



## SUMMARY OF COMMON WORKPLACE VIOLATIONS

By Jason M. Wucetich

A variety of federal and state statutes and regulations dictate how employers must pay their employees in California. Federal law is codified in the Fair Labor Standards Act and various regulations interpreting the Act. *See* 29 U.S.C. §§ 201-219; 29 C.F.R. § 541.0 *et seq.* California law is outlined in the Labor Code as well as in Wage Orders promulgated by the Industrial Welfare Commission. *See* 8 Cal. Code Regs. tit. 8, § 11010 *et seq.*

The following explains important areas of California and federal law regarding employee compensation. These laws do not cover all employees, and their application to the facts of your particular situation may be complicated. For example, certain administrative, executive, and professional employees may be exempt from the rules below. If you are an employee and suspect a violation of these laws or an employer desiring compliance counseling, you should seek legal counsel and not act or refrain from acting based on any of the information in this alert. Contact Wucetich & Korovilas LLP so that we can discuss your circumstances and help safeguard your rights and/or business.

### Meal and Rest Break Violations

#### *Meal Break Violations*

Under California law, an employee who works in excess of 5 hours generally must be provided a 30 minute meal break. During the meal break, an employee must be free of his or her duties and responsibilities. California law prohibits “working lunches.”

If an employee is not allowed to take a meal break, the employee is entitled to recover one hour of pay (at his or her regular pay rate) for each day that a meal break was not allowed.

#### *Rest Break Violations*

Under California law, an employee who works more than 3.5 hours must generally be provided with a 15 minute break. Like meal breaks, rest breaks must be free of an employee’s duties and responsibilities. An employee is entitled to a 10 minute break for every 4 hours worked, or a fraction thereof. The rest break must take place between working periods and cannot be taken

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all at once at the end of the day. If an employee is denied a rest break, the employee is entitled to recover one hour of pay (at his or her regular pay rate) for each day that a rest break was not allowed.

### **Wage Violations and Overtime**

#### *Not Paid for All Time Worked*

An employer is required to pay an employee for all time worked that benefits the employer. If a task or assignment is part of the employee's job, then the employer must pay for that time. This includes time spent at home, work done before a shift in preparation for the work day, post-shift duties (such as closing), and any other thing done that is integral to the job.

For example, some employers require employees to do work on a blackberry or computer during the evening. Even if this work only takes a few hours a week, it is part of the employee's job and he or she must be compensated for that time. Additionally, some employers require employees to participate in weekly, monthly, or quarterly conference calls or meetings that occur outside the normal business day. If an employee is required to participate in these meetings, he or she must be compensated for that time.

#### *Denied Overtime*

Under California law, an employee must generally be paid at one and a half times his or her regular pay rate if an employee works more than 40 hours in one week or more than 8 hours in one day.

As an hourly worker, you may be entitled to overtime if you take work home and are not paid for that time, arrive early (or stay late) on a shift but do not bill your time, and/or work through meal or rest breaks.

As a result of the current economic recession, some employers have decided to stop paying overtime to their employees. Some managers and supervisors are under extreme pressure to be "under budget." To meet these demands, some employees are being required to work the same hours or "write off" time to get the job done. In fear of losing their jobs, some employees are allowing employers to get away with this practice although it violates California overtime laws.

Penalties for failure to pay overtime include: the unpaid overtime, an equal amount as "liquidated damages," and attorneys' fees and costs. For willful violations, an employer may be required to pay overtime for a period covering the prior 4 years and punitive damages.

### *Blackberry and Computer Time*

As the economy has declined, some managers and supervisors are facing pressures to get the same amount of work (or more) with smaller budgets. Some employers have reduced employee compensation budgets and/or are asking employees to do more for less.

In fear of losing their jobs, some employees are willing to cut their time or “write off” time they should otherwise be paid for. This can be particularly true for “blackberry” or “computer time” done at home or outside normal working hours. Non-exempt employees must be paid for this time. Even though this time may only amount to a few hours a week or less, it is a violation of California law to deny an employee compensation for this type of work.

### **Final Paycheck Violations**

California law requires an employer to pay you for all work done within 30 days of your last day of work. It does not matter if you quit, were terminated, or fired.

### **Pooling Tips**

In California, an employer or supervisor cannot share in tips received by an employee. This practice is strictly prohibited under California law. “Tip sharing” or “tip pooling” often occurs in restaurants, bars, hotels and casinos. However, California law strictly prevents an employer or supervisor from taking any portion of an employee’s tips.

### **Unpaid Reimbursements**

Under California law, an employee must generally be reimbursed for all employment related business expenses. For example, a business may require an employee to wear a uniform. However, the employer cannot require the employee to pay the cost of purchasing the uniform. The employer must pay that cost. Additionally, an employer may require that an employee travel for his or her job. However, the employee must be reimbursed for mileage. Often, but not always, the reimbursed mileage rate is the same rate used by the IRS.