

# 2008 Labor Law Lecture Notes

## Required Postings (handout)

- Employers are required to post 21 items on the wall where every employee can view them.
- The LAW, "Every employer shall keep a copy of the postings in an area frequented by employees where it may be easily read during the workday. Where the location of work or other conditions make this impractical, every employer shall keep a copy of all postings and make it available to every employee upon request."

## Minimum Wage

- The federal minimum wage is \$6.55 per hour effective 7/24/2008
- The federal minimum wage will be \$7.25 per hour effective 7/24/2009
- On January 1, 2008 the California minimum wage will raise to \$8.00
- Training Wage-The LAW

CA-LEARNERS: Employees during their first 160 hours of employment in occupations, in which they have no previous similar or related experience, may be paid not less than 85% percent of the minimum wage rounded to the nearest nickel.

## Wage Orders (show several types)

- Order #1 Manufacturing
- Order #2 Personal Service Industries
- Order #3 Canning, Freezing, and Preserving Industry
- Order #4 Professional, Technical, Clerical, Mechanical and Similar Occupations
- Order #5 Public Housekeeping Industry
- Order #6 Laundry, Linen Supply, Dry Cleaning and Dyeing Industry
- Order #7 Mercantile Industry
- Order #8 Industries Handling Products After Harvest
- Order #9 Transportation Industry
- Order #10 Amusement and Recreation Industry
- Order #11 Broadcasting Industry
- Order #12 Motion Picture Industry
- Order #13 Industries Preparing Agricultural Products for Market, on the Farm
- Order #14 Agricultural Occupations

- Order #15 Household Occupations
- Order #16 Certain On-Site Occupations in the Construction, Drilling, Logging and Mining Industries
- Order #17 Miscellaneous Industries

## Split Shifts

- Minimum Wage Section #4 of Wage Order
- The LAW

(C) When an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment.

## Reporting Time Pay

- Reporting Time Pay Section #5
- The LAW

(A) Each workday an employee is required to report for work and does not report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.

(B) If an employee is required to report for work a second time in any one workday and is furnished less than two (2) hours of work on the second reporting, said employee shall be paid for two (2) hours at the employee's regular rate of pay, which shall not be less than the minimum wage.

## Tips

[Labor Code Section 351](#) prohibits employers and their agents from sharing in or keeping any portion of a gratuity left for or given to one or more employees by a patron. Furthermore it is illegal for employers to make wage deductions from gratuities, or from using gratuities as direct or indirect credits against an employee's wages. The law further states that gratuities are the sole property of the employee or employees to whom they are given. "Gratuity" is defined in the Labor Code as a tip, gratuity, or money that has been paid or given to or left for an employee by a patron of a business over and above the actual amount due for services rendered or for goods, food, drink, articles sold or served to patrons. It also includes any amount paid directly by a patron to a dancer covered by [IWC Wage Order 5](#) or [10](#).

### 1. Q. What is a tip?

- A. A tip is money a customer leaves for an employee over the amount due for the goods sold or services rendered. Tips belong to the employee, not to the employer.

### 2. Q. When a customer pays their bill with a credit card and the payment includes a tip, when can the employee expect to receive the money from the employer?

- A. Payment of a gratuity made by a patron using a credit card must be paid to the employee not later than the next regular

payday following the date the patron authorized the credit card payment. [Labor Code Section 351](#)

**3. Q. My employer is deducting the credit card processing fees from my tips. Is this legal?**

- A. No. [Labor Code Section 351](#) provides that the employer must pay the employee the full amount of the tip that is indicated on the credit card. The employer may not make any deduction for credit card processing fees or costs that are charged to the employer by the credit card company from gratuities paid to the employee.

**4. Q. I work in a large restaurant as a waiter. My employer told me that I am required to share my tips with the busboy and the bartender. Am I obligated to do this?**

- A. Yes. According to a California court, [Labor Code Section 351](#) allows involuntary tip pooling. Therefore, your employer can require that you share your tips with other staff that provide service in the restaurant. In this regard, it's DLSE's position that when a tip pooling arrangement is in effect, the tips are to be distributed among the employees who provide "direct table service." Such employees could conceivably include waiters and waitresses, busboys, bartenders, host/hostesses and maitre d's. Employees who do not provide direct table service and who do not share in the tip pool include dishwashers, cooks, and chefs, except in restaurants where the chefs prepare the food at the patron's table, in which case the chef may participate in the tip pool. Additionally, tip pooling cannot be used to compensate the owner(s), manager(s), or supervisor(s) of the business, even if these individuals should provide direct table service to a patron.

**5. Q. Are the tips I receive considered part of my "regular rate of pay" for overtime calculations?**

- A. No. Since tips are voluntarily left for you by the customer of the business and are not being provided by the employer, they are not considered as part of your regular rate of pay when calculating overtime.

**6. Q. Is a mandatory service charge considered to be the same as a tip or gratuity?**

- A. No, a tip is a voluntary amount left by a patron for an employee. A mandatory service charge is an amount that a patron is required to pay based on a contractual agreement or a specified required service amount listed on the menu of an establishment. An example of a mandatory service charge that is a contractual agreement would be a 10 or 15 percent charge added to the cost of a banquet. Such charges are considered as amounts owed by the patron to the establishment and are not gratuities voluntarily left for the employees. Therefore, when an employer distributes all or part of a service charge to its employees, the distribution may be at the discretion of the employer and the service charge, which would be in the nature of a bonus, would be included in the regular rate of pay when calculating overtime payments.

**7. Q. My employer deducts my tips from my paycheck. Is this legal?**

- A. No. Your employer can neither take your tips (or any part of them), nor deduct money from your wages because of the tips you earn. Furthermore, your employer cannot credit your tips against the money the employer owes you. [Labor Code Section 351](#)

**8. Q. My employer pays me less than the minimum wage because he includes my tips in my hourly pay. Is this legal?**

- A. No. Unlike under federal regulations, in California an employer cannot use an employee's tips as a credit towards its obligation to pay the minimum wage. California law requires that employees receive the minimum wage plus any tips left for them by patrons of the employer's business. [Labor Code Section 351](#)

**9. Q. What can I do if my employer credits my tips against my wages?**

- A. You can either [file a wage claim](#) with the Division of Labor Standards Enforcement (the Labor Commissioner's Office), or you can file a lawsuit in court against your employer in to recover the lost wages. Additionally, if your employer is crediting your tips against your wages, you are being underpaid your wages and thus, if you no longer work for this employer, you can make a claim for the waiting time penalty.



## Overtime

Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half ( $1\frac{1}{2}$ ) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half ( $1\frac{1}{2}$ ) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.



## Wage Deductions for Cash Shortages and Breakages

No employer shall make any deduction from the wage or require any reimbursement from an employee for any cash shortage, breakage, or loss of equipment, unless it can be shown that the shortage, breakage, or loss is caused by a dishonest or willful act, or by the gross negligence of the employee.



## Meal Periods

An employer may not employ an employee for a work period of more than five hours per day without providing a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee."(See Labor Code § 512(a))

Employees are entitled to a minimum of a thirty (30) minute duty-free meal period for every five (5) hours worked. A second meal period is required if an employee works more than ten (10) hours per day unless the work period is less than twelve (12) hours, then the second meal period may be waived by mutual consent. Meal periods are not required to be paid, providing that the meal period is "duty-free". For a meal period to be "dutyfree" the employer cannot require that an employee perform any duties while on a meal break. (*Bono Enterprises v. Labor Commissioner* (1995) 32 Cal.App.4th 968, 38 Cal.Rptr2d 549 and *Madera POA v. City of Madera*

(1984) 36 Cal.3d 403) An "on-duty" meal period is only permitted when the nature of the work prevents an employee from being relieved of all duties and when, by written agreement between the parties, an on-the-job paid meal period is agreed to. If an employer requires an employee to remain at the work site or facility during the meal period, the meal period must be compensated. If an employer fails to provide a legally required meal period, the employer must pay a penalty equivalent to one (1) additional hour of pay at the employee's regular rate of pay per day. This additional hour is not counted for purposes of overtime calculations. (See appropriate IWC Order and Labor Code § 226.7)



## Rest Breaks

Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3  $\frac{1}{2}$ ) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.



## Uniforms

(A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer. The term "uniform" includes wearing apparel and accessories of distinctive design or color.

(B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft. This subsection (B) shall not apply to apprentices regularly indentured under the State Division of Apprenticeship Standards.

(C) A reasonable deposit may be required as security for the return of the items furnished by the employer under provisions of subsections (A) and (B) of this

section upon issuance of a receipt to the employee for such deposit. Such deposits shall be made pursuant to Section 400 and following of the Labor Code or an employer with the prior written authorization of the employee may deduct from the employee's last check the cost of an item furnished pursuant to (A) and (B) above in the event said item is not returned. No deduction shall be made at any time for normal wear and tear. All items furnished by the employer shall be returned by the employee upon completion of the job.



## **Selling, Serving Alcohol**

**May an off-sale licensee hire minors or use the services of a person under 18 years of age for the sale of alcoholic beverages?** Yes, if the person under 18 years of age is under the continuous supervision of a person 21 years of age or older. (Section 25663[b])

**May minors be employed in "on-sale" premises?**

In a bona fide public eating place, minors between 18 and 21 years of age may serve alcoholic beverages in an area primarily designed and used for the sale and service of food for consumption on the premises as an incidental part of their overall duties. These minors cannot act as bartenders. (Section 25667)

No minor can be employed during business hours on the portion of any premises which is primarily designed and used for the sale and service of alcoholic beverages for consumption on the premises. There are exceptions, under limited circumstances, with respect to musicians. (Sections 25663 and 25663.5)



## **Pay Stub Record**

(B) Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft or voucher paying the employee's wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee's social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.



## Discrimination (handout)

State of California Department of Fair Employment & Housing  
The California Fair Employment and Housing Act (FEHA) prohibits harassment and discrimination in employment based on the following:

- Race
- Color
- Religion
- Sex (gender)
- Sexual orientation
- Marital status
- National origin (including language use restrictions)
- Ancestry
- Disability (mental and physical, including HIV and AIDS)
- Medical condition (cancer/genetic characteristics)
- Age (40 and above)
- Request for family care leave
- Request for leave for an employee's own serious health condition
- Request for Pregnancy Disability Leave
- Retaliation for reporting patient abuse in tax-supported institutions

Discrimination is prohibited in all employment practices, including the following:

- Advertisements
- Applications, screening, and interviews
- Hiring, transferring, promoting, terminating, or separating employees
- Working conditions
- Participation in a training or apprenticeship program, employee organization, or union

California workers are

- Guaranteed leaves if disabled because of pregnancy
- Guaranteed reasonable accommodation for pregnancy
- Guaranteed leaves for the birth or adoption of a child; for the employee's own serious health condition; or to care for a parent, spouse, or child with a serious health condition
- Protected from harassment because of their sex, race, or any other category covered under the law
- Protected from retaliation for filing a complaint with DFEH, for participating in the investigation of a complaint, or for protesting possible violations of the law

California workers with disabilities are also entitled to reasonable accommodation when necessary in order to perform the job.



## State Disability Insurance

California State Disability Insurance (SDI) is a partial wage-replacement insurance plan for California workers. The SDI program is State-mandated, and funded through employee payroll deductions. SDI provides affordable, short-term benefits to eligible workers who suffer a loss of wages when they are unable to work due to a NON WORK-RELATED illness or injury, or a medically disabling condition from pregnancy or childbirth.

The majority of California employees, approximately 12 million workers, are covered by the SDI program. Some employees are exempt from SDI; for example, railroad employees, some employees of non-profit agencies, employees who claim religious exemptions, and most government employees.

### **BENEFITS OF CALIFORNIA SDI COVERAGE**

- SDI coverage "travels" with the worker. Coverage is not dependent on staying with a specific employer.
- SDI coverage is mandatory for most California workers.
- SDI is non-exclusionary. An eligible worker's coverage cannot be canceled or denied because of health risk factors, pre-existing medical conditions, or hazardous employment.
- SDI may pay up to 52 weeks of benefits with a waiting period of only seven days.
- Payroll deductions for all covered workers are based on the same low contribution rate.

The SDI rate for the employee's share is 0.8 percent.

### **DISABILITY DEFINED**

Disability is defined as any mental or physical illness or injury which prevents you from performing your regular or customary work ([California Unemployment Insurance Code, Section 2626](#)). This includes elective surgery; illness or injury resulting from pregnancy, childbirth, or related conditions; or inability to work due to a written order of quarantine from a state or local health officer.



## Workman's Compensation Insurance

At no cost to you, it is insurance that the law requires your employer to carry to help you if you are injured on the job or if you become ill due to your job.

If you are injured or become ill, either physically or mentally, because of your job, including injuries resulting from a workplace crime, you may be entitled to workers' compensation benefits.

#### WHAT IS A WORKERS' COMPENSATION INJURY OR ILLNESS?

An injury or illness that occurs due to employment is considered a workers' compensation injury or illness. Under workers' compensation law, you will receive help if you are injured, no matter who is at fault.

Workers' compensation covers various types of events, injuries, and illnesses. You could get hurt by one event at work, such as hurting your wrist from doing the same motion over and over again.

#### HOW DO I FILE A CLAIM?

If you are injured on the job, as soon as you can, tell your supervisor that you have been hurt. Except for first-aid injuries, your employer will provide you with a claim form on which you can describe your injury, as well as how, when, and where it occurred. Return the completed form to your employer, who will send it to their insurance provider. The insurance provider will then get in touch with you to explain the benefit to which you are entitled.

NOTE: Within one day after an employee files a claim form, the law requires the employer to authorize medical treatment as required and limited by the law, until the claim is accepted or rejected, up to a limit of \$10,000 in total.

#### HOW DO YOU GET MEDICAL TREATMENT?

After filing a claim, your employer will refer you to an Medical Provider Network facility for initial treatment within 3 business days for non-emergency services.

To file a claim, complete the "Employee" section of form DWC 1, keep one copy and give the rest to your employer. Your employer will then complete the "Employer" section, give you a dated copy, keep one copy and send one to the claims administrator. Benefits can't start until the claims administrator knows of the injury, so complete the form as soon as possible.

**It is illegal for your employer** to punish or fire you for having a job injury or illness, for filing a claim, or testifying in another person's workers' compensation case (Labor Code 132a). If proven, you may receive lost wages, job reinstatement, increased benefits, and costs and expenses up to limits set by the state.

You have the right to disagree with decisions affecting your claim. If you have a disagreement, contact your claims administrator first to see if you can resolve it.

If you are not receiving benefits, you may be able to get State Disability Insurance (SDI) benefits. Call State Employment Development Department at (800) 480-3287.

You can obtain free information from an information and assistance officer of the State Division of Workers' Compensation, or you can hear recorded information and a list of local offices by calling (800) 736-7401. You may also go to the DWC web site at [www.dir.ca.gov](http://www.dir.ca.gov). Link to Workers' Compensation.

**You can consult with an attorney.** Most attorneys offer one free consultation. If you decide to hire an attorney, his or her fee will be taken out of some of your benefits. For names of workers' compensation attorneys, call the State Bar of California at (415) 538-2120 or go to their web site at [www.californiaspecialist.org](http://www.californiaspecialist.org).