

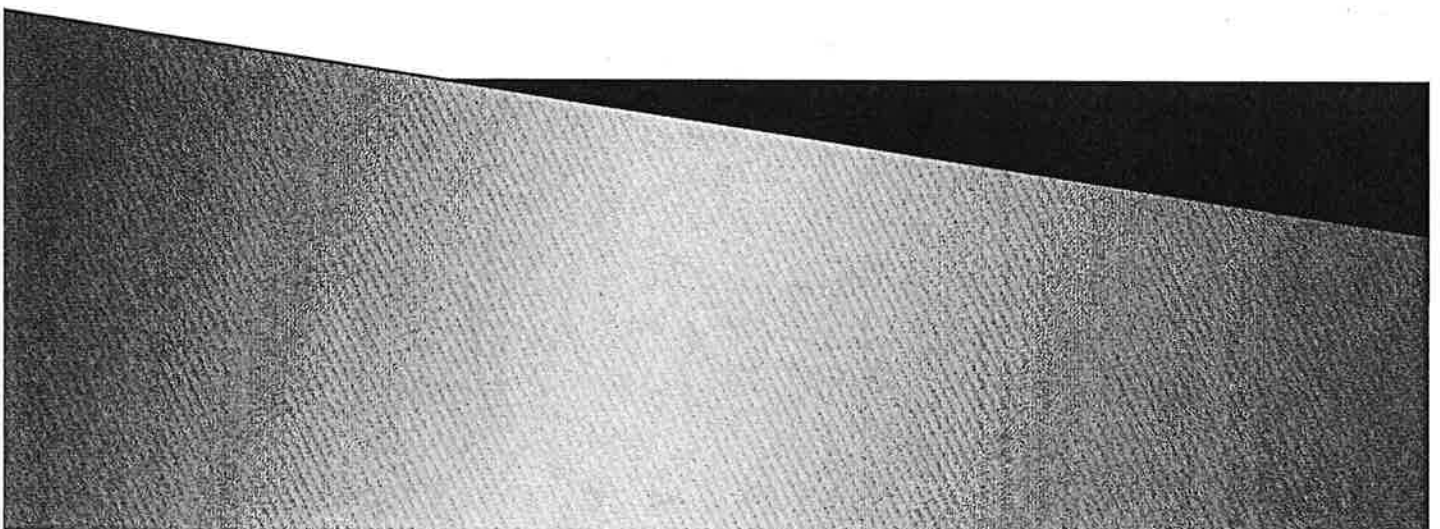


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AG LABOR LAWS WORKSHOP

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OVERVIEW

- ▶ Status of the ag overtime law
- ▶ Exemptions from overtime provisions
- ▶ Minimum wage increase
- ▶ 7th day of rest requirements
- ▶ Piece rate compensation developments
- ▶ Common wage & hour mistakes

AB 1066 - Ag Overtime

- ▶ Effective January 1, 2017, all overtime exemptions for persons employed in agricultural occupations may have been removed from California's Labor Code.
- ▶ Or all overtime exemptions may still exist until January 1, 2019.
- ▶ Over the course of several years, employers will be required to pay all agricultural employees one and half times the regular rate of pay for any hours worked over 8 hours in any one day, or any hours worked over 40 hours in one week, and twice the regular rate of pay for all hours worked in excess of 12 hours in one day.

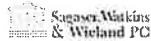
Exemptions Removed From Wage Order 14 Pursuant to AB 1066

- ▶ No longer an exemption from overtime for "irrigators" under Wage Order 14. Previously, employees who spent more than half of their time acting as an irrigator were exempt from overtime provisions. (2017 or 2019?)
- ▶ No longer an exemption for "truck drivers" under Wage Order 14. Previously, employees whose hours of service were regulated by the U.S. Department of Transportation or Title 13 of the California Code of Regulations, subchapter 6.5, Section 1200 and following sections, regulating of hours or drivers, were exempt from overtime considerations.

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What about persons exempted from all provisions of Wage Order 14?

- ▶ Currently, Wage Order 14 does not apply to the following:
 - Employees who are primarily engaged in "intellectual, managerial, or creative" work;
 - Parents, spouses, children, or legally adopted children of the employer;
 - Employers who employ fewer than five persons;
 - Employees who are covered by Wage Orders 8 or 13;
 - Individuals participating in a national service program;
 - Certain sections do not apply to "Sheepherders" and crew of commercial fishing vessels.
- ▶ Unknown whether these employees will continue to be exempt due to the broad language of AB 1066 until Wage Order 14 is revised.



Ag Overtime Phase-In

The overtime provisions of AB 1066 will be phased in over several years based on the size of employer:

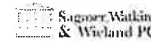
Employers with more than 25 employees	Employers with 25 or fewer employees	Overtime paid at time and a half for any time worked ...
January 1, 2019	January 1, 2022	Over 9.5 hours per day or over 55 hours per workweek.
January 1, 2020	January 1, 2023	Over 9.0 hours per day or over 50 hours per workweek.
January 1, 2021	January 1, 2024	Over 8.5 hours per day or over 45 hours per workweek.
January 1, 2022	January 1, 2025	Over 8.0 hours per day or over 40 hours per workweek.

Also by January 1, 2022- any work performed in excess of 12 hours in one day shall be compensated at the rate of no less than twice the employee's regular rate of pay.



What about employees covered by collective bargaining agreements?

- ▶ Presently, the LC's rules regarding days and hours worked do not apply to an employee covered by a CBA if the agreement provides:
 - for the wages, hours of work, and working conditions of the employees;
 - premium wage rates for all overtime hours worked; and
 - a regular hourly rate of pay for those employees of not less than 30% more than the state minimum wage.
- ▶ There is nothing in the Act or the law that currently states that CBAs that comply with Wage Order 14 will be honored.
- ▶ CBAs have to comply with the heightened requirements of Labor Code section 514 as of January 1, 2017.



Day of Rest Under AB 1066

- ▶ Previously, ag was exempt from the general rule that no employer shall cause his employees to work more than six days in seven.
- ▶ This exemption was deleted with the passage of AB 1066. Effective January 1, 2017, employers could no longer "cause" persons in agricultural occupations to work more than six days in seven.
- ▶ Is the day of rest calculated by work week or any seven-consecutive-day period? What does it mean to "cause" an employee to go without a day of rest?

CA Supreme Court Weighs in On Day of Rest Requirement

- ▶ In May 2017, CA Supreme Court issued a ruling in *Mendoza v. Nordstrom, Inc.*, holding:
 1. Under LC sections 551 and 552, a day of rest must be guaranteed for each workweek.
 2. The exemption for employees working shifts of six hours or less applies only to those who never exceed six hours of work on any day of the workweek.

Continued to next slide...

CA Supreme Court Weighs in On Day of Rest Requirement

3. An employer causes its employee to go without a day of rest when it induces the employee to forgo rest to which he or she is entitled. An employer is not, however, forbidden from permitting or allowing an employee, fully apprised of the entitlement to rest, independently to choose not to take a day of rest.
- ▶ Recommendation: Consider a form informing employees of their right to a day of rest, and asking whether they independently choose not to take a day of rest and want to be scheduled for work if work is available.

Piece Rate Compensation

- ▶ Employers are required to compensate employees for all rest and recovery breaks and other nonproductive time.
- ▶ Compensation for rest & recovery periods at higher of:
 - Applicable minimum wage.
 - Average hourly rate.
- ▶ Compensation for all other non-productive time:
 - No less than applicable minimum wage rate.

Piece Rate Compensation

- ▶ Wage stub must include:
 - The number of units and rate for any piece-work the employee performed.
 - Total hours worked.
 - Total hours of rest & recovery & rate of compensation for same.
 - Total hours paid for non-productive time other than rest & recovery & rate paid for same.

Mistake No. 1: Failure to Pay Overtime

- ▶ Problem with salary compensation: Overtime required, unless "exempt employee."
- ▶ Specific requirements to meet exempt status, and the presumption under law is that all employees are non-exempt.
- ▶ 3-year statute of limitations for statutory overtime claim.

EXEMPTION FROM OVERTIME

▶ In order to be exempt from overtime requirements, employees must meet specific criteria, including:

- ▶ Spend over 50 percent of their working time performing exempt duties.
- ▶ Earn a salary of at least 2x the current minimum wage.
- ▶ Job titles are irrelevant. Depends on employee's actual performance of exempt duties.



What are the requirements to be Exempt from overtime?

- ▶ Job duties must fit into a recognized exemption category
 - ▶ Executive, Administrative and Professional Exemptions (White Collar Exemptions)
 - ▶ Special exemption category for nurse professionals
 - ▶ Special exemption category for computer professionals
 - ▶ Exemptions for Commissioned Salespersons, Truck Drivers, Residential Care Employees and Ski Industry
 - ▶ Outside Salespersons exempt from minimum wage and overtime



Impact Of Increases in California Minimum Wage

Calendar Year	Employ 26 or more	Employed 25 or less	Exempt Salary Requirement
2017	\$10.50/hour	\$10/hour	\$43,680 \$3,640.00/mon.
2018	\$11.00/hour	\$10.50/hour	\$45,760 \$3,813.33/mon.
2019	\$12.00/hour	\$11.00/hour	\$49,920 \$4,160.00/mon.
2020	\$13.00/hour	\$12.00/hour	\$54,080 \$4,506.67/mon.
2021	\$14.00/hour	\$13.00/hour	\$58,240 \$4,853.33/mon.
2022	\$15.00/hour	\$14.00/hour	\$62,400 \$5,200.00/mon.
2023	Calculated increases based on CPI	\$15.00/hour	

* Based on minimum wage for employers of 26 or more employees.

Changes to FLSA

- ▶ The salary threshold was scheduled to double from \$23,660 to \$47,476 on Dec. 1, 2016.
- ▶ Litigation ensued over the DOL's authority to double the salary level.
- ▶ DOL filed its appeal while President Obama was still in office. However, the Trump administration took office prior to completion of the briefing.
- ▶ DOL continues to argue that it has authority to change the minimum salary level, but it has asked the Court not to address the validity of the specific level set in 2016.

Mistake No. 2:

Failure to Provide Meal & Rest Periods

- ▶ Meal Periods:
 - Unpaid.
 - "At least 30 uninterrupted minutes for every 5 hours worked."
 - Must be provided opportunity to take first meal period before the end of the 5th hour of work and second meal period before the end of the 10th hour of work.

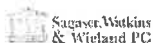
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Meal Periods

- **WAIVERS** – Employee works no more than 6 hours and employee and employer mutually waive meal period.
- Employee who works more than 10 hours, but not more than 12 hours, can waive the second meal period if the first meal period was not waived.
 - Recommend written waivers.
 - Employee may rescind waiver at any time.
- **RECORDING TIME** – Require employees to record the start and end of the meal period.
- Caution with automatic deductions.

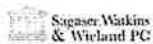
Meal Periods– *Brinker*

- ▶ "Ensure" or "Provide"?
- ▶ **Brinker's** answer: Provide. Not Ensure.
"Employers need only provide, not ensure, that meal periods are taken."
- ▶ Employers cannot "impede, discourage or dissuade employees from taking meal periods."
- ▶ Despite the California Supreme Court's **Brinker** decision, meal and rest period class actions are still widespread in California.



On-Duty Meal Periods

- ▶ Very limited Exception
 - When nature of work prevents employee from being relieved of all duty (employer's burden to prove)
 - Written Agreement, revocable by employee at any time.
 - Paid.



Rest Periods

- ▶ Must "authorize and permit."
- ▶ "Net" 10 minutes for every four hours worked, **or major portion thereof.**
- ▶ Do not need to provide rest break if work time is less than 3 ½ hours.
- ▶ Need not record time but must allow opportunity to take break.
- ▶ Paid time.
- ▶ Timing: Must fall in the middle of work periods "**insofar as practicable.**"
 - Employers may deviate where practical considerations render it infeasible.




Meal & Rest Periods- Written Policy

- ▶ **Faulkinbury v. Boyd & Associates**. Rest period policy that does not echo wage orders may be susceptible to class action liability.
- ▶ **Even if in practice**, the employer provides meal and rest periods in strict accordance with the law.
- ▶ Employers should review their meal and rest period policies to ensure it complies with *Faulkinbury*, *Brinker*, and the wage orders.

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Rest Periods As Follows:

- | | |
|-----------------------|----------------------------|
| ▶ Hours Worked | ▶ Ten Minute Breaks |
| ▶ 3.5-6* | ▶ 1 |
| ▶ 6-10 | ▶ 2 |
| ▶ 10-14 | ▶ 3 |
- ▶ *Labor Commissioner considers anything over 2 hours to require rest period

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Meal & Rest Period Penalties

- ▶ **Penalty**: Pay employee one (1) hour's pay for days when employee is **not provided the opportunity** to take a rest break or meal period.
- ▶ Separate penalties for breaks and meal periods.
- ▶ Self-imposed penalty.
- ▶ **Must Document**. Need to record or maintain record of payment.
- ▶ If **incorrect**, then possible overtime pay owed & Labor Code section 226 (paystub) penalties

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**Mistake No. 3:
Itemized Wage Statements (Check Stubs)**

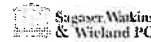
- ▶ **Labor Code §226**
- ▶ Based of Labor Code §226.
- ▶ **Check Stubs**
- ▶ The second largest source of citations by dollar amount issued by the DLSE.

DLSE 2009 Annual Report of the Effectiveness of
Bureau of Field Enforcement



Itemized Wage Statements (Check Stubs)

- ▶ Must be furnished semimonthly or at the time of each payment.
- ▶ Must contain the following accurate information:
 - 1) Gross wages earned
 - 2) Net wages earned
 - 3) Total hours worked
 - 4) All applicable wage rates and the corresponding number of hours
 - 5) The number of piece rate units earned and any applicable piece rate



Itemized Wage Statements (Check Stubs)

- 6) If paid piece rate
 - a) total number of hours of compensable rest and recovery periods and gross wages for that time
 - b) total number of hours on non-productive time and gross wages for that time
- 7) All deductions
- 8) Inclusive dates of the payment period
- 9) The employee's name and last 4 digits of SSN
- 10) Employer's legal name and address
- 11) Amount of sick leave available to employee



Itemized Wage Statements (Check Stubs)

- ▶ What happens if I don't provide itemized wage statements or the statements are inaccurate?
- ▶ **Maximum penalty of \$4,000** plus costs and reasonable **attorney's fees**.
- ▶ Labor Code §226 damage claims are common in wage/hour complaints and class action complaints.
- ▶ Based normally on failure of the statements to be accurate.



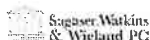
Itemized Wage Statements (Check Stubs)

COMMON PROBLEMS

- ▶ Statement fails to show all the rates of pay and corresponding hours worked.

- ▶ Statement shows the same hours each pay period regardless of the hours worked.

- ▶ Employee cannot determine his or her accurate wages.

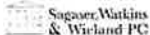


Lawful Deductions

- ▶ Deductions from wages only in instances where:
 - ▶(1) they are required or authorized by state or federal law.

 - ▶(2) they are expressly authorized in writing by the employee to cover insurance premiums, hospital or medical dues, or other deductions not amounting to a rebate or deduction from the standard wage, or

 - ▶(3) when a deduction to cover health and welfare or pension plan contributions are expressly authorized by a collective bargaining or wage agreement.



Unlawful Deductions

- ▶ **Damaged Equipment:** Cannot require employees to pay the cost of damaged equipment (unless gross negligence, willful misconduct or dishonesty).
- ▶ **Unreturned Property:** Cannot deduct from final paycheck or hold final paycheck.
- ▶ **Remedy for Unreturned Equipment:** Have employee post bond or seek recovery in small claims court.



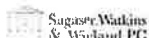
Unlawful Deductions

- ▶ **Loans:** No "balloon payments" on loans, unless employee voluntarily agrees to pay, at time of termination. The best practice: Do not deduct balance from final paycheck. Have the employee write a separate check.
- ▶ **Remedy For Unpaid Loans:** Continued payments by employee or seek recovery in small claims court.



Mistake No. 4: Final Paychecks

- ▶ At termination, must pay final wages, including unused vacation.
- ▶ The timing of the final check depends on the circumstances that led to termination...



Final Paycheck

- ▶ **Discharge/ Termination:**
 - ▶ Must pay immediately
 - ▶ Suspensions prior to termination (caution)
- ▶ **Resignation without notice:**
 - ▶ Must pay within 72 hours
- ▶ **Resignation with at least 72 hours notice:**
 - ▶ Must pay on last day

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Final Paycheck


- ▶ **Waiting Time Penalty:**
 - ▶ Employee's daily wage for every calendar day late
 - ▶ Up to 30 days
- ▶ **Reminder:**
 - ▶ Cannot deduct for unreturned company property
 - ▶ Cannot deduct for damaged property
 - ▶ Direct deposit of final wages *only* if the employee voluntarily authorized you to do so.
 - ▶ Special issues for final commission payments.
 - ▶ Special issue for certain seasonal employees.

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Mistake No. 5:

Failure to Maintain Records

- ▶ Can be the most costly mistake you make: Employer is complying with the law but kept incomplete records or no records to prove it.
- ▶ Maintaining accurate records of employees' hours worked and compensation is not only required by CA law, but is crucial for survival.
- ▶ It is the employer's responsibility to maintain accurate time records, not the employee. Any doubts will be resolved in favor of employee.

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Time Records

- > Grounded in Section 7 of the Wage Orders.
- > Payroll records must include meal periods, split shift intervals and total hours worked.
- > Payroll records do not need to record rest periods or meal period during which operations ceases.
- > **Recommendation:** Keep all employee records going back 5 years.

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Record Keeping: Best Practices

- 1) Maintain accurate time records.
- 2) Use a timecard or timesheet that records all the required information, including the time the employee begins and ends the shift, meal periods, and the total hours worked.
- 3) Ensure that employees are properly compensated for compensable, non-productive time, such as standby time, on-call time, and travel time.

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Record Keeping: Best Practices

- 4) Include a memo with paychecks to review pay and advise company if any problems.
- 5) Written policy communicated to employees.
- 6) Have employee sign acknowledgement confirming accuracy of timecard.
- 7) Regularly audit timecards to determine whether employees are accurately reporting time.
- 8) Discipline for non-compliance.

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**QUESTION
&
ANSWER
SESSION**



THANK YOU
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