

# THE HAGAN LAW FIRM

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### DUTY TO PAY WAGES UPON TERMINATION

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California law requires that employers pay employees in full on the date of termination.

Failure to pay wages when due may result in the imposition of penalties up to \$100 per employee per pay period plus 25 percent of the wages not paid to each employee each pay period.

The willful failure to pay a terminated employee may subject an employer to a penalty consisting of the continuation of the employee's wages on a day-to-day basis until the final paycheck is ready or a maximum of 30 days has elapsed. This rule applies to both exempt and non-exempt employees. The critical issue is whether or not the Employer's failure to pay is willful.

A willful failure to pay need not include a showing of bad faith or evil intent. If there is a good faith dispute that no additional wages are due, then it may not constitute "Willful Failure."

In the event of a dispute over wages, the employer must pay without condition all wages the employer concedes are due. Any additional wages determined to be due by the labor commissioner must be paid within 10 days after receipt of notice from the labor commissioner that the wages are due. Failure to do so may subject the employer to triple the amount due to the employee.

An employer who violates wage payment provisions when paying employees also commits a misdemeanor. Either the district attorney or the DLSE can sue to recover statutory penalties.

In any court action brought for the non-payment of wages, fringe benefits, or pension fund contributions, the court must award reasonable attorneys' fees to the prevailing party if requested by the prevailing party. A California Court of Appeal recently held that even the labor commissioner may be ordered to pay attorneys fees to the prevailing party in litigation.

Recently, The California Supreme Court decided a case which extends the period of time in which a

person can file a claim against an employer for failure to pay wages, including overtime, and allows an individual to file a claim on behalf of himself as well as all other similarly situated employees. See *Rosalba Cortez v. Purolator Air Filtration Products Company*, 23 Cal.4th 163 (2000).

*The information provided herein is not intended as legal advice and should not be acted upon. If you have additional questions about this subject matter or would like to consult with an attorney, please call Jennifer J. Hagan or James Hagan at The Hagan Law Firm (650) 322-8498.*

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