

## **WAGE AND HOUR** **BASICS ALL** **EMPLOYERS SHOULD** **KNOW ABOUT**

By Dania M. Baker (Alvarenga), Esq.

You own a shop downtown and you have about five employees. All your employees are friends and you think they are your friends too. One day, there is an argument and the next thing you know you are handed a complaint filed with the labor commissioner. You are being sued for \$10,000 for failure to pay overtime, failure to give lunch breaks and in penalties. Sure, your employee worked a bit of overtime but in exchange you gave her free time off. You thought you had an agreement...now what do you do? And more importantly, how could you have avoided this?

Employers often get into trouble for failure to stick to wage and hour laws. Small companies think its okay to bend and relax the rules since they trust in the fact that an employee has been around for a long time and they can skip a few dots and not cross all the Ts. This can lead to significant trouble for the employer who is (more often than not) unaware he is violating the law.

Here is some information to help you:

### **Do I Really Have to Keep Accurate Files?**

Absolutely. The law required you to have accurate files. It also shows a judge or commissioner that you are neat, organized and care about your business and employees. It will also make it much easier to show you are innocent of the alleged wrongdoing and makes it more difficult for the employee to prove his/her case.

What do you have to keep? You have to keep accurate records of: when an employee comes in and leaves; when an employee is out; vacation time; hours worked; and breaks and lunches as well as copies of paystubs. Keep everything for four years.

### **Do I Have to Give My Employees A Ten Minute Break?**

Yes. While you do not have to force your employees to take a break, you do have to make a break available to them. More specifically, your employees are entitled to a ten minute break for every four hours worked. This break has to be as close as possible to the middle of the four hours.

If you don't allow employees to take the ten minute break and you are sued you may have to pay a penalty of one hour of pay at the employee's regular rate of pay for each day that the break wasn't provided. This means that if your employee makes \$10.00/hour and you didn't give a break for a 5 day work week, you will have to pay \$50.00 in penalties for those five days. In one week it can seem small, but spread that



over three or four years and it could be as much as \$7,800 (\$50 x 52 weeks x 3 years).

Be careful: You can't arrange for an employee to leave early in exchange for working straight through the break. The same goes for arriving late. Also keep in mind that time for going to the restroom during work hours is completely separate, does not count against and cannot be deducted from the ten minute break time. Finally, keep in mind that the break has to be uninterrupted.

### **Do I have To Give Lunch Break?**

Yes. Same as with the ten minute break- while you don't have to force your employees to take a lunch break you do have to make it available to them. More specifically, your employees are entitled to a 30 minute break for every 5 hours worked. If the total workday is only 6 hours long both you and your employee can waive this right to a break.

During lunch your employees must be entirely relieved of all work duties. This means that if one of your employees is eating at her desk and you ask her to type something up quickly or answer a phone call she is not on break and you have to pay her the hour at the regular rate of pay. There are exceptions to this for on-duty workers. Similarly, though there are exceptions, if you require your employee to stay in your building or premises for lunch, you are depriving them of their lunch break and must pay the lunch hour.

If you don't give a lunch break and you are sued you may have to pay a penalty of one additional hour of pay at the employee's [regular rate of pay](#) for each workday that lunch wasn't provided. This can add up significantly, particularly because it can be combined with the penalty for failure to give lunch breaks.

### **Do I Have to Pay Overtime?**

Yes. You have to pay your non-exempt employees overtime. Under California law you have to pay 1.5 times the regular rate of pay for all hours worked over eight hours up to and 12 hours a day, and for the first eight hours worked on the seventh consecutive day of work in a workweek. If your \$10/hr employee regularly works from 8am-5pm and you need them to stay an extra (until 8pm), you have to pay them \$15/hr from 5pm until 8pm.

If your employee works over 12 hours then you have to pay them double their regular rate of pay for all hours over 12 hours. If you ask your employee to stay until midnight then you would pay them \$15/hr from 5pm until 8pm and \$20/hr from 8pm until midnight.

If you fail to pay overtime wages, you can be slapped with a fine in addition to having to repay all overtime. The fines can be pretty hefty: 30 days of wages, including weekends and days the employee doesn't usually work. This can seem low but it can add up quickly with employees who make higher



hourly rates or over a large number of employees.

### **What If We Have Our Own Agreement?**

This is not legal. Even if you employee agrees to not take lunches or get paid overtime in exchange for free time off. Even if you indeed did give that employee time off as agreed, the law does not see that as a valid agreement and you will be required to pay penalties and overtime. Don't make a side agreement with your employee. Stick by the law and document everything you do otherwise you will be exposing yourself to litigation.

### **What About Alternative Work Weeks?**

The law allows for alternative work weeks. Those are work weeks where an employee works four days a week for an extra number of hours a day. These are allowed without the payment of overtime, however, In order to employ an alternative workweek, you must undergo very strict employee voting and election procedures.

Under this schedule an employee cannot work more than ten hours in one day of a 40 hour week. If an employee works more than 10 hours overtime must be paid at double the employee's salary.

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