

CALIFORNIA EMPLOYMENT LAW Work Hour Laws



The Fair Labor Standards Act (FLSA) regulates federal work hour requirements. California law complements the FLSA and, in some instances, provides additional work hour, rest period and employee break requirements for California employers.

The [Division of Labor Standards Enforcement](#) (DLSE), part of the California Department of Industrial Relations, enforces these provisions throughout the state.

STATE RESOURCES

California Department of Industrial Relations
www.dir.ca.gov/dlse/dlseWagesAndHours.html

Publications

The DIR has published the following materials regarding wage and hour laws in the state:

- [Wage orders](#)
- [Filing a wage claim](#)
- [Prevailing wage](#)

Poster

Employers can use this DIT model [poster](#) to satisfy their posting requirements.

COMPENSABLE TIME

Generally, employers must pay their employees for every hour of compensable time. Compensable time usually includes every hour (or portion of an hour) an employee is required or allowed to be on duty. An employee is on-duty when the employer controls how he or she uses his or her time, including:

- Any time the employee is permitted or required to work;
- Any periods the employee must wait for an assignment; and
- Mandated recovery periods.

In certain circumstances, compensable time may include periods of time when an employee was not performing any activities but was still engaged to wait.

Compensable time does not include off-duty periods, where the employee is completely relieved from all work responsibilities or assignments and is free to pursue his or her own interests.

TRAVELLING TIME

An employee's commute, or regular home-to-work travel time, is generally not compensable time. Home-to-work travel is a normal incident of employment, regardless of whether the employee works at a fixed location or at different job sites. This is the case even if employees commute in a vehicle that is owned, leased or subsidized by the employer and is used for ridesharing (as defined by the California Vehicle Code).

WORKDAY AND WORKWEEK

A workweek in California is a fixed period of **168 hours, or seven consecutive 24-hour workdays**.



The workweek can begin on any day of the week and at any hour of the day, without coinciding with a calendar week. A workday is any consecutive 24-hour period commencing at the same time each calendar day. California recognizes the eight-hour workday as a full day's work.

ALTERNATIVE WORK SCHEDULES

Employers and their employees can agree on an alternative work schedule that permits employees to work **up to 10 hours** during a workday without accruing overtime. However, overtime regulations still apply for any hours employees work over 40 during an alternative work schedule week.

Before adopting an alternative work schedule, employers must propose the alternative schedule to their employees. The proposal can consist of:

- A single work schedule for all affected employees; or
- Several work schedule options that each employee can choose from.

A proposal can only be approved if **at least two-thirds** of all affected employees vote to adopt it. The results of any election to adopt an alternative schedule must be reported to the DLSE **within 30 days** of when the results are final.

Under an alternative work schedule, employers must pay their employees overtime wages for certain hours worked outside of the alternative work schedule, as shown in the table below:

Hours Worked	Overtime Wage Rate
Over 8 hours , up to 12 hours , during a regularly scheduled workday	One and one-half the employee's regular rate
Over 12 hours during a regularly scheduled workday	Twice the employee's regular rate
Over 8 hours during any day beyond the employee's regularly scheduled workday	Twice the employee's regular rate

Employers may not reduce an employee's regular wage rate solely because an alternative work schedule has been adopted, repealed or nullified. Employers must also make reasonable efforts to find a work schedule that does not exceed **eight hours in a workday** to accommodate affected employees who are unable to work the alternative schedule hours (for example, because of the employee's religious beliefs or observances that conflict with the adopted alternative work schedule).

MAXIMUM WORK HOURS

For certain industries, state law regulates the maximum number of hours an employee can work per workday, per workweek or before a prolonged rest break becomes mandatory.

Maximum work hour restrictions apply for employees in the following industries:

- Trains and railroads (operators can work up to 12 hours per workday, while individuals who dispatch, report, transmit, receive or deliver orders affecting train movements can work up to nine hours in any 24-hour period);
- Underground mines, smelters and plants used for reducing or refining ores or metals (employees can work up to eight hours within any 24-hour period); and



- Pharmacies (employees, except registered pharmacists, cannot work more than an average of nine hours per day, 108 hours during two consecutive workweeks or 12 days in any two consecutive workweeks).

In general, employers that violate these industry-specific regulations are subject to a variety of penalties that include **criminal charges, fines, imprisonment** and **administrative sanctions**. However, some exceptions apply for certain exempted individuals, in cases where controlling bona fide collective bargaining agreements exist and during a state of emergency.

TIME OFF

Employers cannot require employees to work beyond their regular schedules without first obtaining a permit or other authorization from the DLSE. These permits, which are valid for **up to one year**, specify the terms and conditions of additional employer-required work hours. Employers that do not make good faith efforts to comply with the permit requirements will not be allowed to renew the permit.

In addition, employers cannot discharge or in any other manner retaliate against any employee who refuses to work beyond his or her regularly scheduled hours or the scheduled authorized by the DLSE.

MAKING UP WORK TIME

Under California law, employers can allow employees to make up any regularly scheduled hours that are missed because of personal obligations. Make-up work time requests and authorizations should be issued in writing. However, employers are prohibited from encouraging or soliciting an employee to request personal time off and then use make-up time within the same week to compensate for time lost.

Employers that allow make-up work time must include make-up hours when calculating an employee's compensable time for any particular workweek if make-up time causes the employee to work more than 11 hours during a workday or 40 hours during a workweek.

REQUIRED BREAK PERIODS

California law requires employers to provide rest and break periods in certain circumstances.

DAY'S REST

Employers may not require employees to work more than six days per workweek if the employee's work schedule is for **more than 30 hours** per week or **six hours** per day. However, this restriction does not apply to agricultural occupations. The DLSE may also exempt any employer or employees from this restriction during times of emergency or hardship, including situations where work is performed to protect life or property from loss or destruction.

When an exception applies, employees may be entitled to receive the accumulated number of rest days they were unable to use during that time. Violations of this restriction constitute a misdemeanor.

RECOVERY PERIOD

Unless an exemption applies, employers cannot require employees to work during a **recovery period**. A recovery period is a break provided to certain employees to prevent heat illness. The prohibition on employers applies to recovery periods mandated by law or required by:

- The Industrial Welfare Commission;



- The Occupational Safety and Health Standards Board; or
- The Division of Occupational Safety and Health.

Employers must count mandated recovery periods as compensable time and must compensate their employees accordingly. Employers that fail to provide a required recovery period to their employees must compensate their employees with an additional hour of work, at the employee’s regular wage rate, for each workday when the recovery period is not provided.

MEAL BREAKS

Employers *cannot* allow their employees to work more than **five hours** without taking a **30-minute meal break**. The meal break requirement can be waived by the employee’s and the employer’s mutual consent if the employee’s shift lasts fewer than six hours. A second 30-minute meal period is required if the employee’s shift is longer than 10 hours. The second meal period can also be waived by mutual consent if the employee’s shift lasts fewer than 12 hours and the first meal period was *not* waived.

In certain industries, state law also dictates when employers must provide this meal break. For example, employers must provide a meal break between the third and fifth hour of the shift for employees that operate a sawmill, shakemill, shinglemill, logging camp, planing mill, veneer mill, plywood plant or any other type of plant or mill which processes or manufactures any lumber, lumber products or allied wood products. Violations of this requirement constitute a misdemeanor, punishable by a fine of between \$100 and \$400.

Employers are generally *not* required to compensate their employees for this 30-minute break, unless it is impractical for the employees to take an uninterrupted meal break because of the nature of the business activity or other circumstances. In these cases, employees must also be allowed to consume a meal while “on the job.” The DLSE may allow some exceptions to this rule if it determines that the exception will not jeopardize the health and welfare of the affected employees.

Meal break requirements do not apply to:

<i>Wholesale Baking</i>	Employee must be: <ul style="list-style-type: none">• Subject to a California wage order;• Covered by a collective bargaining agreement that requires a 35-hour workweek of five 7-hour workdays;• Paid at least one and one-half their regular wage rate for any overtime hours worked; and• Allowed to take at least one 10-minute break every two hours.
<i>Motion Picture or Broadcasting</i>	Employee must be covered by a valid collective bargaining agreement that: <ul style="list-style-type: none">• Provides for meal periods; and• Includes a monetary remedy if the employee is not allowed meal breaks.



<i>Construction, Commercial Driving, Security Services and Electric, Gas or Local Publicly Owned Electric Utilities</i>	Employee must be covered by a valid collective bargaining agreement that: <ul style="list-style-type: none">• Specifies employee wages, work hours and working conditions;• Specifies employee meal periods;• Requires final and binding arbitration for disputes related to meal periods and overtime wage rates; and• Guarantees a regular hourly wage rate of at least 130 percent of the state minimum wage rate.
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NURSING MOTHERS

California law requires employers to provide nursing mothers with a **reasonable break time each day** to express breast milk for her infant child. The break can run concurrently with any other break already provided to affected employees. Break times that do not run concurrently with a rest time required by a wage order must be unpaid.

Employers must make reasonable efforts to provide a location close to the employee’s work area, other than a toilet stall, where the employee may take this break in privacy. This may include the employee’s work area, if all the criteria are met.

Employers that fail to provide a break for nursing mothers are subject to a **fine of \$100** for each violation. However, employers will not be required to provide this break period if it would seriously disrupt their operations.

PENALTIES

Employers that violate work day, work hour or rest period laws are subject to fines, as follows:

- **\$50 per affected employee** in each pay period, for a first offense; and
- **\$100 per affected employee** in each pay period, for a second or subsequent violation.

These fines are payable to affected employees.

MORE INFORMATION

Contact Conrey Insurance Brokers for more information on wage payment laws in California.