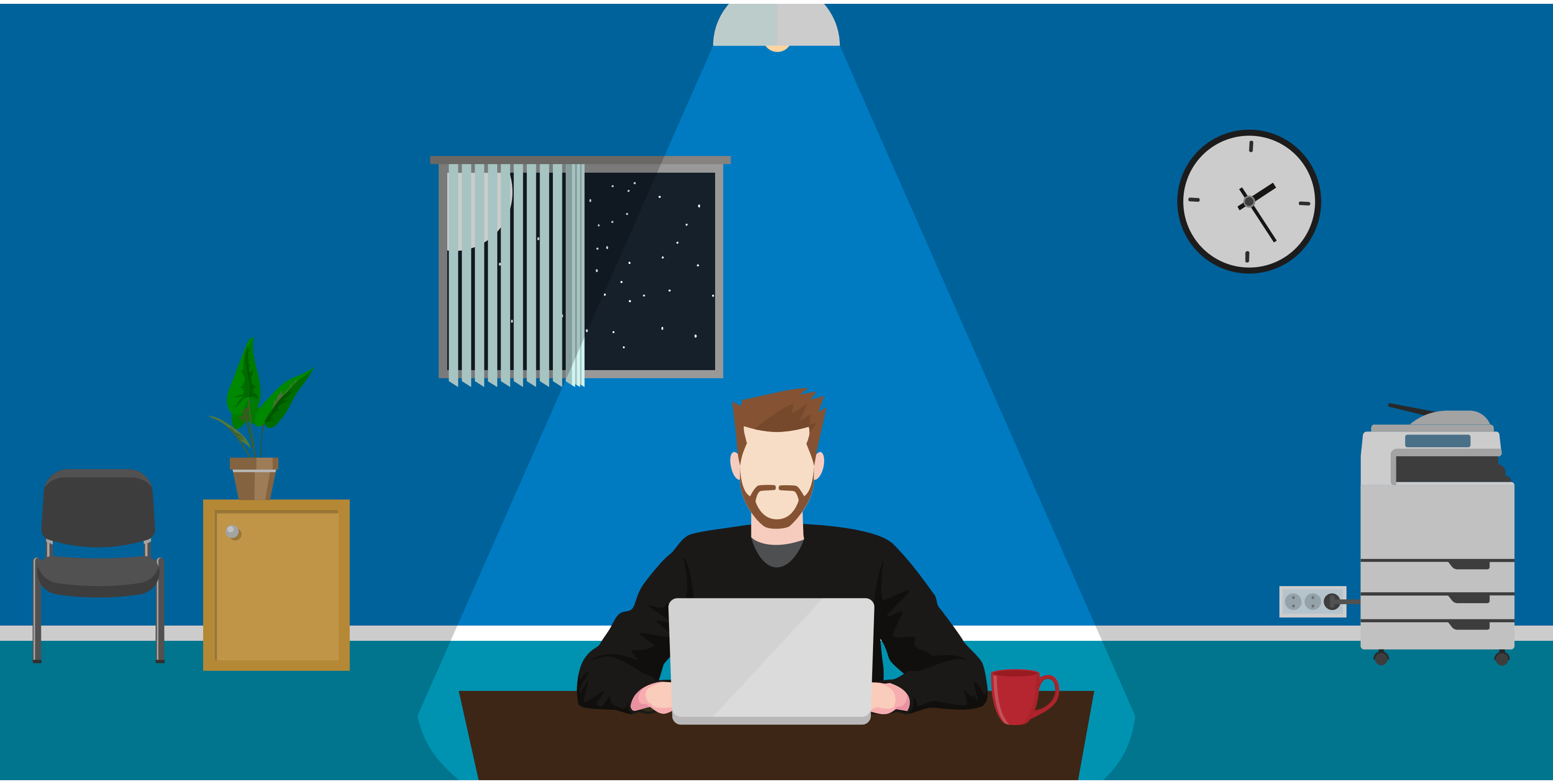
WORK LAWYERS
SERVING CALIFORNIA



OVERTIME WAGE LAWS IN CALIFORNIA

California overtime is time and a half after 8 hours a day or 40 a week, and double time after 12. This guide explains who qualifies and how to recover unpaid overtime.

This document is a PDF version of the following article:
https://www.worklawyers.com/overtime-laws-california/

CONTENTS

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.

© 2026, Kyle D. Smith · All Rights Reserved

Overtime wages are a type of increased payment that employees can earn when they work more than a certain number of hours in a workday or workweek. Most nonexempt employees in California have a legal right to receive overtime wages when they work long hours.[1] For most jobs, that means one and one-half times the employee's regular rate of pay for hours worked beyond eight in a workday or 40 in a workweek, and twice that rate for hours worked beyond 12 in a workday.[2]

The amount of overtime depends on the length of the employee's shift and the number of days he or she has worked in the workweek. A rough guide is as follows:[3]

Overtime Requirements in California

Time Worked	Overtime Rate
More than 8 hours in a day	Time and a Half†
More than 40 non-overtime hours in a workweek	Time and a Half†
Hours worked on the 7th consecutive day in a workweek	Time and a Half†
More than 12 hours in a workday	Double Time‡
More than 8 hours on the 7th consecutive day in a workweek	Double Time‡

† *Time and a half* means one and one-half times the employee's regular rate of pay.

‡ *Double time* means twice the employee's regular rate of pay.

Unpaid overtime can result from an employer's failure to understand California wage and hour laws, or it can be a form of wage theft. Understanding California's overtime laws is important for employers that want to comply with the law.

It is equally important for employees to understand their right to overtime so they can collect all the wages they've earned. This guide provides a look at California's overtime laws for employers and employees alike.

CH. 01

The Legal Background in California

1.1 Purpose of Overtime Laws

The payment of higher wages for hours that exceed a normal amount of work serves two goals. First, extra pay provides fair compensation to employees who sacrifice their free time by working long hours.[4]

Second, overtime wages incentivize employers to hire more employees so they can avoid paying higher overtime wages. Overtime thus contributes to higher employment rates, while saving many employees from the burden of excess work.[5]

Because overtime laws serve important goals, California courts interpret them liberally in favor of protecting employees.[6] So when there are ambiguities about an overtime law, the courts will generally resolve them in the employee's favor.

1.2 Which Laws Govern Overtime Wages

Both federal and California law require employers to pay overtime to most employees.[7] There are two main sets of laws that control overtime in California:

© 2026, Kyle D. Smith · All Rights Reserved

- The federal Fair Labor Standards Act (commonly called the "FLSA"),[8] and
- California Labor Code section 510.

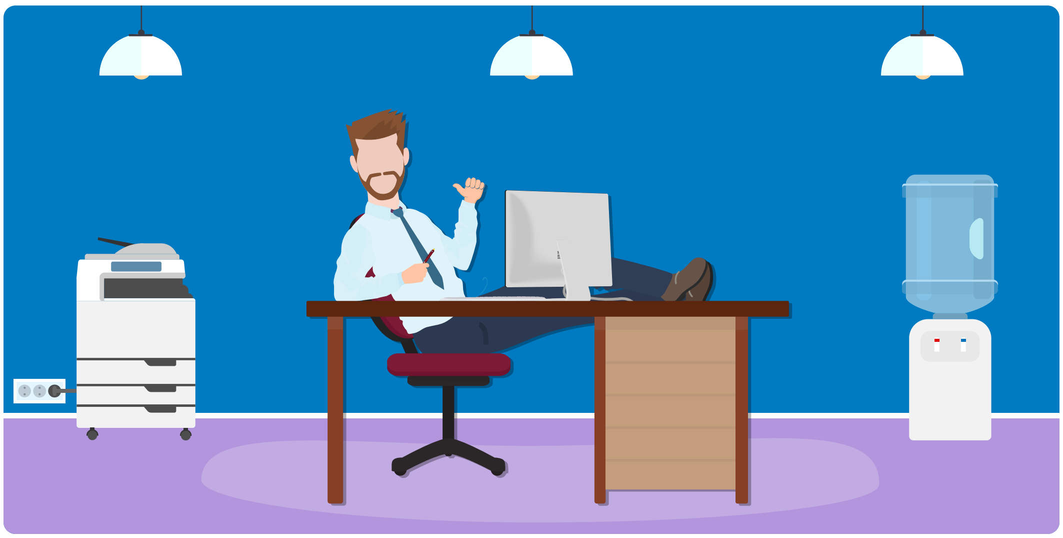
There are also administrative regulations and court cases that interpret these sets of laws.

When state and federal laws differ, the general rule is that the law most favorable to the employee will apply.[9] California's overtime laws are usually more protective of employee rights than federal laws, and in those situations California law controls.[10]

© 2026, Kyle D. Smith · All Rights Reserved

CH. 02

Which Workers Have a Right to Overtime Pay



Most employees who perform work in the State of California are entitled to the protection of California's overtime laws, including many salaried employees.[11] There are several types of employees that do *not* have a right to overtime pay at an increased rate. Those include:

- Workers classified as *exempt employees* whose primary duties consist of executive, administrative, or professional functions.[12]
- Workers classified as *outside salespersons*.[13]
- Certain unionized employees that are subject to a collective bargaining agreement.[14]
- Workers in specific occupations that have special overtime rules.[15]

Each of these exemptions is discussed below.

© 2026, Kyle D. Smith · All Rights Reserved

2.1 Exempt Employees

To qualify as an *exempt employee*, the worker must meet certain criteria established by California law. Most notably, exempt employees must be paid a fixed salary (rather than an hourly wage) equal to at least twice the minimum wage.[16]

The job duties of an exempt employee must also match those that are specified by law.[17] The duties are usually associated with the kind of “white collar” jobs that allow employees to exercise significant discretion without close supervision.[18]

The primary categories of employment that will allow a salaried employee to be classified as exempt are:

- Executive employees,[19]
- Administrative employees,[20] and
- Professional employees.[21]

To learn more about the classification (and misclassification) of exempt employees, including the job duties that apply to each category of exempt employment, visit Exempt vs. Non-Exempt Employees: Guide to California Law.

2.2 Exempt Outside Salespersons

Employees who qualify as an *outside salesperson* are a type of exempt employee.[22] An *outside salesperson* is defined as someone:

- Who is at least 18 years old,
- Who spends more than half of their working time away from their employer's place of business, and
- Who sells items, services, contracts, or the use of facilities.[23]

2.3 Exempt Unionized Employees

Union employees are sometimes exempt from California's overtime laws.[24] To qualify as exempt, the employee's collective bargaining agreement must expressly provide for the wages, hours of work, and working conditions of the employee.[25]

The collective bargaining agreement must also provide premium wage rates for all overtime hours worked and a regular hourly rate of pay of at least 30 percent more than the state minimum wage.[26]

If these requirements are not met, the employee will be protected by California's overtime laws.

2.4 Job-Specific Exceptions

California law is governed, in part, by a series of regulations called *wage orders*, which have been issued by California's Industrial Welfare Commission.[27]

The wage orders have adopted several exceptions to California's overtime laws that apply to workers in specific industries or jobs. Occupations to which special overtime rules apply include:

- Live-in household employees;[28]
- Personal attendants;[29]
- Camp counselors;[30]
- Managers of homes for the aged;[31]
- Certain providers of 24-hour residential childcare;[32]
- Ambulance drivers and attendants;[33] and
- The employer's spouse, children, and parents.[34]

2.5 Nonresidents

Employees don't need to be residents of California to receive the protection of California's overtime laws.[35] In fact, California employees are protected even if they do not have legal residence or work privileges ("green card" status) in the United States.[36]

It is unsettled, however, whether out-of-state workers that briefly work in California for less than a day at a time are entitled to the protection of California's overtime laws.[37]

© 2026, Kyle D. Smith · All Rights Reserved

CH. 03

Determining an Employee's Overtime Wages

Both federal and California law require nonexempt employees to be paid overtime when the employee works more than 40 non-overtime hours in a workweek.[38] But California law goes further by providing rights that exceed federal overtime protections.

In California, overtime must be paid to nonexempt employees in most occupations when the employee works:

- More than 8 hours in a workday,
- More than 40 non-overtime hours in a workweek, or
- A seventh consecutive day in any workweek.[39]

When California law requires an employer to pay overtime, the usual overtime rate of pay is one and one-half times the employee's *regular rate* of pay.[40] This is often known as being paid “time and a half.”

However, an overtime rate of twice the employee's regular rate of pay (often called “double time”) applies to hours worked:

© 2026, Kyle D. Smith · All Rights Reserved

- In excess of 12 hours in a workday, or
- In excess of 8 hours on the seventh consecutive workday in a workweek.[41]

Some of these words have a specific legal meaning. A *workday* for these purposes is a 24-hour period that begins at the same time each calendar day.[42] A *workweek* is a period of seven consecutive days beginning on the same calendar day each week.[43]

Employers are responsible for designating the start of the workweek.[44] Knowing how the workweek has been designated is often important for deciding whether overtime is owed.

> EXAMPLE
>
> An employer designates a workweek to start on Monday and end on Sunday. An employee who begins work on Wednesday and works seven consecutive days before taking a day off has not worked seven consecutive days in the workweek and is not entitled to overtime.[45]

3.1 The Employee's "Regular Rate" of Pay

Overtime rates are based on the employee's *regular rate* of pay.[46] Computing an employee's regular rate depends on how the employee is compensated.

If an employee is paid by the hour and receives no other compensation, the hourly rate of pay is the employee's regular rate.[47]

The regular rate of a nonexempt salaried employee who regularly works 40 hours per week is computed by dividing the weekly salary by 40.[48] Thus, a nonexempt employee's salary only compensates them for *regular*, *non-overtime* hours.[49]

The regular rate can be more difficult to compute under other circumstances, particularly when an employee receives more than one form of compensation. The general rule is that the regular rate must be based on wages and most other forms of compensation an employee earns for work performed during the workweek, excluding overtime.[50]

Importantly, employers may not designate rates of pay with the intent to evade overtime laws.[51] As such, the employee's regular rate of pay must be calculated in a consistent manner that accurately reflects the employer's pay practices.

© 2026, Kyle D. Smith · All Rights Reserved

EXAMPLE

It is unlawful to pay a higher hourly rate during weeks when no overtime is worked and a lower hourly rate during weeks when employees work overtime in order to reduce the employee's regular rate.

3.2 Defining "Hours Worked"

Employers are required to pay overtime to nonexempt employees for all *hours worked* in excess of 8 in one day or 40 in one week, as well as *hours worked* on a seventh consecutive day in a workweek.[52]

There are two tests to determine whether an employee has *worked* during a given period of time:

- The employee works or is permitted to work, ***or***
- The employee is subject to the control of an employer.[53]

The two tests are independent of each other. Hours during which an employee is subject to the employer's control will count as "hours worked" even if the employee is not required or permitted to work during those hours.[54]

3.3 Workweeks vs. Calendar Weeks

As mentioned above, both federal and California law require nonexempt employees to be paid overtime when the employee works more than 40 non-overtime hours in a "workweek."[55] A *workweek*, for these purposes, is not necessarily the same thing as a regular calendar week, which many people consider to start on Monday (the first business day of the week, normally).

The law gives employers flexibility to designate a workweek that meets their needs.[56] An employer's designated workweek does not need to match a traditional calendar week.

For example, employers can establish rotating or alternating schedules that have workers starting work at different times on different days.[57]

© 2026, Kyle D. Smith · All Rights Reserved

The workweek that an employer uses doesn't need to coincide with the workweek that the employee works, but any difference between the two must be justified by a legitimate business purpose.[58] Employers cannot structure workweeks in a way that is meant to avoid paying overtime.[59]

3.4 Alternative Workweeks

Nonexempt employees in California usually have a right to earn overtime by working more than 8 hours in a workday.[60] Under some circumstances, however, an employer may adopt an alternative schedule that permits employees to work up to 10 hours per day without paying overtime.[61]

An *alternative workweek* is a schedule of up to 10 hours per day within a 40-hour workweek in which the employer does not pay an overtime rate of compensation.[62] Some industries, like health care, can adopt alternative workweeks that differ slightly from this model.[63]

Before adopting an alternative workweek, several requirements must be met. The most notable include:

- **Proposal.** The employer must propose, in the form of a written agreement, the alternative workweek schedule. This proposal can include a single work schedule, or a menu of work schedule options from which each employee would be entitled to choose.[64]
- **Written Disclosure.** The employer must disclose, in writing, the effects of the proposed arrangement on the employees' wages, hours, and benefits. The disclosure must include notice of at least one meeting, held at least 14 days prior to voting, where the effects of the alternative workweek schedule will be discussed.[65]
- **Employee Vote.** Two-thirds of the employees must approve the alternative workweek schedule by a secret ballot.[66] The election must be held during regular working hours at the employees' work site.[67]
- **Reporting.** The results of the secret ballot election must be reported by the employer to the Division of Labor Standards Enforcement within 30 days of the results becoming final.[68]

During this process, employees may not be punished or retaliated against for expressing opinions concerning the alternative workweek election or for opposing or supporting its adoption or repeal.[69]

© 2026, Kyle D. Smith · All Rights Reserved

Importantly, even if this procedure is followed and an alternative workweek schedule is adopted, the employer still must pay overtime for hours worked in excess of 10 hours per workday or 40 hours in a workweek.[70]

The rate of overtime compensation is usually one and one-half times the employee's regular rate of pay. But if the employee works more than 12 hours in a day or more than 8 hours on days outside the regularly scheduled workdays, the overtime rate is double the employee's regular rate.[71]

CH. 04

Overtime “Pyramiding” Is Generally Not Allowed

As mentioned above, the general rule is that any work performed that exceeds eight hours in a day ***or*** 40 hours in a workweek must be paid at an overtime rate.[72]

At first glance, this rule would seem to require that *all* hours worked beyond the first 40 hours in a workweek should be paid at an overtime rate, even if some of those hours were counted towards the employee's daily overtime wages.

The practice of double counting an employee's daily and weekly overtime hours is called “overtime pyramiding,” because it attempts to stack overtime hours on top of overtime hours. Overtime pyramiding has been disapproved by California courts.[73]

Here is an illustration of how overtime pyramiding can mistakenly occur:

Incorrect Overtime Pyramiding Example

	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.	Sun.
Hours	12	14	14	8	16	4	–
1x	8	8	8	–	–	–	–
1.5x	4	4	4	8	12	4	–
2x	–	2	2	–	4	–	–

1x = Non-overtime hours (straight time)

1.5x = Time-and-a-half hours

2x = Double-time hours

The problem in this example is that, beginning on the Thursday, all hours worked technically exceed 40 hours in the workweek even though many of those initial 40 hours were paid at an overtime rate.

© 2026, Kyle D. Smith · All Rights Reserved

Overtime pyramiding, if allowed, would thus result in some employees receiving double credit for the overtime hours they work. Because of these issues, overtime pyramiding is not permitted in California.

Employers are therefore *not* required to count an employee's daily overtime hours toward their weekly overtime hours.[74] Instead, the correct way to calculate an employee's overtime is to follow these three easy steps:

- Determine the daily overtime hours the employee has accumulated during the workweek.
- Subtract the employee's daily overtime hours from the total hours the employee worked during the workweek.
- If the employee has more than 40 hours leftover, those additional hours must be paid at a rate of time and a half.[75]

Put another way, the weekly overtime trigger of 40 hours is reached *after* the employee has worked 40 hours at straight or regular time.[76] Using this method of calculating overtime, the example above would look like this:

Correct Overtime Calculation Example

	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.	Sun.
Hours	12	14	14	8	16	4	–
1x	8	8	8	8	8	–	–
1.5x	4	4	4	–	4	4	–
2x	–	2	2	–	4	–	–

1x = Non-overtime hours (straight time)

1.5x = Time-and-a-half hours

2x = Double-time hours

The key thing to note in this example is that the employee's weekly overtime begins to accrue on Saturday, only after they have worked more than 40 non-overtime hours in the workweek. None of the employee's daily overtime hours are credited toward their weekly overtime.

© 2026, Kyle D. Smith · All Rights Reserved

CH. 05

A Simple Overtime Calculator for California Employees

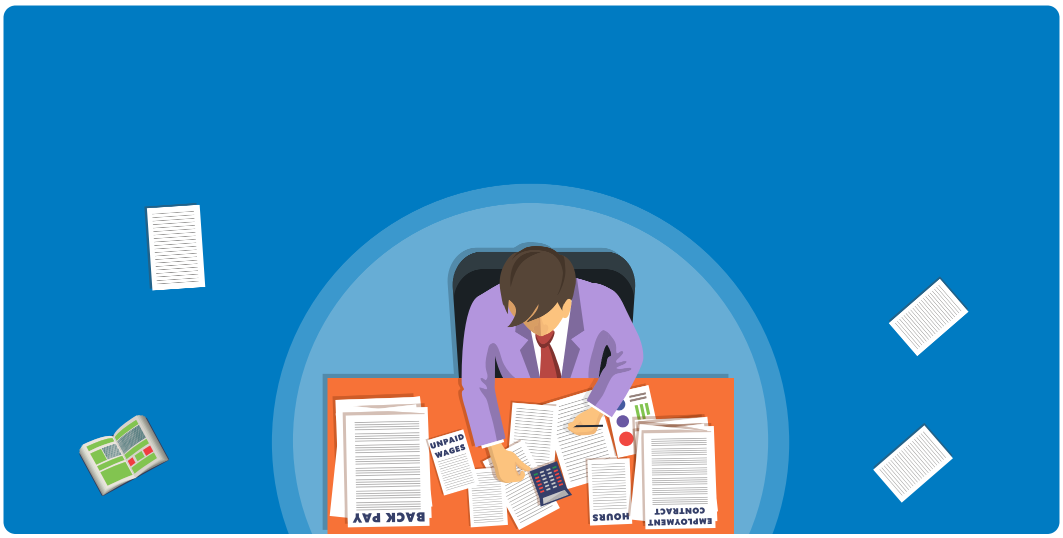
To help illustrate these concepts, we have provided an overtime calculator below. This can help you calculate the amount of overtime an employee might be owed in a given workweek.

Please note that this calculator does not cover any exceptional circumstances, like how to calculate overtime for employees subject to an alternative workweek schedule. It should not be relied on as legal advice.

© 2026, Kyle D. Smith · All Rights Reserved

CH. 06

A Closer Look at Some Common Overtime Issues



6.1 Receiving Comp Time Instead of Overtime Wages

An employer cannot require an employee to take paid time off (compensating time or “comp time”) instead of being paid overtime.[77] But an employee may *request* comp time if all of the following conditions are met:

- The compensating time off is provided pursuant to a written agreement between the employer and employee (or the employee's union) before the performance of the work.[78]
- The employee has not accrued more than 240 hours of comp time.[79]
- The employee made a written request to the employer asking for compensating time off in lieu of overtime compensation.[80]
- The employee is regularly scheduled to work no less than 40 hours in a workweek.[81]

© 2026, Kyle D. Smith · All Rights Reserved

If any of these conditions are not met, the employee must be paid the overtime rate they would otherwise be entitled to under the law.[82]

Compensating time must equal the overtime rate. In other words, if an employee is entitled to an overtime rate of time and a half, the employee must be given an hour and a half of paid time off for each hour of overtime that the employee worked.[83]

6.2 Overtime for Missed Meal or Rest Breaks

An employer must pay wages for all "hours worked." An employee who is instructed or permitted to work through a meal break must therefore be paid for the meal break.[84]

Thus, if an employee works more than 8 hours a day or more than 40 non-overtime hours a week after counting meal breaks during which the employee worked, the employee is entitled to pay at the employee's overtime rate.[85]

But, if an employee is relieved of all duties and obligations during their meal period, that time will usually not count as "hours worked," and will not be compensable.[86]

California law also requires employers to give employees a paid rest period, usually of 10 minutes during every 4 hours worked.[87] This rest period is considered part of the employee's work hours, and is therefore included in the employee's calculation of overtime wages.[88]

6.3 Overtime for "On Call" Hours

Employees are sometimes entitled to compensation for hours spent "on call."[89]

An employee is considered *on call* if the employer can call them into work on short notice. The degree of control that the employer exercises over the employee while the employee is not working will usually determine whether the employer must pay overtime.[90]

If the employee is completely free to engage in personal activities while on call, the employee is *not* subject to the employer's control and is thus not entitled to compensation.[91]

But if the employee has no opportunity to engage in personal activities while waiting to be called into work, the employee is subject to the employer's control and is entitled to compensation.[92]

© 2026, Kyle D. Smith · All Rights Reserved

When an employee's on call time falls between those two extremes, courts will examine several factors to determine whether that time counts as “hours worked.” Those factors include:

- Whether the employer imposes an on-site living requirement;
- How much time the employee is given to report after being called in to work;
- Limits on the distance from the employer the employee is realistically free to travel while on call;
- The frequency with which the employee is called in to work;
- Whether the employee is free to trade on-call duties with other employees; and
- Whether the employee actually engages in personal activities while on call.[93]

Courts have generally found that “hours worked” does not include on call hours when the employee is free to engage in personal activities and has a reasonable time to report to work (which might be as short as 20 or 30 minutes).[94]

In the end, employees who are not paid for on call hours and who believe they might be entitled to overtime wages for those hours should seek advice from an employment lawyer.

6.4 “Off the Clock” and Unauthorized Work

Employers may *not* ask employees to work off the clock.[95] If an employee is paid by the hour, the employer must keep track of those hours, including overtime hours, and pay the appropriate rate for all hours worked.[96]

Likewise, the employer must pay for hours, including overtime hours, that:

- The employee worked, and
- The employer knew or should have known that the employee was working.[97]

So, even if an employee engages in work that the employer did not authorize, the employer must nevertheless compensate the employee. If that unauthorized work time results in overtime, the employee must be paid at the applicable overtime rate.

EXAMPLE

An employee keeps working after the employee's shift ends, and the employer knows the employee is working and does not tell the employee to stop. The employer must pay for the extra hours (including overtime) that the employee works.[98]

On the other hand, an employer must pay for off the clock hours only if the employer “knows or should have known” that the employee worked those hours.[99] An employee may not conceal unauthorized work from an employer and then expect to be paid for that work.[100]

6.5 Overtime for Job Preparation

Tasks that an employee must perform to prepare for work count as “hours worked” when they are an integral and indispensable part of the job.[101]

EXAMPLE

A machinist who must set up a machine or perform routine maintenance before operating the machine is entitled to be compensated for the time, including overtime, that is spent performing those tasks.

Whether an activity is an integral part of the job is not always clear. For example, courts have reached different conclusions about whether time spent changing into a uniform or donning special safety equipment counts as “hours worked.”[102]

Employees should obtain advice from an employment lawyer if they are not sure whether they are owed additional compensation for the time they spend preparing to work.

6.6 Commutes and Travel Time

In general, time the employee spends commuting from home to work is not part of the workday. This is true even if the employee commutes to work in a “ridesharing”

© 2026, Kyle D. Smith · All Rights Reserved

program that the employer provides.[103]

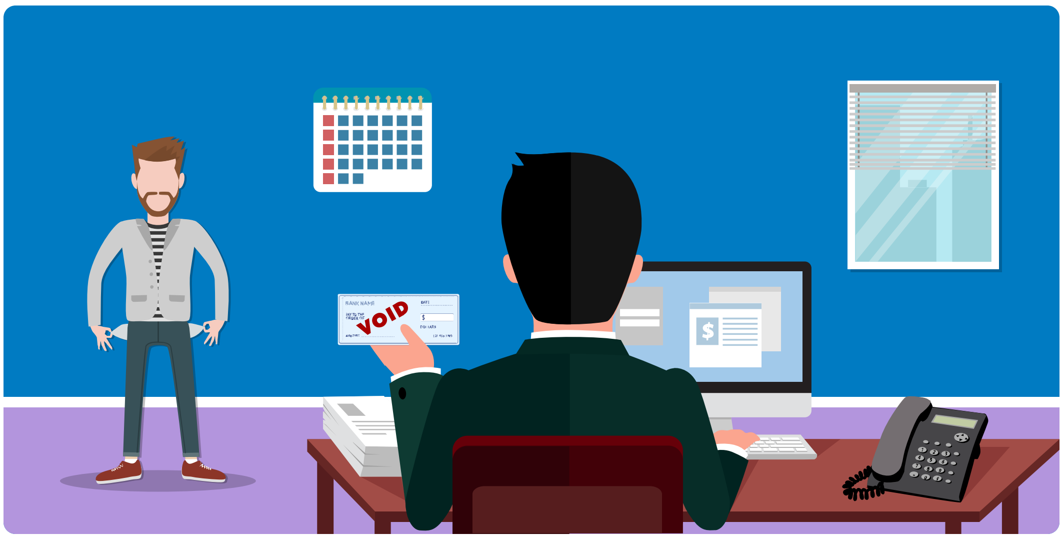
If traveling to work on employer-provided transportation is mandatory, however, commuting time will be considered “hours worked” and the employee is entitled to compensation, including overtime if applicable, for those hours.[104]

Time spent traveling from home to a job site might also count as “hours worked” if the job site is distant from the place where the employee usually works and the travel is necessary to carry out a special assignment.[105]

© 2026, Kyle D. Smith · All Rights Reserved

CH. 07

How to Handle a Violation of Overtime Laws



Employees who have been underpaid usually have at least three options. They can:

- Resolve the dispute informally with the employer,
- File a lawsuit in court, or
- Bring a claim for unpaid wages and penalties with a government agency.[106]

Employees have a right to hire an employment attorney to assist or advise them with any of these options. It is often a good idea to do so, rather than trying to handle it alone.

Employees who choose to pursue a remedy for unpaid overtime will need to decide whether to seek relief under federal or state law. Both federal and state law allow an employee to recover unpaid overtime that the employee earned.

Federal law allows the amount of unpaid overtime to be doubled as a penalty for a failure to pay overtime.[107] California law does not allow double damages, but does include a late payment penalty under some circumstances.[108]

© 2026, Kyle D. Smith · All Rights Reserved

Whether it is better to seek a state or federal remedy, and whether it makes sense to file an administrative claim or a lawsuit, will depend on the facts of the case.

To learn more about the process for bringing a claim for unpaid overtime, visit How to File a Wage & Hour Claim in California: The Ultimate Guide.

References

1 29 U.S.C. § 207; Labor Code, § 510, subd. (a).

2 Labor Code, § 510, subd. (a).

3 Labor Code, § 510, subd. (a).

4 *Huntington Memorial Hospital v. Superior Court* (2005) 131 Cal.App.4th 893, 902 [“'The purpose behind the overtime pay requirement is two-fold: (1) to spread employment by encouraging employers to avoid overtime work and thereby employ additional workers on a regular basis; and (2) where the employer prefers overtime work, to compensate the employee for the burden of working longer hours.'”], quoting *Donovan v. McKissick Products Co.* (10th Cir. 1983) 719 F.2d 350, 352.

5 *Huntington Memorial Hospital v. Superior Court* (2005) 131 Cal.App.4th 893, 902.

6 *Industrial Welfare Com. v. Superior Court of Kern County* (1980) 27 Cal.3d 690, 702 [“[I]n light of the remedial nature of the legislative enactments authorizing the regulation of wages, hours and working conditions for the protection and benefit of employees, the statutory provisions are to be liberally construed with an eye to promoting such protection.”]; *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1026–1027.

7 29 U.S.C. § 207; Labor Code, § 510.

8 See 29 U.S.C. § 207 [covering overtime].

9 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.”].

10 *United Parcel Service Wage & Hour Cases* (2010) 190 Cal.App.4th 1001, 1010 [“In many respects, California law provides broader protection of employee rights, and in such instances, California law controls.”].

© 2026, Kyle D. Smith · All Rights Reserved

11 *Sullivan v. Oracle Corp.* (2011) 51 Cal.4th 1191, 1197 [“California's overtime laws apply by their terms to all employment in the state . . . .”].

12 Labor Code, § 515 [“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.”].

13 Cal. Code of Regs., tit. 8, §§ 11010–11170, subds. 1(C).

14 Labor Code, § 514.

15 See Cal. Code of Regs., tit. 8, §§ 11050, subd. 3, 11150, subd. 3.

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

17 Labor Code, § 515, subd. (a).

18 Labor Code, § 515, subd. (a) [requiring employees to “customarily and regularly exercises discretion and independent judgment in performing” the duties of their job].

19 See, e.g., Cal. Code of Regs., tit. 8, § 11040, subd. 1(A)(1) [defining the executive exemption].

20 See, e.g., Cal. Code of Regs., tit. 8, § 11040, subd. 1(A)(2) [defining the administrative exemption].

21 See, e.g., Cal. Code of Regs., tit. 8, § 11040, subd. 1(A)(3) [defining the professional exemption].

22 Cal. Code of Regs., tit. 8, §§ 11010–11170, subds. 1(C).

23 Cal. Code of Regs., tit. 8, §§ 11010–11170, subds. 2(M).

24 Labor Code, § 514.

25 Labor Code, § 514.

26 Labor Code, § 514.

27 Labor Code, § 1173.

28 Cal. Code of Regs., tit. 8, § 11150, subd. 3.

© 2026, Kyle D. Smith · All Rights Reserved

29 Cal. Code of Regs., tit. 8, § 11050, subd. 3.

30 Cal. Code of Regs., tit. 8, § 11050, subd. 3.

31 Cal. Code of Regs., tit. 8, § 11050, subd. 3.

32 Cal. Code of Regs., tit. 8, § 11050, subd. 3.

33 Cal. Code of Regs., tit. 8, § 11050, subd. 3.

34 See, e.g., Cal. Code of Regs., tit. 8, § 11040, subd. 1(D).

35 *Sullivan v. Oracle Corp.* (2011) 51 Cal.4th 1191, 1206 ["The California Labor Code does apply to overtime work performed in California for a California-based employer by out-of-state plaintiffs in the circumstances of this case, such that overtime pay is required for work in excess of eight hours per day or in excess of 40 hours per week."].

36 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."].

37 See *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 578 ["[T]he Legislature may not have intended IWC wage orders to govern out-of-state businesses employing nonresidents, though the nonresident employees enter California temporarily during the course of the workday."]; *Sullivan v. Oracle Corp.* (2011) 51 Cal.4th 1191, 1200 ["Nothing in *Tidewater* suggests a nonresident employee, especially a nonresident employee of a California employer such as Oracle, can enter the state for entire days or weeks without the protection of California law."].

38 29 U.S.C. § 207(a)(1) ["Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed."]; Labor Code, § 510 ["Any work in excess of eight hours in one workday . . . shall be compensated at the

© 2026, Kyle D. Smith · All Rights Reserved

rate of no less than one and one-half times the regular rate of pay for an employee.”].

39 Labor Code, § 510, subd. (a).

40 Labor Code, § 510, subd. (a).

41 Labor Code, § 510, subd. (a).

42 Labor Code, § 500, subd. (a) [“'Workday' and 'day' mean any consecutive 24-hour period commencing at the same time each calendar day.”].

43 Labor Code, § 500, subd. (b) [“'Workweek' and 'week' mean any seven consecutive days, starting with the same calendar day each week. 'Workweek' is a fixed and regularly recurring period of 168 hours, seven consecutive 24-hour periods.”].

44 *Seymore v. Metson Marine, Inc.* (2011) 194 Cal.App.4th 361, 368 [“Section 500 undoubtedly affords an employer significant flexibility in the designation of a workweek.”], disapproved on other grounds by *Mendiola v. CPS Security Solutions, Inc.* (2015) 60 Cal.4th 833, 845–846.

45 *Seymore v. Metson Marine, Inc.* (2011) 194 Cal.App.4th 361, 369–370, quoting DLSE, *Enforcement Policies and Interpretations Manual* (Mar. 2006 rev.) p. 48-2, disapproved on other grounds by *Mendiola v. CPS Security Solutions, Inc.* (2015) 60 Cal.4th 833, 845–846.

46 Labor Code, § 510, subd. (a).

47 *Huntington Memorial Hospital v. Superior Court* (2005) 131 Cal.App.4th 893, 905.

48 Labor Code, § 515, subd. (d)(1) [“For the purpose of computing the overtime rate of compensation required to be paid to a nonexempt full-time salaried employee, the employee's regular hourly rate shall be 1/40th of the employee's weekly salary.”]; see also *Skyline Homes, Inc. v. Department of Industrial Relations* (1985) 165 Cal.App.3d 239, 245 [explaining DLSE method of computing overtime for salaried employees], disapproved on other grounds by *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 572–574. Note that this calculation may differ from the calculation of the regular rate under federal law. (*Skyline Homes, Inc. v. Department of Industrial Relations*,

© 2026, Kyle D. Smith · All Rights Reserved

supra, 165 Cal.App.3d 239, 247.) California employees will usually be entitled to calculate their regular pay under California law because it is more favorable to employees than federal law.

49 Labor Code, § 515, subd. (d)(2) ["Payment of a fixed salary to a nonexempt employee shall be deemed to provide compensation only for the employee's regular, nonovertime hours, notwithstanding any private agreement to the contrary."].

50 *Walling v. Youngerman-Reynolds Hardwood Co.* (1945) 325 U.S. 419, 424 [65 S.Ct. 1242, 1245] ["The regular rate by its very nature must reflect all payments which the parties have agreed shall be received regularly during the workweek, exclusive of overtime payments."]; *Huntington Memorial Hospital v. Superior Court* (2005) 131 Cal.App.4th 893, 903–904. The *Huntington Memorial* decision relied on 29 U.S.C. § 207(e), which excludes certain kinds of compensation, such as discretionary bonuses and vacation pay, from the regular rate.

51 *Huntington Memorial Hospital v. Superior Court* (2005) 131 Cal.App.4th 893, 910 [The bottom line is this: An employer may not engage in a subterfuge or artifice designed to evade the overtime laws.].

52 Labor Code, § 510, subd. (a).

53 See, e.g., Cal. Code of Regs., tit. 8, § 11040, subd. 2(K) ["'Hours worked' means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so."]. While this specific regulation applies to professional, technical, clerical, mechanical, and similar occupations, the same definition of "hours worked" appears in regulations governing overtime requirements for most other occupations. (See, e.g., *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 582.)

54 *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 582.

55 29 U.S.C. § 207(a)(1); Labor Code, § 510.

56 Labor Code, § 500, subd. (b); *Seymore v. Metson Marine, Inc.* (2011) 194 Cal.App.4th 361, 369, disapproved on other grounds by *Mendiola v. CPS Security Solutions, Inc.* (2015) 60 Cal.4th 833, 845–846.

57 *Seymore v. Metson Marine, Inc.* (2011) 194 Cal.App.4th 361, 369 ["[E]mployers may for bona fide business reasons establish an infinite

© 2026, Kyle D. Smith · All Rights Reserved

variety of working schedules, including rotating and alternating schedules under which employees start at different times on different days."], disapproved on other grounds by *Mendiola v. CPS Security Solutions, Inc.* (2015) 60 Cal.4th 833, 845–846.

58 *Seymore v. Metson Marine, Inc.* (2011) 194 Cal.App.4th 361, 365 ["We agree with plaintiffs that it is not permissible for Metson to artificially designate the workweek in such a way as to circumvent the statutory requirement to pay overtime rates for the seventh consecutive day worked in a workweek."], disapproved on other grounds by *Mendiola v. CPS Security Solutions, Inc.* (2015) 60 Cal.4th 833, 845–846. The court in *Seymore* noted that the employer had established a single work schedule that began on a Tuesday, while designating the "workweek" to begin on a Monday. This accomplished nothing apparent in the record other than the elimination of overtime. (*Seymore v. Metson Marine, Inc.*, *supra*, 194 Cal.App.4th 361, 371.)

59 *Huntington Memorial Hospital v. Superior Court* (2005) 131 Cal.App.4th 893, 910.

60 Labor Code, § 510, subd. (a).

61 See Labor Code, § 511.

62 Labor Code, § 511; Cal. Code of Regs., tit. 8, §§ 11010–11170, subds. 3(b).

63 See, e.g., Cal. Code of Regs., tit. 8, § 11050, subd. 3(b)(8) [permitting alternative workweek schedules of three 12-hour days without requiring time-and-a-half pay].

64 Cal. Code of Regs., tit. 8, §§ 11010–11170, subds. 3(c)(1).

65 Cal. Code of Regs., tit. 8, §§ 11010–11170, subds. 3(c)(3).

66 Labor Code, § 511.

67 Cal. Code of Regs., tit. 8, §§ 11010–11170, subds. 3(c)(2).

68 Cal. Code of Regs., tit. 8, §§ 11010–11170, subds. 3(c)(6).

69 Cal. Code of Regs., tit. 8, §§ 11010–11170, subds. 3(c)(8).

70 Labor Code, § 511, subd. (b).

71 Labor Code, § 511, subd. (b).

© 2026, Kyle D. Smith · All Rights Reserved

72 Labor Code, § 510, subd. (a); see Cal. Code of Regs., tit. 8, § 11170, subd. 4 [“[E]mployees shall not be employed more than eight (8) hours in any workday ***or*** more than 40 hours in any workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek.”], emphasis added.

73 *Monzon v. Schaefer Ambulance Serv.* (1990) 224 Cal.App.3d 16, 40; see also Labor Code, § 510, subd. (a) [“Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.”].

74 *Monzon v. Schaefer Ambulance Serv.* (1990) 224 Cal.App.3d 16, 40 [“The weekly overtime trigger of 40 hours is reached after the employee has worked 40 hours at straight or regular time, not the first 40 hours.”]; see also Labor Code, § 510, subd. (a).

75 *Monzon v. Schaefer Ambulance Serv.* (1990) 224 Cal.App.3d 16, 40.

76 *Monzon v. Schaefer Ambulance Serv.* (1990) 224 Cal.App.3d 16, 40.

77 Labor Code, § 204.3, subd. (b).

78 Labor Code, § 204.3, subd. (b)(1) [“The compensating time off is provided pursuant to applicable provisions of a collective bargaining agreement, memorandum of understanding, or other written agreement between the employer and the duly authorized representative of the employer's employees; or, in the case of employees not covered by the aforementioned agreement or memorandum of understanding, pursuant to a written agreement entered into between the employer and employee before the performance of the work.”].

79 Labor Code, § 204.3, subds. (b), (c).

80 Labor Code, § 204.3, subd. (b)(3) [“The employee has requested, in writing, compensating time off in lieu of overtime compensation.”].

81 Labor Code, § 204.3, subd. (b)(4).

82 Labor Code, § 204.3, subd. (b).

83 Labor Code, § 204.3, subd. (a) [“An employee may receive, in lieu of overtime compensation, compensating time off at a rate of not less than

© 2026, Kyle D. Smith · All Rights Reserved

one and one-half hours for each hour of employment for which overtime compensation is required by law. If an hour of employment would otherwise be compensable at a rate of more than one and one-half times the employee's regular rate of compensation, then the employee may receive compensating time off commensurate with the higher rate.”].

84 Cal. Code of Regs., tit. 8, §§ 11010–11170, subds. 11 [“Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked.”].

85 Cal. Code of Regs., tit. 8, §§ 11010–11170, subds. 11(A).

86 Cal. Code of Regs., tit. 8, §§ 11010–11170, subds. 11.

87 Cal. Code of Regs., tit. 8, §§ 11010–11170, subds. 12 [“Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours.”].

88 Cal. Code of Regs., tit. 8, §§ 11010–11170, subds. 12 [“Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.”].

89 See *Gomez v. Lincare, Inc.* (2009) 173 Cal.App.4th 508, 523.

90 *Gomez v. Lincare, Inc.* (2009) 173 Cal.App.4th 508, 523 [“On-call waiting time may be compensable if it is spent primarily for the benefit of the employer and its business. [Citation.] A determination of whether the on-call waiting time is spent predominantly for the employer's benefit depends on two considerations: (1) the parties' agreement, and (2) the degree to which the employee is free to engage in personal activities.”].

91 *Gomez v. Lincare, Inc.* (2009) 173 Cal.App.4th 508, 523.

92 *Gomez v. Lincare, Inc.* (2009) 173 Cal.App.4th 508, 523.

93 *Gomez v. Lincare, Inc.* (2009) 173 Cal.App.4th 508, 523; see also *Madera Police Officers Assn. v. City of Madera* (1984) 36 Cal.3d 403, 406

[constraints placed on the activities and conduct of employees during their mealtime were so restrictive that the employees were considered at work and thus entitled to overtime compensation.].

94 See *Seymore v. Metson Marine, Inc.* (2011) 194 Cal.App.4th 361, 375–376 [collecting cases], disapproved on other grounds by *Mendiola v. CPS Security Solutions, Inc.* (2015) 60 Cal.4th 833.

95 See, e.g., *Bradley v. Networkers Internat., LLC* (2012) 211 Cal.App.4th 1129, 1156 [discussing allegation that "workers were compelled to work off the clock and this off-the-clock work was required to be paid at premium overtime wages"].

96 Labor Code, § 226, subd. (a) [requiring employer to keep record of "total hours worked by the employee"].

97 *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 584–585.

98 *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575.

99 *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 584–585.

100 *Jong v. Kaiser Foundation Health Plan, Inc.* (2014) 226 Cal.App.4th 391, 395; *Forrester v. Roth's I.G.A. Foodliner, Inc.* (9th Cir. 1981) 646 F.2d 413, 414–415.

101 *Mitchell v. King Packing Co.* (1956) 350 U.S. 260, 261 [76 S.Ct. 337, 339] [establishing federal standard for compensable time spent performing preliminary tasks].

102 Compare *Bamonte v. City of Mesa* (9th Cir. 2010) 598 F.3d 1217, 1228–1229 [time spent changing into police uniform not compensable if officer has option of changing at home] with *Steiner v. Mitchell* (1956) 350 U.S. 247, 256 [76 S.Ct. 330, 335] [time spent changing into specialized protective gear at work is an integral part of the job and is thus compensable].

103 Labor Code, § 510, subd. (b) ["Time spent commuting to and from the first place at which an employee's presence is required by the employer shall not be considered to be a part of a day's work, when the employee commutes in a vehicle that is owned, leased, or subsidized by the employer and is used for the purpose of ridesharing, as defined in Section 522 of the Vehicle Code."].

© 2026, Kyle D. Smith · All Rights Reserved

104 *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 587 [“When an employer requires its employees to meet at designated places to take its buses to work and prohibits them from taking their own transportation, these employees are 'subject to the control of an employer,' and their time spent traveling on the buses is compensable as 'hours worked.'”].

105 29 C.F.R. § 785.37.

106 *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.”].

107 29 U.S.C. § 216(b) [“Any employer who violates the provisions of section 206 or section 207 of this title shall be liable to the employee or employees affected in the amount of . . . their unpaid overtime compensation . . . and in an additional equal amount as liquidated damages.”].

108 Labor Code, § 203, subd. (a) [“If an employer willfully fails to pay . . . 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.”].

© 2026, Kyle D. Smith · All Rights Reserved