



CALCULATING THE “REGULAR RATE OF PAY” IN CALIFORNIA

Overtime, break premiums, and more are measured by the "regular rate of pay," a figure that folds in bonuses, commissions, and other earnings. This guide explains what counts toward the rate and how the math works for every common pay structure.

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In California, nonexempt employees are generally entitled to overtime pay if they work more than eight hours in a workday, 40 hours in a workweek, or seven consecutive days in a workweek.¹ The amount of the employee's overtime pay depends, in part, on the employee's **regular rate of pay**.²

Put simply, the *regular rate of pay* is the per-hour value of the compensation the employee has earned.³ It must reflect an employee's non-overtime hourly rate *and* any other compensation the employee has earned, like nondiscretionary bonuses or commissions.⁴

The regular rate of pay can be difficult to compute, particularly when an employee receives more than one form of compensation. This guide takes a closer look at the regular rate of pay as it is currently defined under California's wage and hour laws.

Why the Regular Rate of Pay Matters



The regular rate of pay is not just an overtime concept. It is the measuring stick for a surprising number of payments California employees are owed, including:

-  **Overtime pay.** Overtime is paid at one-and-a-half or two times the regular rate of pay.⁵
-  **Meal, rest, and recovery period premiums.** A missed break entitles the employee to one extra hour of pay at the “regular rate of compensation,” which the California Supreme Court has held is the same figure as the overtime regular rate.⁶
-  **Reporting time pay.** Employees who are sent home early are owed reporting time pay at their regular rate.⁷
-  **Paid sick leave.** Sick pay uses a related, but distinct, calculation that is discussed below.⁸
-  **Piece-rate rest and recovery pay.** Employees paid by the piece must be separately paid for rest and recovery periods at an average hourly rate.⁹

Because so many obligations are measured by the same number, a mistake in the regular rate tends to spread. A bonus that is wrongly left out of overtime is usually

also left out of break premiums, and the resulting shortfalls can distort the employee's pay, pay stubs, and final paycheck.¹⁰

The General Rule

The general rule is that the regular rate of pay must be based on wages and most other forms of compensation an employee earns for work performed during the workweek, excluding overtime.¹¹

California borrows this framework from federal law. The Labor Code does not define the phrase “regular rate of pay,” so the Labor Commissioner and the courts look to the definition in the federal Fair Labor Standards Act, which includes “all remuneration for employment” unless a specific exclusion applies.¹² California’s rules must be at least as protective of employees as the federal rules, and in several situations discussed below they are more protective.¹³

A few foundational principles apply to every calculation.

First, the regular rate is always an *hourly* figure. Whatever the form of the employee’s pay (salary, piece rate, commission, or something else) it must be converted into an average hourly rate before overtime can be computed.¹⁴

Second, federal law generally computes the regular rate on a workweek basis.¹⁵ California usually follows that approach, although the California Supreme Court has expressly declined to decide whether California law invariably requires workweek-by-workweek calculations in every context.¹⁶

Third, when non-hourly pay is converted into an hourly rate, California has generally treated that pay as earned during the employee’s regular (non-overtime) hours. The number of hours used as the divisor therefore usually cannot exceed the legal maximum of regular hours, which in most cases is eight hours per day and 40 hours per week.¹⁷ This is one of the main ways California law is more protective than federal law. An important exception applies to piece rates, commissions, and production bonuses, which grow as the employee works more hours; those earnings are divided by all hours worked, as explained below.¹⁸

Fourth, the regular rate can never be less than the applicable minimum wage, and employees cannot sign away their right to a correctly-computed rate. An agreement to accept less than the legal minimum wage or the legal overtime rate is unenforceable.¹⁹

Finally, compensation does not have to be paid in cash to count. The reasonable value of board, lodging, and other goods or facilities furnished to the employee as part of their wages is added to the cash wage when computing the regular rate.²⁰

Payments That Count Toward the Regular Rate



Subject to the exclusions discussed in the next section, the starting presumption is that every dollar an employee earns for their work belongs in the regular rate.²¹ Common examples include:

-  **Hourly wages.** The employee's base hourly earnings.²²
-  **Shift differentials.** Extra pay for working nights, weekends, or other less desirable shifts.²³
-  **Nondiscretionary bonuses.** Attendance, production, longevity, retention, safety, and similar bonuses that are promised or expected.²⁴
-  **Commissions.** Compensation based on a percentage of the price of goods or services the employee sells.²⁵
-  **Piece-rate earnings.** Pay based on the number of units the employee produces or tasks they complete.²⁶
-  **On-call and standby payments.** Flat fees paid for being available for work.²⁷



The value of board, lodging, and other facilities. Non-cash compensation furnished as part of the employee's wages.²⁸

The defining feature of an includable bonus is that it is *nondiscretionary*. A bonus is nondiscretionary when it is promised, announced, or expected in a way that encourages employees to work more steadily, rapidly, or efficiently, or to stay with the employer.²⁹ The label the employer puts on the payment is irrelevant. A so-called “discretionary bonus” that is actually promised in advance, tied to performance, or routinely paid is nondiscretionary and must be included in the regular rate.³⁰

Payments That Are Left Out

Federal law lists eight categories of payments that are excluded from the regular rate, and California follows the same framework.³¹ In plain terms, the following payments generally stay out of the regular-rate-of-pay calculation [↗](#):

-  **True gifts.** Holiday or special-occasion gifts whose amounts are not measured by hours worked, production, or efficiency.³²
-  **Pay for time not worked.** Vacation pay, holiday pay, sick pay, and payments for periods when the employer fails to provide work.³³
-  **Expense reimbursements.** Reasonable payments that repay the employee for business expenses, like mileage or travel costs.³⁴
-  **Truly discretionary bonuses and bona fide profit-sharing.** Payments where both the decision to pay and the amount are entirely up to the employer, decided at or near the end of the period and not promised in advance, along with payments under bona fide profit-sharing, thrift, or savings plans.³⁵
-  **Benefit plan contributions.** Employer contributions made irrevocably to a trustee or third party under a bona fide plan for retirement, life, accident, or health benefits.³⁶
-  **Overtime premiums themselves.** The extra premium portion of overtime pay is not folded back into the regular rate.³⁷
-  **Genuine premium pay for special days.** Extra pay of at least one-and-a-half times the regular rate for working weekends, holidays, days of rest, or hours outside a basic schedule set by a good-faith agreement.³⁸
-  **Qualifying stock benefits.** Income from qualifying employer-provided stock options, stock appreciation rights, and employee stock purchase plans.³⁹

Two notes about these exclusions. First, the premium payments in the last two overtime-related categories can usually be credited against the overtime the employer owes, which prevents employees from being paid twice for the same premium.⁴⁰ Second, the gift and discretionary-bonus exclusions are narrow. Anything

the employee was promised, expects, or earns through performance does not qualify.⁴¹

Calculating the Regular Rate of Pay



Once you know which payments count, the method for converting them into an hourly rate depends on how the employee is paid. The most common situations are discussed below.

5.1 Hourly Employees

If an employee is paid by the hour and receives no other compensation, the regular rate of pay is simply the employee's hourly rate.⁴² Overtime hours are then paid at one-and-a-half or two times that rate.

The moment the employee earns any other includable compensation, like a bonus, a shift differential, or a commission, the regular rate rises above the base hourly rate and must be recomputed using the methods below.⁴³

5.2 Salaried Employees

A nonexempt employee can lawfully be paid a salary, but the salary does not buy out their overtime rights. For a full-time salaried employee, the regular rate of pay is *one-*

fortieth (1/40) of the weekly salary.⁴⁴ If the employee is paid monthly, the weekly salary is found by multiplying the monthly salary by 12 and dividing by 52.⁴⁵

$$(\text{Monthly salary} \times 12) \div 52 \text{ weeks} \div 40 \text{ hours} = \text{regular rate of pay}$$

Importantly, a nonexempt employee's salary compensates them only for their *regular, non-overtime* hours.⁴⁶ Because none of the salary is credited toward overtime hours, each overtime hour must be paid at the *full* one-and-a-half or double-time rate, not just an extra half-time premium.⁴⁷

EXAMPLE: SALARIED NONEXEMPT EMPLOYEE

Dana earns a monthly salary of \$4,000.00 and works 45 hours in one week, five of which are daily overtime hours.

Her weekly salary is $(\$4,000.00 \times 12) \div 52 = \923.08 , and her regular rate is $\$923.08 \div 40 = \23.08 per hour.

Because the salary covers only her first 40 hours, each overtime hour is owed at the full time-and-a-half rate: $5 \times (\$23.08 \times 1.5) = \173.10 .

Her total pay for the week is $\$923.08 + \$173.10 = \mathbf{\$1,096.18}$.

Employers sometimes claim that a salary was “agreed” to include overtime. California law does not allow this. The Legislature amended the Labor Code in 2012 to make clear that a fixed salary compensates only non-overtime hours, no matter what the parties privately agreed.⁴⁸

For the same reason, the federal “fluctuating workweek” method, under which a fixed salary is treated as straight-time pay for however many hours the employee happens to work, is not permitted in California. That method shrinks the employee's hourly rate as their hours grow, which is incompatible with California's overtime policy.⁴⁹

If the salary is expressly agreed to cover fewer than 40 hours per week, the agreed number of hours is used as the divisor instead, which produces a higher regular rate.⁵⁰

5.3 Employees Paid Two or More Hourly Rates

Some employees earn different hourly rates for different kinds of work in the same workweek, like a higher rate for training shifts and a lower rate for travel time. In that situation, California uses the *weighted average* method: total straight-time earnings for the week are divided by total hours worked, and the result is the regular rate for that week.⁵¹ Because the employee has already received straight-time pay for every hour, each overtime hour is then owed an additional one-half of the weighted-average rate (or an additional full rate for double-time hours).⁵²

EXAMPLE: TWO RATES IN ONE WEEK

Marcus works 30 hours at \$18.00 per hour as a server and 20 hours at \$25.00 per hour as a trainer, for 50 hours total, with 10 hours of overtime.

His straight-time earnings are $(30 \times \$18.00) + (20 \times \$25.00) = \$1,040.00$, so his weighted-average regular rate is $\$1,040.00 \div 50 = \20.80 .

His overtime premium is $10 \times (\$20.80 \times 0.5) = \104.00 , for total weekly pay of **\$1,144.00**.

One caution: at least one Court of Appeal has allowed an employer to instead pay overtime at the rate in effect when the overtime hours were worked, where that method actually left the employees better off overall. The California Supreme Court has not resolved the issue, and the weighted average remains the method the Labor Commissioner endorses.⁵³

5.4 Employees Who Earn Bonuses

When a nonexempt employee earns a nondiscretionary bonus, overtime is owed on the bonus itself. California splits the calculation into two methods, depending on the type of bonus.

A **flat-sum bonus** is a fixed amount that does not grow with the employee's hours or output, like a set attendance bonus or a fixed bonus for staying through the end of a season. Under the California Supreme Court's decision in *Alvarado v. Dart Container Corp.*, the per-hour value of a flat-sum bonus is found by dividing the bonus by the employee's *non-overtime hours actually worked* during the period, and each overtime hour is then owed one-and-a-half times that per-hour value (or double for double-

time hours).⁵⁴ The reasoning is that a flat-sum bonus is fully earned during regular hours, so spreading it across overtime hours would water down the overtime premium.⁵⁵ This is more generous to employees than the federal method.

EXAMPLE : FLAT - SUM BONUS

Priya earns \$20.00 per hour and works nine hours a day, Monday through Friday: 45 hours, with five hours of daily overtime. She also earns a flat \$100.00 attendance bonus for the week.

Her hourly wages come to $45 \times \$20.00 = \900.00 , plus an overtime premium of $5 \times (\$20.00 \times 0.5) = \50.00 .

The bonus is worth $\$100.00 \div 40 \text{ non-overtime hours} = \2.50 per hour, so the overtime owed on the bonus is $5 \times (\$2.50 \times 1.5) = \18.75 .

Her total pay for the week is $\$900.00 + \$50.00 + \$100.00 + \$18.75 =$
\$1,068.75. Under the federal method, the overtime owed on the bonus would have been just \$5.56.

A **production bonus**, by contrast, grows with the employee's hours or output, like a per-unit incentive. For these bonuses, the bonus is divided by *all* hours worked during the period, including overtime hours, and each overtime hour is owed an additional one-half of that per-hour value (or an additional full amount for double-time hours). Because the bonus itself already grew during the overtime hours, only the premium portion remains owing.⁵⁶

A special case is a bonus set as a fixed *percentage of the employee's total earnings*, including overtime earnings. Because that kind of bonus automatically increases the employee's overtime pay by the same percentage, no additional overtime is owed on it.⁵⁷

Finally, when a bonus covers more than one workweek, like a quarterly or annual bonus, it must be allocated back to the workweeks in which it was earned, and the overtime for each affected week must be recomputed once the bonus amount is known.⁵⁸

5.5 Commissioned Employees

Commissions are wages, and they must be included in the regular rate of pay.⁵⁹ The commission is assigned to the workweek or workweeks in which it was earned. If it cannot be tied to particular weeks, it is spread reasonably across the period over which it was earned, and overtime is recomputed for each affected week.⁶⁰

The usual method is the same one used for production bonuses: total includable earnings for the week (hourly wages plus the allocated commission) are divided by total hours worked, and each overtime hour is owed an additional one-half of that rate (or an additional full rate for double-time hours). Alternatively, by agreement made in advance, the employer may pay one-and-a-half times the commission rate itself for sales made during overtime hours, though this method is rarely used.⁶¹

Keep in mind that some commissioned employees, mainly commission-heavy salespeople in retail and certain professional, technical, or clerical occupations, are exempt from overtime entirely under a separate test. That exemption eliminates the overtime obligation for qualifying pay periods; it is not an alternative way of computing the regular rate.⁶²

5.6 Piece-Rate Employees

Employees paid by the piece raise two separate questions: how overtime is computed on their piecework earnings, and how they are paid for time that earns no piece rate at all.

For overtime, either of two methods may be used. Under the usual method, total piece-rate earnings (plus any other includable compensation) are divided by total hours worked to find the regular rate, and each overtime hour is owed an additional one-half of that rate (or an additional full rate for double-time hours). Alternatively, if the parties agree in advance, the employer may pay one-and-a-half times the piece rate itself for pieces produced during overtime hours.⁶³

Separately, because piecework pays only for productive activity, California requires piece-rate employees to be paid on top of their piece rate for rest periods and other unproductive time. Specifically:



Rest and recovery periods must be paid at the higher of the applicable minimum wage or an average hourly rate, computed by dividing the week's compensation (excluding rest-period pay and overtime premiums) by the week's hours (excluding rest periods).⁶⁴



Other nonproductive time, meaning time under the employer's control that is not directly related to the piece-rate activity, must be paid at least the applicable minimum wage.⁶⁵



Pay stubs must itemize the rest, recovery, and nonproductive time and the rates paid for them.⁶⁶

These rules codify court decisions holding that employers cannot average piece-rate earnings across all hours to cover unpaid time.⁶⁷

Applying the Regular Rate to Overtime

Once the regular rate is known, California's overtime multipliers apply to it:

California Overtime Multipliers	
Overtime Rate	When It Applies
1.5 × the regular rate	Hours over 8 and up to 12 in a workday; hours over 40 in a workweek; and the first 8 hours on the seventh consecutive day of work in a workweek
2 × the regular rate	Hours over 12 in a workday; and hours over 8 on the seventh consecutive day of work in a workweek
Labor Code, § 510, subd. (a). Different thresholds apply to properly adopted alternative workweek schedules.	

Hours are not counted twice. An hour that has already been paid as daily overtime does not also count toward the 40-hour weekly threshold.⁶⁸ And while an alternative workweek schedule can change *when* overtime begins, it does not change how the regular rate itself is computed.⁶⁹

Other Payments Measured by the Regular Rate

7.1 Meal, Rest, and Recovery Period Premiums

When an employer fails to provide a compliant meal, rest, or recovery period, the employee is owed one additional hour of pay at their “regular rate of compensation.”⁷⁰ For years, many employers paid this premium at the employee’s base hourly rate. The California Supreme Court rejected that practice in *Ferra v. Loews Hollywood Hotel*, holding that the “regular rate of compensation” is the same figure as the overtime regular rate, so break premiums must include nondiscretionary bonuses, commissions, and other includable pay.⁷¹

These premium payments are themselves wages. They must appear on the employee’s pay stubs and be paid on time when the employment ends, or the employer can owe pay stub and waiting time penalties on top of the premiums.⁷²

7.2 Paid Sick Leave

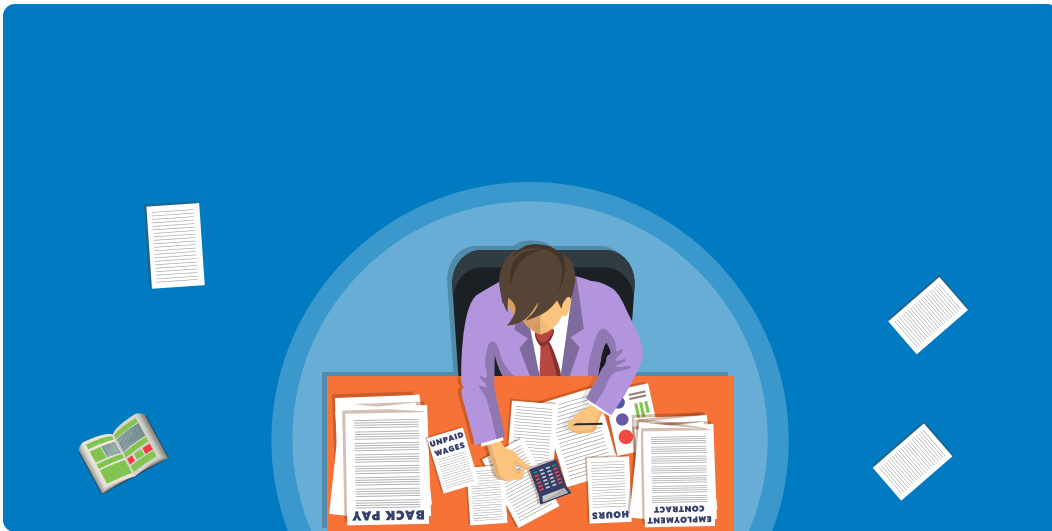
Paid sick leave is *related* to the regular rate, but it is not calculated identically, and mixing up the two is a common mistake. For nonexempt employees, the employer may choose between two methods: (1) calculating sick pay “in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek,” or (2) dividing the employee’s total wages, *not including overtime premium pay*, by the employee’s total hours worked in the full pay periods of the prior 90 days of employment.⁷³ For exempt employees, sick pay is calculated the same way the employer calculates other forms of paid leave.⁷⁴

7.3 Reporting Time and Split-Shift Pay

An employee who reports to work but is given less than half of their usual or scheduled day's work is owed reporting time pay: half the scheduled day, but no less than two and no more than four hours, at the employee's regular rate of pay.⁷⁵ A split-shift premium of one hour at the minimum wage is owed when the workday is split by an unpaid, non-working period other than a normal meal break.⁷⁶

These premiums flow *from* the regular rate or the minimum wage, but they are generally not folded back *into* the regular rate, because they are not compensation for hours actually worked.⁷⁷

Common Mistakes That Shrink Paychecks



Regular rate errors are among the most common wage violations in California. Employees reviewing their pay stubs should watch for these patterns:

-  **Overtime paid on the base rate alone.** If the employee earns bonuses, commissions, or shift differentials but their overtime rate never changes, the regular rate is probably being computed incorrectly.⁷⁸
-  **Promised bonuses labeled “discretionary.”** A bonus that employees expect, or that is tied to attendance, production, or staying employed, is nondiscretionary no matter what it is called.⁷⁹
-  **Flat-sum bonuses computed the federal way.** Dividing a flat-sum bonus by total hours and paying a half-time premium understates California overtime; the bonus must be divided by non-overtime hours with a full 1.5 multiplier.⁸⁰
-  **A salary that supposedly “includes” overtime.** California law deems a nonexempt salary to cover only non-overtime hours, no matter what was agreed.⁸¹



Break premiums paid at the base hourly rate. Meal and rest premiums must be paid at the full regular rate, including nondiscretionary bonuses and commissions.⁸²



Piece-rate pay with no separate rest-period pay. Piece-rate employees must be paid separately, and their pay stubs must itemize it.⁸³



Sick pay treated interchangeably with the overtime rate. The sick leave statute has its own methods, including a 90-day look-back that excludes overtime premiums.⁸⁴



Averaging earnings across multiple workweeks. The regular rate is computed one workweek at a time.⁸⁵

What to Do If Your Regular Rate Was Miscalculated



Even a small per-hour error can add up to significant unpaid wages over months or years of paychecks. Employees whose regular rate was computed incorrectly can generally recover:

-  **Unpaid overtime and other wages**, plus interest, along with attorney fees and costs if the employee prevails.⁸⁶
-  **Unpaid meal and rest premiums**, where break premiums were paid at the wrong rate or not at all.⁸⁷
-  **Pay stub and waiting time penalties**, where the underpayments carried through to the employee's wage statements or final paycheck.⁸⁸

Strict deadlines apply. Claims for unpaid wages must usually be filed within *three years*, and certain claims can reach back *four years* under California's Unfair Competition Law.⁸⁹

Employees can raise the issue informally with their employer, file a wage claim with the Labor Commissioner's Office, or file a lawsuit. Because regular rate math turns on

the details of how the employee was paid, it is usually a good idea to get the opinion of a lawyer before deciding how to proceed.



RELATED GUIDE

How to File a Wage Claim in California

The Labor Commissioner process from start to finish: what to gather, where to file, and what happens at the hearing.

References

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- 1 This rule does not necessarily apply to employees that work an “alternative workweek” adopted pursuant to Labor Code sections 511, 514, or 554.
 - 2 Labor Code, § 510, subd. (a) [“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. 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.”]; see also Cal. Code Regs., tit. 8, §§ 11010–11160, subds. 3(A), 11170, subd. 4.
 - 3 *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 554 [“[The] per-hour value must be determined so that the employee’s regular rate of pay—and, derivatively, the employee’s overtime pay rate—reflects all the various forms of regular compensation that the employee earned in the relevant pay period.”].
 - 4 *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 554 [“Regular rate of pay, which can change from pay period to pay period, includes adjustments to the straight time rate, reflecting, among other things, shift differentials and the per-hour value of any nonhourly compensation the employee has earned.”].
 - 5 Labor Code, § 510, subd. (a).
 - 6 Labor Code, § 226.7, subd. (c); *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 864 [the “regular rate of compensation” in section 226.7 is synonymous with the “regular rate of pay” in section 510].
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- 7 Cal. Code of Regs., tit. 8, § 11040, subd. 5; see also Cal. Code of Regs., tit. 8, §§ 11010–11170, subds. 5.
-
- 8 Labor Code, § 246, subd. (l).
-
- 9 Labor Code, § 226.2, subd. (a)(3).
-
- 10 See Labor Code, §§ 201–203 [final wages], 226 [itemized wage statements].
-
- 11 *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 [relying on 29 U.S.C. § 207(e), which excludes certain kinds of compensation, such as discretionary bonuses and vacation pay, from the regular rate].
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- 12 29 U.S.C. § 207(e); Div. of Labor Standards Enforcement, Enforcement Policies and Interpretations Manual (2002 rev.), § 49.1.2 (the “DLSE Manual”). The DLSE Manual states the Labor Commissioner’s enforcement positions. It is not a binding regulation (see *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 571), but courts often find its reasoning persuasive, and the California Supreme Court adopted the Manual’s method for flat-sum bonuses as its own interpretation of state law. (*Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 561–566.)
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- 13 *Huntington Memorial Hospital v. Superior Court* (2005) 131 Cal.App.4th 893, 902–905 [California incorporates the federal method of computing the regular rate, and state law requirements must be at least as protective as the corresponding federal standards]; see also *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 562.
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- 14 29 C.F.R. §§ 778.109, 778.110; see *Huntington Memorial Hospital v. Superior Court* (2005) 131 Cal.App.4th 893, 903.
-
- 15 29 C.F.R. §§ 778.104, 778.105.
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- 16 *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 551 fn. 2.
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- 17 DLSE Manual, § 49.1.4; *Skyline Homes, Inc. v. Department of Industrial Relations* (1985) 165 Cal.App.3d 239, 245–250.
- 18 DLSE Manual, §§ 49.2.1.2–49.2.1.3 [explaining why the rule for piece workers, production bonus workers, and commission workers differs from the rule for salaries and flat-sum bonuses].
- 19 Labor Code, §§ 1194, subd. (a) [an employee is entitled to recover unpaid overtime “[n]otwithstanding any agreement to work for a lesser wage”], 1197.
- 20 Cal. Code of Regs., tit. 8, § 11040, subd. 10; DLSE Manual, § 49.1.2.2; 29 C.F.R. § 778.116.
- 21 29 U.S.C. § 207(e); DLSE Manual, §§ 49.1.2, 49.1.2.3.
- 22 Labor Code, § 510; 29 C.F.R. § 778.110.
- 23 *Huntington Memorial Hospital v. Superior Court* (2005) 131 Cal.App.4th 893, 902–910; 29 C.F.R. § 778.207.
- 24 DLSE Manual, § 49.2.4; 29 U.S.C. § 207(e)(3); 29 C.F.R. § 778.211.
- 25 Labor Code, §§ 200, 204.1; 29 C.F.R. § 778.117.
- 26 DLSE Manual, § 49.1.2.1; 29 C.F.R. § 778.111.
- 27 DLSE Manual, § 49.1.2.3 [payments for performing a duty, such as a flat payment for each on-call period, must be included].
- 28 Cal. Code of Regs., tit. 8, § 11040, subd. 10; DLSE Manual, § 49.1.2.2; 29 C.F.R. § 778.116.
- 29 29 C.F.R. § 778.211; *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 546–547.
- 30 29 C.F.R. § 778.211(b)–(c) [both the fact of payment and the amount must be within the employer’s sole discretion, determined at or near the end of the period, and not paid pursuant to any prior contract, agreement, or promise].
- 31 29 U.S.C. § 207(e)(1)–(8); DLSE Manual, § 49.1.2.4.
- 32 29 U.S.C. § 207(e)(1); 29 C.F.R. § 778.212.
- 33 29 U.S.C. § 207(e)(2).
- 34 29 U.S.C. § 207(e)(2); see also Labor Code, § 2802.

35	29 U.S.C. § 207(e)(3); 29 C.F.R. § 778.211.
36	29 U.S.C. § 207(e)(4).
37	29 U.S.C. § 207(e)(5).
38	29 U.S.C. § 207(e)(6)–(7).
39	29 U.S.C. § 207(e)(8).
40	29 U.S.C. § 207(h).
41	29 C.F.R. §§ 778.211, 778.212.
42	29 C.F.R. § 778.110, subd. (a).
43	29 C.F.R. § 778.110, subd. (b); <i>Alvarado v. Dart Container Corp. of California</i> (2018) 4 Cal.5th 542, 554.
44	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.”]; Cal. Code Regs., tit. 8, §§ 11010–11160, subds. 3(A)(1)(c) [“The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee’s regular hourly salary as one fortieth (1/40) of the employee’s weekly salary.”].
45	DLSE Manual, § 49.2.1.1.
46	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.”].
47	DLSE Manual, § 49.1.5 [to determine the regular rate for a nonexempt salaried employee, “one must divide the weekly salary paid by no more than forty hours”].
48	Labor Code, § 515, subd. (d)(2), added by Assem. Bill No. 2103 (2011–2012 Reg. Sess.), abrogating <i>Arechiga v. Dolores Press, Inc.</i> (2011) 192 Cal.App.4th 567; see also DLSE Manual, § 49.1.5.
49	<i>Skyline Homes, Inc. v. Department of Industrial Relations</i> (1985) 165 Cal.App.3d 239, 245–250; DLSE Manual, §§ 48.1.4–48.1.5.2.

50	See Labor Code, § 515, subd. (d); DLSE Manual, § 49.1.5 [the weekly salary is divided “by no more than forty hours”].
51	DLSE Manual, § 49.2.5; 29 C.F.R. § 778.115; see <i>Skyline Homes, Inc. v. Department of Industrial Relations</i> (1985) 165 Cal.App.3d 239.
52	DLSE Manual, § 49.2.5; 29 C.F.R. § 778.115.
53	<i>Levanoff v. Dragas</i> (2021) 65 Cal.App.5th 1079 [approving the “rate in effect” method where it resulted in a net benefit to the employees]; compare DLSE Manual, § 49.2.5 [endorsing the weighted average method].
54	<i>Alvarado v. Dart Container Corp. of California</i> (2018) 4 Cal.5th 542, 546–547, 561–566; DLSE Manual, § 49.2.4.2. The court declined to limit its holding to future cases, so the rule applies retroactively. (<i>Alvarado, supra</i> , 4 Cal.5th 542.)
55	<i>Alvarado v. Dart Container Corp. of California</i> (2018) 4 Cal.5th 542, 561–565.
56	DLSE Manual, §§ 49.2.4–49.2.4.1; 29 C.F.R. §§ 778.209, 778.210; see <i>Alvarado v. Dart Container Corp. of California</i> (2018) 4 Cal.5th 542, 547 [limiting the flat-sum method to flat-sum bonuses].
57	29 C.F.R. § 778.210.
58	29 C.F.R. § 778.209; see DLSE Manual, § 49.2.4.
59	Labor Code, §§ 200, 204.1; 29 C.F.R. § 778.117.
60	29 C.F.R. §§ 778.118–778.120.
61	DLSE Manual, § 49.2.1.2.
62	Cal. Code of Regs., tit. 8, §§ 11040, subd. (3)(D), 11070, subd. (3)(D) [requiring earnings of more than one-and-a-half times the minimum wage, with more than half of the employee’s compensation representing commissions]; see <i>Peabody v. Time Warner Cable, Inc.</i> (2014) 59 Cal.4th 662, 669 [commissions count only in the pay period in which they are paid for purposes of this test].
63	DLSE Manual, § 49.2.1.2; 29 C.F.R. § 778.111.
64	Labor Code, § 226.2, subds. (a)(1), (a)(3)(A); DLSE Manual, §§ 49.2.1.4–49.2.1.5.

65	Labor Code, § 226.2, subds. (a)(1), (a)(4) [and defining “other nonproductive time” as “time under the employer’s control, exclusive of rest and recovery periods, that is not directly related to the activity being compensated on a piece-rate basis”].
66	Labor Code, § 226.2, subd. (a)(2).
67	Labor Code, § 226.2, added by Assem. Bill No. 1513 (2015–2016 Reg. Sess.); <i>Gonzalez v. Downtown LA Motors, LP</i> (2013) 215 Cal.App.4th 36; <i>Bluford v. Safeway Stores, Inc.</i> (2013) 216 Cal.App.4th 864. An employer that pays at least the minimum wage for every hour worked, in addition to the piece rate, is deemed to satisfy the separate-pay requirement for nonproductive time. (Labor Code, § 226.2, subd. (a)(7).)
68	See <i>Overtime</i> , Cal. Dept. of Industrial Relations, available here  [explaining that daily and weekly overtime hours are not pyramided].
69	Labor Code, § 511; DLSE Manual, § 49.1.4.
70	Labor Code, § 226.7, subd. (c).
71	<i>Ferra v. Loews Hollywood Hotel, LLC</i> (2021) 11 Cal.5th 858, 864–865. The court also held that its decision applies retroactively. (<i>Ferra, supra</i> , 11 Cal.5th 858.)
72	<i>Naranjo v. Spectrum Security Services, Inc.</i> (2022) 13 Cal.5th 93, 102.
73	Labor Code, § 246, subd. (l)(1)–(2).
74	Labor Code, § 246, subd. (l)(3).
75	Cal. Code of Regs., tit. 8, § 11040, subd. 5(A).
76	Cal. Code of Regs., tit. 8, § 11040, subd. 4(C).
77	See 29 C.F.R. § 778.220 [show-up and similar payments for non-work time are excluded from the regular rate].
78	<i>Huntington Memorial Hospital v. Superior Court</i> (2005) 131 Cal.App.4th 893, 902–910.
79	29 C.F.R. § 778.211.
80	<i>Alvarado v. Dart Container Corp. of California</i> (2018) 4 Cal.5th 542, 546–547.
81	Labor Code, § 515, subd. (d)(2).

82	<i>Ferra v. Loews Hollywood Hotel, LLC</i> (2021) 11 Cal.5th 858, 864–865.
83	Labor Code, § 226.2, subds. (a)(1)–(a)(4).
84	Labor Code, § 246, subd. (l).
85	29 C.F.R. § 778.104.
86	Labor Code, § 1194, subd. (a).
87	Labor Code, § 226.7, subd. (c); <i>Ferra v. Loews Hollywood Hotel, LLC</i> (2021) 11 Cal.5th 858, 864–865.
88	Labor Code, §§ 203, 226; <i>Naranjo v. Spectrum Security Services, Inc.</i> (2022) 13 Cal.5th 93, 102.
89	Code Civ. Proc., § 338, subd. (a); Bus. & Prof. Code, § 17208; see <i>Cortez v. Purolator Air Filtration Products Co.</i> (2000) 23 Cal.4th 163, 178–179.