contractors

Wages are paid to *employees*.[16] Independent contractors receive payments for work performed pursuant to a contract, but those payments are *not* wages.

However, when an employee has been misclassified as an independent contractor, the employee is entitled to be paid the wages that are required by California law.[17] Our guide to independent contractor misclassification explains how that determination is made.

CH. 03

The Form Wage Payments Must Take

Most employers pay wages by using a company check or a check issued by a payroll service from the employer's payroll account.

Employers are permitted to pay wages by means of a personal check or in cash,[18] but they are not permitted to make “under the table” payments. Whether wages are paid by cash or by check, employers are required by state and federal law to withhold payroll taxes.[19]

Paychecks must also meet certain requirements. A check used to pay wages must be negotiable and payable in cash, on demand, without any fee or discount, at an established place of business in California.[20]

Employers may pay wages by direct deposit as well, as long as the employee has voluntarily authorized the deposit into an account at a bank, savings and loan, or credit union of the employee's choice.[21] A standing direct-deposit authorization ends automatically when employment ends. So final wages must be paid under the rules described later in this article, unless the employee has authorized direct deposit of the final paycheck and it is paid on time.[22]

All employees must be given a wage statement with each wage payment, regardless of whether the wages are paid by check or cash.[23] The wage statement must show, among other things:

- Gross and net wages paid,
- The number of hours worked during the pay period,
- The number of pieces for which the employee is being paid (if the employee is paid a piece rate), and
- Any deductions made from gross pay (like payroll taxes).[24]

The employer must keep a copy of the wage statement for at least three years.[25] Current and former employees are entitled to inspect those records, or to receive a copy of them, upon request.[26] The employer must comply no later than 21 calendar days after the request is made, and a failure to do so carries a $750 penalty.[27]

Having the right to inspect the employer's records helps employees make a claim for unpaid wages.

CH. 04

When Wages Must Be Paid

The agreement between the employee and employer sets the terms of employment, including when wages will be paid. But California law imposes some requirements on employers, regardless of their agreement with their employees.

4.1 General Rule: Semimonthly Payments

Most California employees must be paid at least twice a month.[28] An employer must establish an employee's regular paydays before wages are first paid.[29]

The employer must post a conspicuous notice at the place of work or at the office where employees are paid, specifying the regular paydays and the time and place of payment.[30]

If employees are paid semimonthly (twice a month) *and* the work periods for which they are paid are the 1st through the 15th and the 16th through the end of the month, wages must be paid on the following schedule:[31]

- Wages earned between the 1st and 15th day of the month must be paid between the 16th and 26th day of the same month.

Wages earned between the 16th and the last day of the month must be paid between the 1st and the 10th day of the following month.

4.2 Alternative Pay Schedules

If employees are paid on any other schedule the employer must generally pay wages no later than 7 days after the end of each work period.[32]

This rule applies to employees paid on a weekly or biweekly (every two weeks) basis, as well as those who are paid semimonthly with work periods other than the 1st through the 15th and the 16th through the end of the month.[33]

4.3 Overtime Wages

Wages for overtime earned during a work period must be paid not later than the regular payday for the next work period.[34]

4.4 Exempt Employees

Certain employees are exempt from many of California's labor laws. They are usually employees who work in administrative, executive, or professional positions.[35] Exempt employees are paid on a different schedule than other employees.

They may be paid once a month, provided that the payment is made on or before the 26th of the month and includes wages for the entire month, including wages between the date of the payment and the end of the month that the employee has not yet earned.[36]

Employees who are unsure if they are an exempt employee can consult our article *How to Tell If an Employee Is “Exempt” under California Law*.

4.5 Vehicle Sales Commission Payments

Commissions paid by a licensed vehicle dealer may be paid once each month on a date designated as a salesperson's payday.[37]

4.6 Agricultural Employees

Agricultural employees who are not provided room and board and who are paid on the semimonthly schedule discussed above must be paid no later than the 22nd of the same month for work performed between the 1st and 15th, and no later than the 7th of the next month for work performed between the 16th and the last day of the month.[38]

4.7 Other Exceptions

Certain employees, including household domestic employees, who receive room and board as part of their compensation may be paid once each month on a date designated in advance. Wages paid on that payday must include all wages earned up to the payday, and no two paydays can be more than 31 days apart.[39]

Depending on the employee's type of work and employment agreement, there may be other exceptions to these schedules. Employees should consult an employment lawyer if they need advice about when their wages are due.

CH. 05

When Final Wages Are Due

The greatest risk of not being paid comes when an employee is discharged. The timing of an employee's final paycheck depends on whether they are fired or they quit.

5.1 Terminations

In general, an employee who is fired must be paid all unpaid wages that have been earned up to and including the date of termination. That payment must be made on the same day that the employee is terminated.[40]

A layoff counts as a discharge for this purpose. Employees who are laid off are entitled to their final wages on the same immediate schedule as employees who are fired for cause.[41]

There are, however, limited exceptions to this rule, depending on the industry in which the worker is employed.[42]

5.2 Resignations

Employees who quit and give notice at least 72 hours before their last day of work must be paid their final wages on their last day, assuming it is the day stated in the notice.[43]

Employees who quit without giving such notice must be paid their final wages within 72 hours after their last day of work.[44] An employee who quits without notice can also ask that the final paycheck be mailed to a designated address; the date of mailing then counts as the date of payment.[45]

5.3 Vacation Pay

California law regards a paid vacation as a form of wages.[46] Paid vacations are compensation for labor the employee performs, but the payment is delayed until the employee takes the vacation.[47]

Employers are not required to offer vacation pay to their employees,[48] but they must follow certain rules if they do.

If an employment agreement includes paid vacations, an employee is entitled to be paid wages for unused vacation time that has vested at the time the employee's work ends.[49] The right to a paid vacation vests as the employee performs the work that entitles the employee to a paid vacation.[50]

When employment is terminated, the employee is entitled to be paid for the portion of the employee's unused paid vacation that the employee has earned.[51]

> EXAMPLE
>
> An employment agreement gives the employee the right to take two weeks of paid vacation after one year of work. If the employee is terminated after six months of work, the employee has earned half of the paid vacation. The employee is entitled to one week of extra wages at the time of termination.

California employers are not allowed to circumvent the right to be paid the proportionate share of vacation pay that the employee has earned by conditioning entitlement to vacation on the completion of a fixed period of work.[52]

So, even if an employment agreement states that the employee is not entitled to vacation pay until the employee has worked a full year, the employee must be paid for unused paid vacation in proportion to the time that the employee worked before employment ended.[53]

CH. 06

The Waiting Time Penalty for Unpaid Final Wages

California law provides for a “waiting time penalty” when employers willfully fail to pay final wages, in full and on time, after employment ends.[54] The penalty can apply to any earned wages that go unpaid at separation, including unpaid premium pay for missed meal or rest breaks.[55]

The penalty for late payment of wages advances the public policy of assuring that employees are paid *promptly* for their work.[56] It incentivizes employers to pay wages in a timely manner.[57]

6.1 Calculating the Penalty

The waiting time penalty consists of a full day of wages for each day that payment is delayed.[58] The penalty continues to accrue for as much as 30 calendar days, until the wages are paid in full or the employee files a lawsuit.[59]

The waiting time penalty is calculated by computing the employee's daily wage rate and then multiplying it by the number of days that payment is delayed, up to a maximum of 30 days.[60]

The daily wage rate is typically calculated by adding the base wages, commissions, bonuses, and vacation pay that the employee earns in a year, dividing that sum by 52 weeks, and dividing the result by the number of days the employee normally works each week (usually five).[61] Overtime counts toward the daily rate only when it is regularly scheduled; occasional or infrequent overtime is not included.[62]

6.2 When a Failure to Pay is “Willful”

A failure to pay wages on time is *willful* if the failure is intentional.[63] An employer does not fail to pay wages willfully when there is a good faith dispute about the employee's entitlement to the unpaid wages.[64]

A *good faith dispute* exists when an employer presents a legitimate legal or factual defense to the payment of wages, even if the employer does not prevail.[65]

A dispute does not excuse the employer from paying the wages that are *not* disputed. When part of the pay is contested in good faith, the employer must still pay the conceded amount, without conditions and on the normal schedule; only the disputed balance can wait.[66] Nor can the employer require the employee to sign a release of a wage claim as a condition of being paid wages that are owed. A release signed under those circumstances is null and void.[67]

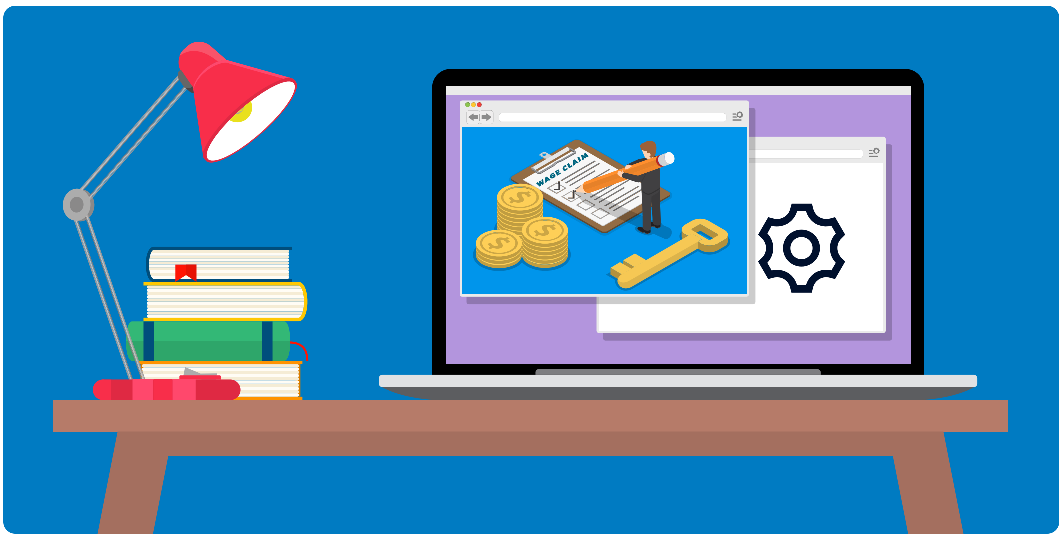
6.3 Employer's Insufficient Funds

A related penalty applies when a paycheck bounces. If an employer pays wages, including final wages, with a check that is refused payment because the employer has no account at the bank or has insufficient funds in the account, the wages continue as a penalty at the employee's same rate of pay for up to 30 days until they are paid.[68]

Two conditions apply. The employee must present the check for payment within 30 days of receiving it. And the penalty does not apply if the employer can establish that the violation was unintentional.[69]

CH. 07

Penalties When Wages Are Late During Employment



In some cases, the employer fails to pay wages in full or on time and the employee continues to work for the employer. In these situations, the waiting time penalty doesn't apply.[70] Instead, the employer may be liable for statutory penalties.

If an employer fails to pay wages on the schedules described above, or unlawfully withholds wages that are due, the employer is subject to a penalty in the following amounts:[71]

- **First Violation.** For any initial violation, the employer must pay $100 for each failure to pay each employee.[72]
- **Subsequent Violations.** For each subsequent violation, or any willful or intentional violation, the employer must pay $200 for each failure to pay each employee, plus 25% of the amount unlawfully withheld.[73]

These penalties were once payable only to the State of California. Since 2020, however, an employee whose paycheck is late or short can recover the entire late-payment penalty for themselves by filing a wage claim with the Labor

Commissioner.[74] Penalties for unlawfully *withheld* wages are still recovered by the Labor Commissioner.[75]

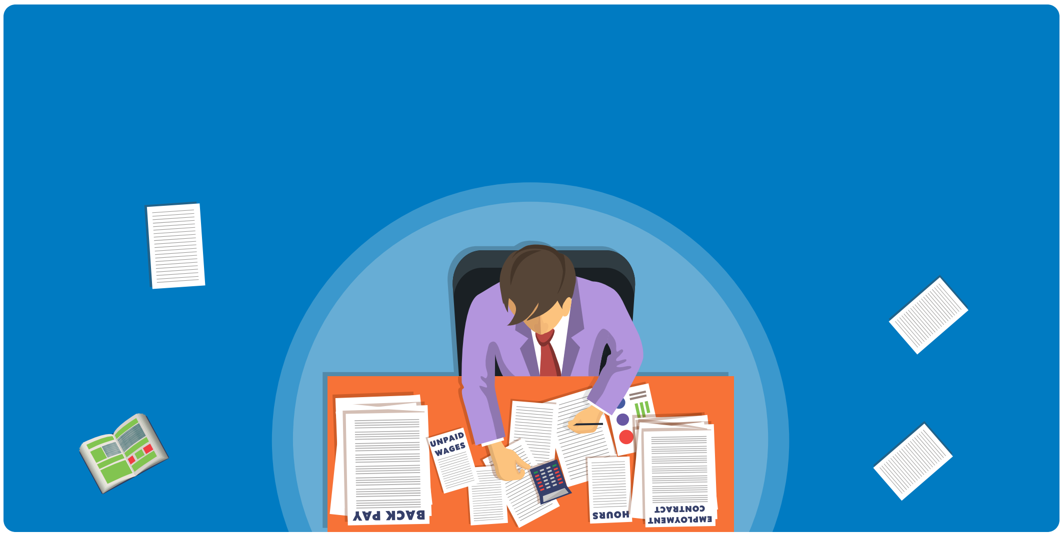
As an alternative, an employee can pursue these penalties as civil penalties by suing under the Private Attorneys General Act, on behalf of themselves and other affected employees.[76] These are called “PAGA” claims. The employee cannot do both: for the same violation, the employee must choose between the statutory penalty and a PAGA civil penalty.[77]

To bring a PAGA claim, the employee must first follow certain procedures, which begin with a written notice to the state Labor and Workforce Development Agency and are described in Labor Code sections 2698 through 2699.5.[78] The employee must also have personally experienced each violation the lawsuit alleges, within the one-year limitations period.[79]

Civil penalties recovered in a PAGA lawsuit are divided between the state and the workers: 65% goes to the Labor and Workforce Development Agency, and 35% goes to the aggrieved employees.[80] A prevailing employee is also entitled to reasonable attorney fees and litigation costs.[81] Many attorneys take these kinds of cases on a contingency basis, without any upfront fees.

CH. 08

Recovering Late or Unpaid Wages



Unpaid wages and penalties for late-paid wages can be pursued in three primary ways:

- By resolving the dispute informally with the employer,
- By filing a lawsuit in court, or
- By bringing an administrative claim for unpaid wages and penalties.[82]

An administrative wage claim can be filed with the Labor Commissioner online, by email, by mail, or in person, and there is no fee to file.[83] The procedure is explained in our article *How to File a Wage & Hour Claim in California*. The pros and cons of wage claims and civil lawsuits are also discussed in that article.

Employees are protected when they take these steps. An employer may not fire or otherwise retaliate against an employee for filing a wage claim or complaining, in writing or orally, about unpaid wages. If the employer takes an adverse action within 90 days of that protected activity, there is a rebuttable presumption in favor of the employee's retaliation claim.[84] An employee who suffers retaliation is entitled to reinstatement and reimbursement of lost wages and benefits, and the employer is liable for a civil penalty of up to $10,000 per employee for each violation, payable to the employee.[85]

Strict deadlines apply to wage claims and lawsuits, and they vary with the type of claim, so it is usually best to act quickly.[86] Of course, the best way to resolve a wage dispute will depend on the employee's specific situation. It's usually a good idea to get the opinion of a lawyer before deciding how to proceed.

References

1 Labor Code, §§ 201, 202, 204.

2 Labor Code, §§ 218.6, 1194, subd. (a).

3 Labor Code, § 203, subd. (a).

4 Labor Code, § 210, subd. (a).

5 Labor Code, § 200, subd. (a) [“'Wages' includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.”].

6 Labor Code, § 200, subd. (b) [“'Labor' includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment.”].

7 Labor Code, § 200, subd. (a).

8 *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103 [“Courts have recognized that 'wages' also include those benefits to which an employee is entitled as a part of his or her compensation, including money, room, board, clothing, vacation pay, and sick pay.”].

9 *Naranjo v. Spectrum Security Services, Inc.* (2022) 13 Cal.5th 93 [premium pay owed under Labor Code section 226.7 for missed meal or rest breaks is a wage that must be paid timely when employment ends and reported on wage statements].

10 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.”].

11 *Reynolds v. Bement* (2005) 36 Cal.4th 1075, 1084 ["An employee's wage rights may be provided for in an employment contract and also are closely regulated by statute."], abrogated on other grounds by *Martinez v. Combs* (2010) 49 Cal.4th 35.

12 *Foley v. Interactive Data Corp*. (1988) 47 Cal.3d 654, 696 ["the employment relationship is fundamentally contractual"].

13 *Foley v. Interactive Data Corp*. (1988) 47 Cal.3d 654, 675 [the fact that employment contract is "an implied or oral agreement is not fatal to its enforcement"].

14 *Cuadra v. Millan* (1998) 17 Cal.4th 855, 858 ["The Labor Code prescribes such matters as the time and manner of paying wages, minimum wage requirements, and mandatory overtime pay . . . ."], disapproved on other grounds by *Samuels v. Mix* (1999) 22 Cal.4th 1.

15 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."].

16 Labor Code, § 200, subd. (a) ["'Wages' includes all amounts for labor performed by employees . . . ."].

17 *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341, 349 ["The label placed by the parties on their relationship is not dispositive, and subterfuges are not countenanced."]; see Labor Code, § 2775 [codifying the "ABC test" for deciding whether a worker is an employee or an independent contractor].

18 Other types of compensation, such as stock options and profit sharing, are beyond the scope of this article. Employees should consult an employment lawyer if they need advice about any form of unpaid compensation.

19 Labor Code, § 224 [authorizing payroll tax deductions from wages].

20 Labor Code, § 212, subd. (a)(1).

21 Labor Code, § 213, subd. (d).

22 Labor Code, § 213, subd. (d); Division of Labor Standards Enforcement, Paydays, Pay Periods, and the Final Wages ["Direct deposits of wages to an employee's bank, saving and loan, or credit union account that were previously authorized by the employee are immediately terminated when an employee quits or is discharged"].

23 Labor Code, § 226, subd. (a).

24 Labor Code, § 226, subd. (a) ["An employer, semimonthly or at the time of each payment of wages, shall furnish to their employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of their social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment."].

25 Labor Code, § 226, subd. (a) ["[A] copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. For purposes of this subdivision, 'copy' includes a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately shows all of the information required by this subdivision."].

26 Labor Code, § 226, subd. (b) [“An employer that is required by this code or any regulation adopted pursuant to this code to keep the information required by subdivision (a) shall afford current and former employees the right to inspect or receive a copy of records pertaining to their employment, upon reasonable request to the employer. The employer may take reasonable steps to ensure the identity of a current or former employee. If the employer provides copies of the records, the actual cost of reproduction may be charged to the current or former employee.”].

27 Labor Code, § 226, subds. (c), (f).

28 Labor Code, § 204, subd. (a).

29 Labor Code, § 204, subd. (a) [“All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.”].

30 Labor Code, § 207 [“Every employer shall keep posted conspicuously at the place of work, if practicable, or otherwise where it can be seen as employees come or go to their places of work, or at the office or nearest agency for payment kept by the employer, a notice specifying the regular pay days and the time and place of payment, in accordance with this article.”].

31 Labor Code, § 204, subd. (a).

32 Labor Code, § 204, subd. (d) [“The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”]. Weekly pay is governed by Labor Code, § 204b.

33 Labor Code, §§ 204, subd. (d), 204b.

34 Labor Code, § 204, subd. (b)(1).

35 Labor Code, § 515, subd. (a); Cal. Code of Regs., tit. 8, § 11040.

36 Labor Code, § 204, subd. (a).

37 Labor Code, § 204.1.

38 Labor Code, § 205.5.

39 Labor Code, § 205 [applying to employees in “agricultural, viticultural, and horticultural pursuits, in stock or poultry raising, and in household domestic service, when the employees in such employments are boarded and lodged by the employer”].

40 Labor Code, § 201, subd. (a) [“If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”].

41 Labor Code, § 201, subd. (a); Division of Labor Standards Enforcement, Waiting Time Penalty [the final-pay rules apply on “a quit or a discharge, which includes a layoff”].

42 Employers may delay payment for up to 72 hours when they lay off a group of seasonal employees involved in “the curing, canning, or drying of any variety of perishable fruit, fish or vegetables.” (Labor Code, § 201, subd. (a).) Other rules apply to terminations in specified industries, including certain employees in the movie industry (Labor Code, § 201.5), employees who drill oil (Labor Code, § 201.7), and certain employees who work in venues that host live theatrical or concert events (Labor Code, § 201.9).

43 Labor Code, § 202, subd. (a) [“If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”].

44 Labor Code, § 202, subd. (a).

45 Labor Code, § 202, subd. (a) [“Notwithstanding any other law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address.”].

46 *Suastez v. Plastic Dress-Up Co.* (1982) 31 Cal.3d 774, 779 [“It is established that vacation pay is not a gratuity or a gift, but is, in effect, additional wages for services performed.”].

47 *Suastez v. Plastic Dress-Up Co.* (1982) 31 Cal.3d 774, 780 [“[V]acation pay is simply a form of deferred compensation.”].

48 *Henry v. Amrol, Inc.* (1990) 222 Cal.App.3d Supp. 1, 5 [the law “does not require that an employer include a paid vacation as a portion of his employees' compensation”].

49 Labor Code, § 227.3.

50 *Suastez v. Plastic Dress-Up Co.* (1982) 31 Cal.3d 774, 784 [“Case law from this state and others, as well as principles of equity and justice, compel the conclusion that a proportionate right to a paid vacation 'vests' as the labor is rendered. Once vested, the right is protected from forfeiture by section 227.3.”].

51 *Suastez v. Plastic Dress-Up Co.* (1982) 31 Cal.3d 774, 784 [“On termination of employment, therefore, the statute requires that an employee be paid in wages for a pro rata share of his vacation pay.”].

52 Labor Code, § 227.3 [“[A]n employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination.”].

53 Labor Code, § 227.3; *Suastez v. Plastic Dress-Up Co.* (1982) 31 Cal.3d 774, 784.

54 Labor Code, § 203, subd. (a); see *McLean v. State of California* (2016) 1 Cal.5th 615, 619 [“An 'employer' that 'willfully fails to pay' in accordance with sections 201 and 202 'any wages of an employee who is discharged or who quits' is subject to so-called waiting-time penalties of up to 30 days' wages.”].

55 *Naranjo v. Spectrum Security Services, Inc.* (2022) 13 Cal.5th 93 [a willful failure to timely pay missed-break premium pay at separation can support waiting time penalties].

56 *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 491–492.

57 *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 493 [“This larger penalty acts as a disincentive to employers who are reluctant to pay wages in a timely manner, thus furthering the intent of the statutory scheme.”].

58 Labor Code, § 203, subd. (a) [“If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an

action therefor is commenced; but the wages shall not continue for more than 30 days. An employee who secretes or absents themselves to avoid payment to them, or who refuses to receive the payment when fully tendered to them, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which the employee so avoids payment.”].

59 Labor Code, § 203, subd. (a); Division of Labor Standards Enforcement, Waiting Time Penalty [the 30-day maximum runs in calendar days, including weekends and holidays].

60 *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 493 [“[T]he critical computation required by section 203 is the calculation of a daily wage rate, which can then be multiplied by the number of days of nonpayment, up to 30 days.”].

61 Division of Labor Standards Enforcement, Waiting Time Penalty [setting out example calculations of the daily rate of pay].

62 Division of Labor Standards Enforcement, Waiting Time Penalty [“In calculating the penalty, overtime wages are considered only if overtime is regularly scheduled each week.”].

63 Cal. Code of Regs., tit. 8, § 13520 [“A willful failure to pay wages within the meaning of Labor Code Section 203 occurs when an employer intentionally fails to pay wages to an employee when those wages are due.”].

64 Cal. Code of Regs., tit. 8, § 13520 [“[A] good faith dispute that any wages are due will preclude imposition of waiting time penalties under Section 203.”].

65 Cal. Code of Regs., tit. 8, § 13520, subd. (a) [“A 'good faith dispute' that any wages are due occurs when an employer presents a defense, based in law or fact which, if successful, would preclude any recovery on the part of the employee. The fact that a defense is ultimately unsuccessful will not preclude a finding that a good faith dispute did exist. Defenses presented which, under all the circumstances, are unsupported by any evidence, are unreasonable, or are presented in bad faith, will preclude a finding of a 'good faith dispute.'”].

66 Labor Code, § 206, subd. (a) ["In case of a dispute over wages, the employer shall pay, without condition and within the time set by this article, all wages, or parts thereof, conceded by him to be due, leaving to the employee all remedies he might otherwise be entitled to as to any balance claimed."].

67 Labor Code, § 206.5, subd. (a) ["An employer shall not require the execution of a release of a claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made."].

68 Labor Code, § 203.1 [applying when a check, draft, or voucher "is subsequently refused payment because the employer or maker has no account with the bank, institution, or person on which the instrument is drawn, or has insufficient funds in the account upon which the instrument is drawn at the time of its presentation"].

69 Labor Code, § 203.1.

70 Labor Code, § 203, subd. (a) [the waiting time penalty applies to unpaid "wages of an employee who is discharged or who quits"].

71 Labor Code, §§ 210, subd. (a), 225.5.

72 Labor Code, §§ 210, subd. (a)(1), 225.5, subd. (a).

73 Labor Code, §§ 210, subd. (a)(2), 225.5, subd. (b).

74 Labor Code, § 210, subd. (b), as amended by Stats. 2019, ch. 716 (AB 673); see Division of Labor Standards Enforcement, FAQs: Late Payment of Wages ["an employee can recover the entire penalty for themselves through the Labor Commissioner's wage claim process"].

75 Labor Code, § 225.5.

76 Labor Code, § 2699, subd. (a).

77 Labor Code, § 210, subd. (c).

78 Labor Code, §§ 2699, subd. (a), 2699.3.

79 Labor Code, § 2699, subd. (c)(1), as amended by Stats. 2024, ch. 44 (AB 2288) [applying to PAGA actions noticed on or after June 19, 2024].

80 Labor Code, § 2699, subd. (m). The 65/35 division and the 2024 reform's other changes, including penalty caps for employers that take reasonable

compliance steps and expanded rights to cure violations, apply to PAGA actions noticed on or after June 19, 2024; earlier actions keep the prior rules, including the old 75/25 division. (Labor Code, § 2699, subds. (g), (h), (j), (v), as amended by Stats. 2024, ch. 44 (AB 2288); Stats. 2024, ch. 45 (SB 92).)

81 Labor Code, § 2699, subd. (k)(1).

82 *Post v. Palo/Haklar & Associates* (2000) 23 Cal.4th 942, 946 ["[I]f an employer fails to pay wages in the amount, time, or manner required by contract or statute, the employee may seek administrative relief by filing a wage claim with the commissioner or, in the alternative, may seek judicial relief by filing an ordinary civil action for breach of contract and/or for the wages prescribed by statute."].

83 Labor Code, §§ 96, 98; Division of Labor Standards Enforcement, How to File a Wage Claim.

84 Labor Code, § 98.6, subds. (a), (b)(1), as amended by Stats. 2023, ch. 612 (SB 497).

85 Labor Code, § 98.6, subds. (b)(1), (b)(3).

86 Code Civ. Proc., §§ 337, 338, subd. (a), 339, 340, subd. (a) [limitations periods for contract and statutory wage claims vary by claim type].