

CALIFORNIA LAWS THAT COMMONLY ENGENDER PAGA CLAIMS (and a few that don't)

Prepared by



Davis Wright
Tremaine LLP

for

REDF
and its
Affiliated Enterprises

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PREFACE

The information on the chart that follows is a capsulized summary of those California employment laws that, if employers fail to comply with them, commonly result in legal claims. Those claims may be Labor Commissioner claims, class action claims, or, most often, PAGA (Private Attorney General Act) claims.

Through its legal counsel, Davis Wright Tremaine, REDF is providing this chart as a resource for the use of its affiliated entities that have employees in California. Each “category” of legal issue is followed by an identification of the “issues” within that category, followed by a description of the basic “requirements” pertaining to that issue.

The chart is not an exhaustive list of all California requirements. Nor does the chart describe the many nuances of California law. Nor does it constitute legal advice. Anyone with a question about any of the listed issues, or any other question pertaining to the legal obligations of employers of California employees, should consult the lawyers at Davis Wright Tremaine retained by REDF for this purpose, or a lawyer of their own choosing.

- Judith Droz Keyes jkeyes@dwt.com 415.276.6512
- Jaime Walter jaimewalter@dwt.com 415.276.6576
- Brenna Hull brennahull@dwt.com 415.276.6565
- Mardoux Battaglia mardouxbattaglia@dwt.com 415.276.6500

Category	Issue	Requirements	Potential PAGA Claim?
Classification			
	Contractor v. Employee	ABC Test substantially limits the ability to consider a worker an independent contractor	Yes
	Exempt v. Nonexempt	Exempt status generally requires satisfying both a duties test and the salary test – and California’s tests are more stringent than under the FLSA. Most common categories of exemption are: Executive and Administrative , and sometimes (rarely) Professional	Yes
	Proper Wage Order	Determine which one pertains based on occupation and industry (see here) Read it and post it	Potentially yes
Onboarding			
	Wage Theft Prevention Notice	Provide notice to new nonexempt employees at time of hire, to current nonexempt employees if a change other than wage rate	Potentially yes
Meal Periods			
	Minimum 30 Minutes	Unpaid (or can be paid), uninterrupted, unrestricted, beginning before the end of the 5 th hour of work (e.g., shift starts at 8 a.m., meal break must begin by 12:59:59 p.m.)	Yes

Category	Issue	Requirements	Potential PAGA Claim?
	2 nd meal period for workday of over 10 hours	Unless waived by mutual, voluntary agreement and 12 hours completes the workday and first meal break was taken	Yes
	Accurate recording of meal break start and end times	No rounding or estimating	Yes
	On-duty meal period	When circumstances prohibit employee being off-duty (very rarely applies), and employee voluntarily agrees in writing, and employee still is afforded the opportunity to take time for a meals Recorded and paid as work time	Yes
	If noncompliant, one hour penalty payment	Paid at the regular rate of pay, which is often <i>higher</i> than the base hourly rate Maximum of one meal period penalty per day	Yes
Rest Breaks			
	10 minutes, paid, for every 2-4 hours worked (unless a total of 3.5 hours or fewer are worked in the workday)	Shift of 3.5-6 hours: 1 rest break Shift of 6.1-10 hours: 2 rest breaks Shift of 10.1 to 12 hours: 3 rest breaks, etc.	Yes
	No clocking out	Scheduling is a best practice	N/A
	Suitable resting facilities	Employer must provide an area separate from a bathroom	Yes

Category	Issue	Requirements	Potential PAGA Claim?
	Special requirements for lactation accommodation	Lactation room (room or other location, other than a bathroom, near work area, shielded from view, and free from intrusion) and additional break time if needed	Yes
	If noncompliant, one hour penalty payment	Paid at the regular rate of pay, which is often <i>higher</i> than the base hourly rate Maximum of one rest period penalty per day	Yes
Work Time			
	All work time must be compensated, regardless of when and where it occurs, or how little of it there is	Work time = time under the control of the employer and/or providing services for the employer Includes e.g., time spent logging on to or signing off a work computer, “donning and doffing,” security checks, time spent traveling from one work location to another, responding to emails, calls, and texts “after hours” There is no “de minimis” defense	Yes
Overtime			
	8-12 hours worked in a workday or more than 40 hours in a workweek	1½ times the regular rate	Yes
	First 8 hours on the 7 th consecutive workday in a workweek	1½ times the regular rate	Yes

Category	Issue	Requirements	Potential PAGA Claim?
	Hours worked over 12 in a workday	2 times the regular rate	Yes
	Hours worked over 8 on the 7 th consecutive workday in a workweek	2 times the regular rate	Yes
	Alternative work schedules can be adopted, but the process is detailed and unforgiving	Requires a secret ballot vote in the “affected unit” Result recorded with the state	Yes
Timekeeping			
	Accurate records must be kept of the exact time an employee starts and stops work each day, starts and returns from meal period	No rounding on meal period records Probably no rounding on other time records Timekeeping “by exception” not permitted	Yes
Compensation			
	Exempt employee must be paid a “salary”	Salary cannot vary with the hours worked Salary must meet minimum requirements (see “Classification” above)	Yes
	For nonexempt employees, the “regular rate” must be used for an overtime calculation, payment of sick leave, meal and rest penalties, and reporting time pay	Regular rate = base rate + all other forms of earned compensation (e.g., shift differential, production bonus, pay in lieu of health insurance) May require a retroactive “true up” payment	Yes

Category	Issue	Requirements	Potential PAGA Claim?
	“Piece rate” compensation is permissible	Paid rest breaks still must be provided	Yes
	Payroll timing requirements	<p>Salary/wages must be paid no less frequently than twice per month</p> <p>Wages earned from the 1st to 15th must be paid no later than the 26th, earned between the 16th and last of the month must be paid by the 10th of the following month</p> <p>Payments within 7 calendar days after the close of the payroll period for weekly, biweekly, or semimonthly payroll periods satisfy the requirement</p>	Yes
	Minimum wage	<p>Generally, state minimum wage increases each January</p> <p>Increases in state minimum wage impact the salary test for exempt employees</p> <p>Some cities and counties require higher minimum wages than the state minimum wage (but this does not affect the salary for exempt status)</p>	Yes

Category	Issue	Requirements	Potential PAGA Claim?
Reporting Time Pay			
	<p>Required to work for a scheduled time but at employer’s request work less than half that time</p> <p>OR</p> <p>When required to report to work for a second time in one day and furnished fewer than 2 hours’ work on second reporting</p>	<p>Greater of 2 hours’ pay or half the usual or scheduled day’s work</p> <p>Paid for 2 hours</p>	Yes
Split Shift Pay			
	Nonexempt employee’s work interrupted by unpaid period of more than an hour	1-hour additional pay at minimum wage with some exceptions	Yes
Paystub/Wage Statement			
	Strict requirement of what must be shown on the paystub or wage statement (if direct deposit)	<ol style="list-style-type: none"> 1. Gross wages earned 2. Total hours worked (not required for exempt employees) 3. The number of piece-rate units earned and any applicable piece rate if employee is paid on a piece rate basis 4. All deductions 5. Net wages earned 6. Inclusive dates of the pay period 	Yes

Category	Issue	Requirements	Potential PAGA Claim?
		<p>7. Name of the employee and the last four digits of the SSN or an employee ID number</p> <p>8. Name and address of the legal entity that is the employer</p> <p>9. All applicable hourly rates in effect during the pay period, and the corresponding number of hours worked at each hourly rate</p>	
	Statement of accrued sick leave available for use	Include on the paystub or in a separate document provided along with the wage payment	Yes
Termination Pay			
	Payment of all accrued wages, earned bonuses and commissions, and vacation/PTO	<p>On last day of employment if terminated or resigns with 72 hours' notice</p> <p>If resigns without 72 hours' notice, then within 72 hours</p>	Yes
Expense Reimbursement			
	Any reasonable expense the employee necessarily incurs to perform their job	Examples: personal cell phone usage; personal internet usage; mileage	Yes
Vacation			
	Can never be a forfeiture	No use-it-or-lose it, and all accrued unused vacation must be paid out on termination	Yes

Category	Issue	Requirements	Potential PAGA Claim?
	Accrual can be capped	Cap can be no lower than 1.5 times the employee's current accrual rate	Yes
	Floating holidays	Considered vacation unless tied to specific events (e.g., employees' birthday or work anniversary)	Yes
	PTO	Treated as all vacation or all sick leave, whichever is more advantageous to the employee	Yes
Sick Leave			
	Applies to all employees (including part-time, temporary)	Employees who work more than 30 hours for the employer begin accruing on date of hire; use can be restricted to 90 th day after hire	Yes
	Accrual of 1 hour of sick leave for every 30 hours worked (including overtime)	Can cap accrual at 80 hours or 10 days; can limit usage to 40 hours or 5 days a year (but cannot limit usage in most cities)	Yes
	Can use the "up front" method, providing 40 hours or 5 days per year (not allowed in Oakland)	Must meet certain minimum requirements	Yes
	Some cities, counties provide greater rights	SF, Oakland, Emeryville, Berkeley, LA, Santa Monica, San Diego	Maybe
	Use of paid sick leave	For sickness or preventive care of employee, family member or "designated person" Paid at the regular rate!	Yes

Category	Issue	Requirements	Potential PAGA Claim?
Accommodation			
	Know or suspect employee suffering from physical or mental disability	Duty to engage in interactive process and provide accommodation unless undue hardship	No
	Pregnant employee who provides medical certification of the need	Must provide if reasonable	No
	Employee whose religion (“firmly held belief”) requires	Must provide if reasonable	No
CFRA Leave			
	Applies to all employers with 5 or more employees	<p>Employees in California who have been employed for 1 year and worked 1250 hours before leave begins are eligible</p> <p>Leave up to 12 weeks/year</p> <p>Covers employee’s own serious health condition, “bonding” with new baby/child, care for family members (health insurance paid)</p> <p>Qualifies for SDI or PFL</p>	No
Pregnancy Disability Leave			
	Applies to employers with 5 or more employees	<p>All employees are eligible</p> <p>Leave is for the duration of a pregnancy-related disability, up to 4 months per pregnancy (health insurance paid)</p> <p>Qualifies for SDI</p>	No

Category	Issue	Requirements	Potential PAGA Claim?
Miscellaneous Leaves			
	Reproductive loss, bereavement, bone marrow and organ donation, drug rehab, attendance at child's school activities, volunteer firefighter training and duty, to testify in certain legal proceedings, etc.	Most often unpaid (bone marrow and organ donation must be paid), but employees can use vacation and, sometimes, sick leave	Some of these leaves are covered by PAGA, and some are not. It depends on whether the obligation is found in the Labor Code or elsewhere in California law.