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OVERTIME WAGES AND PAY DAYS IN CALIFORNIA

By James R. Hagan

September 8, 2008

1. In California, all nonunion employees, except exempt employees, are required to paid overtime pay. As a practical matter, in order to comply with the law, this means that all nonunion nonexempt employees must be paid on an hourly basis.

2. Overtime pay is time and one-half of the regular rate of pay for hours worked over 8 hours through 12 hours per day and the first 8 hours worked on the seventh consecutive day, and double time for hours worked beyond 12 hours on a day and hours worked beyond 8 hours on the seventh consecutive day. Under federal law, overtime pay is time and one-half for all hours worked (not compensated by commissions) beyond 40 straight-time hours in the workweek.

3. Just because an employee is paid a salary does not mean that he or she is an exempt employee. Exempt employees are defined to be high-salaried executive, administrative, professional, computer professional, outside sales, and commission inside sales employees. All other employees are nonexempt.

A. In all cases (except for sales employees), the minimum regular monthly salary (cash wages) for an exempt employee must be two times the state minimum wage for full time employment of 2,080 hours per year. In 2008, that is \$2,600 per month.

B. In all cases, an exempt employee must work within his own discretion and independent judgment with little supervision about matter of consequence.

C. An exempt executive employee must have managerial responsibilities, must direct the work of two or more other employees, and must have the power to hire and fire.

D. An exempt administrative employee is one that is primarily engaged in non-manual work related to general business operations in advising management, planning, negotiating, purchasing supplies, researching business opportunities, analyzing data, or determining personnel policies.



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E. An exempt professional employee is one that has a state license in a special field that requires special education or is primarily engaged in work commonly recognized as a learned or artistic profession such as scientific or creative work.

F. An exempt computer professional employee is one that is primarily engaged in intellectual and creative work with respect to computer hardware or software, in designing computer systems or programs, and receives wages of not less than \$27.63 per hour.

G. An exempt outside sales employee is one that is at least 18 years old and spends more than 50% of his working time away from the office selling the goods or services of the employer.

H. An exempt inside sales employee is one whose earnings exceed one and one-half the minimum wage and at least one-half of his compensation comes from commissions.

PAYMENT OF WAGES

1. Exempt employees may be paid once a month on or before the 26th day of the month. The payment must include compensation for the entire month.
2. Nonexempt employees must be paid at least twice each month on days designated in advance by the employer. The employer may pay nonexempt employees weekly, biweekly, or semi-monthly within seven days after the end of the pay period.
3. The employer must post a notice stating its regular pay periods and paydays. If a payday falls on a day that the employer is closed because it is a Sunday or a holiday, the employer may pay wages on the next business day.
4. Upon the termination of employment by the employer, or voluntary quit by the employee with 72 hours notice, the FULL AMOUNT due to the employee must be paid on his last day of work. If the employee quits with less than 72 hours notice, the final wages are due to be paid 72 hours after the notice that is given.
5. The employer may pay wages by check drawn on a California bank. With the employee's voluntary authorization, the employer may pay wages by means of electronic funds transfer.



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6. At the time that wages are paid, a non-farm employer must provide to each employee an itemized statement in writing that contains the following information.

Gross wages earned	Name of employee
For nonexempt employees, total hours worked	Last four digits of employee's SSN
Piece work units and rate (if applicable)	Name and address of employer
All deductions	Various hourly rates (if applicable)
The dates of the pay period	Net wages earned and paid

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; www.Haganlaw.com.