EXECUTIVE SERIES:
LABOR & EMPLOYMENT

BUILDING A 50-STATE EMPLOYMENT LAW COMPLIANCE STRATEGY



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AGENDA

EXECUTIVE SERIES:
LABOR & EMPLOYMENT

- Introduction: Federal/State Employment Laws and Jurisdictional Triggers
- Legal Considerations for Employers (incl. Unique to CA)
- Practical Considerations: Guidance for Multi-State Compliance
- Conclusion/Questions

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INTRODUCTION: FEDERAL/STATE EMPLOYMENT LAWS AND JURISDICTIONAL TRIGGERS



FEDERAL/STATE EMPLOYMENT LAWS AND JURISDICTIONAL TRIGGERS

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- **Generally, federal employment laws apply based on number of employees**
  - 1+ – OSHA, Equal Pay Act, IRCA (Form I-9), FLSA
  - 15+ – Title VII, ADA, GINA
  - 20+ – ADEA, COBRA
  - 50+ – FMLA (within 75-mile radius), ACA
  - 100+ – EEO-1 Reports (for private sector ERs, though note proposed rule to rescind), WARN Act
- Baseline for 50-state compliance strategy

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FEDERAL/STATE EMPLOYMENT LAWS AND JURISDICTIONAL TRIGGERS

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- State employment laws sometimes track federal laws. But often, they provide additional and/or greater protections in a wide range of areas, e.g.:
  - **Wage & hour** – minimum wage, overtime, exemptions, independent contractor classification
  - **Workers' compensation**
  - **Unemployment compensation**
  - **Working protections** – breaks, leaves of absence, accommodations, anti-harassment, discrimination, and retaliation
- Local laws may also impose additional/different requirements
- Employers generally must follow the applicable law that provides the highest standard of protection

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FEDERAL/STATE EMPLOYMENT LAWS AND JURISDICTIONAL TRIGGERS

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- When is a state or local law applicable?
  - Generally, EEs are protected by the state/local employment laws of the location where they physically work
    - Particularly important for remote employees
    - Can be complex if employee works in different locations, or lives and works in different locations
- Employers can have substantial compliance obligations, even if they have only one employee in a state, particularly if that state is heavily regulated (e.g., CA, NY)



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LEGAL CONSIDERATIONS FOR EMPLOYERS (INCLUDING THOSE UNIQUE TO CALIFORNIA)



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EXECUTIVE SERIES: LABOR & EMPLOYMENT

LEGAL CONSIDERATIONS

CLASSIFICATION

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LEGAL CONSIDERATIONS - CLASSIFICATION

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- Exempt vs. Non-Exempt
  - FLSA exemptions – must meet salary and duties test
    - Professional
    - Administrative
    - Executive
  - State exemptions
    - Some states (e.g., NY, WA) enforce higher salary thresholds to qualify for exemptions, so an employee could be exempt under FLSA but non-exempt under state law
    - Categories of exemptions also can differ (e.g., PA law does not have "teacher" exemption, MA (and others) exempt seasonal camp counselors)



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LEGAL CONSIDERATIONS – CLASSIFICATION

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- Employee vs. Independent Contractor
  - FLSA independent contractor test
    - Courts' seven-factor "economic reality" test
    - DOL – currently operates under six-factor "totality of circumstances" test, but proposed rule to return to 2021 five-factor test
  - State independent contractor test
    - ABC test (32 states)
      - Absence of control
      - Business of worker
      - Customarily engaged
    - Common law test (IRS, 18 states)



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LEGAL CONSIDERATIONS

MINIMUM WAGE/OVERTIME

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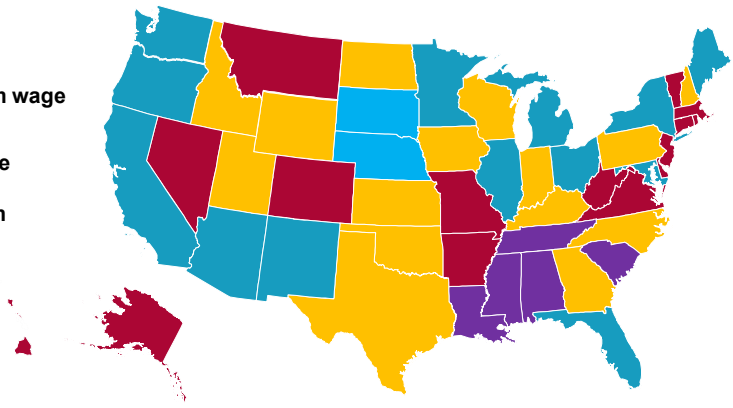
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LEGAL CONSIDERATIONS – MINIMUM WAGE AND OVERTIME

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MINIMUM WAGE REQUIREMENTS

- No state minimum wage
- Greater than federal minimum wage
- Equals federal minimum wage
- Greater than federal minimum wage and varies by locality



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LEGAL CONSIDERATIONS – MINIMUM WAGE AND OVERTIME

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Federal Overtime Requirements

- 1.5x regular rate for all hours over 40 per week
  - Include all compensation for hours worked
  - Not including PTO, holiday pay, sick pay, gifts, benefit contributions
- Regular rate calculation
  - Includes non-discretionary bonuses

By State/Territory

- Alaska - more than 8hr/day
- Colorado - more than 12 hr/day
- Nevada - more than 8 hr/day
- Puerto Rico - more than 8 hr/day

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LEGAL CONSIDERATIONS

TAXES AND FINAL PAY

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LEGAL CONSIDERATIONS – TAXES AND FINAL PAY

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- **Payroll Withholding**
  - State tax withholding
    - Employee works in-person at an institution in State A, but lives in State B. Employee will pay tax to only one state
    - Employee works and lives in State A, but works for an institution in State B. Employee will pay tax only to State A
  - County and municipal income tax withholding



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LEGAL CONSIDERATIONS – TAXES AND FINAL PAY

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- **Final Pay**
  - Timing
    - Can vary by reason for separation (voluntary vs. involuntary)
    - Most states require pay on next scheduled payday
      - 5 states have no law regarding timing of final pay
      - Outliers: TN (within later of 21 days or next regular payday); CA (detailed later)
      - Deductions from final pay may differ
  - Several states have laws regarding mandatory or conditional payout of accrued unused vacation time



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LEGAL CONSIDERATIONS

WORKING PROTECTIONS

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LEGAL CONSIDERATIONS – WORKING PROTECTIONS

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- **Meal and Rest Breaks**
  - Federal
    - No requirements for meal and rest breaks
    - Breaks between 5 and 20 minutes must be paid
    - Breaks lasting 30+ minutes need not be paid if EE completely relieved of duty
  - State
    - Massachusetts
      - Employees who work more than 6 consecutive hours must receive a 30-minute meal break
    - Illinois
      - Employees who are scheduled to work 7.5 consecutive hours must receive a meal period of 20 minutes no later than 5 hours after shift starts

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LEGAL CONSIDERATIONS – WORKING PROTECTIONS

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- **Leave Entitlement**
  - Family and Medical Leave Act (FMLA)
  - Some states require leave over and above FMLA, e.g.:
    - **Colorado** – leave for reasons related to domestic violence, sexual assault, stalking, or harassment
    - **Massachusetts** – 20 weeks to manage personal serious health condition
    - **Rhode Island** – up to 30 weeks for worker's own disability
    - **Vermont** – additional 24 hours in 12 months to attend children's educational activities
    - 14 states + DC have paid FML laws
  - Some states (and municipalities) have laws regarding sick leave/PTO, and some are heavily regulated (e.g., CA and NY state and local laws)

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LEGAL CONSIDERATIONS – WORKING PROTECTIONS

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- **<u>Reasonable Accommodation</u>**
  - ADA disability = physical or mental impairment that substantially limits one or more major life activities
  - Reasonable accommodations are required by the ADA and state laws that cover disability discrimination
    - Accommodation not reasonable if it would cause an "undue hardship"
    - "Undue hardship" = accommodation that would create financial difficulty, or are unduly extensive, substantial, or disruptive, or would fundamentally alter the nature or operation of the business.
  - Some state laws have broader or different definitions of "disability," typically by removing or altering "substantial limit" requirement (e.g., CA, CT, NJ, NY (and NYC))

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- **Required written policies and notices**
  - Certain policies are required by all states (e.g., discrimination, harassment, anti-retaliation)
  - Some states also require specific written policies and notices to employees (e.g., meal and rest break notices, lactation/accommodation notices, specific notices of rights regarding leaves)
- Mandatory harassment prevention training
  - IL and Chicago (all ERs), NY and NYC (all ERs), Puerto Rico (all ERs – req. to "educate"), CA (5+ EEs), CT (3+ EEs), DE (50+ EEs), ME (15+ EEs), WA, VA, and Washington DC (industry-specific reqs)



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LEGAL CONSIDERATIONS – WORKING PROTECTIONS

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- Union considerations
  - Public institutions – state labor relations laws
  - Private institutions – NLRB
  - Right to Work laws
    - State laws that prohibit union security agreements between ERs and labor unions requiring employees who are not union members to pay union dues
    - Private sector right to work states: Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Nebraska, Nevada, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, Wisconsin, Wyoming

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LEGAL CONSIDERATIONS – WORKING PROTECTIONS

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- Whistleblower protections
  - States without whistleblower laws: Arizona, Arkansas, DC, Georgia, Idaho, Maryland, Mississippi, Montana, Nevada, New Mexico, North Carolina, South Dakota, Texas, Vermont, Virginia, Wisconsin, Wyoming
  - E.g., NJ Conscientious Employee Protection Act protects employees who:
    - Disclose or threaten to disclose activity they believe is unlawful
    - Employees who testify or provide information in a violation investigation
    - Refuse or object to participating in an activity that the employee reasonably believes is fraudulent, violates the law, is criminal, or threatens the safety, health, protection, or welfare of the environment



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EXECUTIVE SERIES: LABOR & EMPLOYMENT

LEGAL CONSIDERATIONS

UNEMPLOYMENT COMPENSATION AND WORKERS' COMPENSATION

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LEGAL CONSIDERATIONS – UC AND WORKERS' COMPENSATION

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- Unemployment compensation
  - DOL's Unemployment Insurance Program Letter 20-04 provides principles for determining where wages should be reported:



    - Is the employee's service localized in this state or some other state?
    - If it is not localized in a state, does the employee perform some service in the state in which the employee's "base of operations" is located?
    - If the employee does not perform any services in the state of "base of operations," does the employee perform any service in the state from which the service is directed and controlled?
    - If the individual does not perform any service in the state from which the employee's service is directed and controlled, does the employee perform any service in the state in which the employee lives?

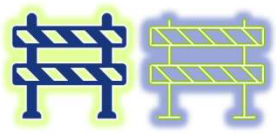
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LEGAL CONSIDERATIONS – UE AND WORKERS' COMPENSATION

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- Workers' compensation
  - Covers injuries that happen "in the scope and course of employment" or "in furtherance of employment"
  - Texas is the only state that does not require most private ERs to carry workers' comp insurance
  - Ohio, Washington, Wyoming, and North Dakota require employers to purchase coverage exclusively through a state-run fund rather than from private insurance companies



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LEGAL CONSIDERATIONS

MISCELLANEOUS

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LEGAL CONSIDERATIONS – MISCELLANEOUS

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- Expense reimbursement
- State EEO laws
- Mini-COBRA laws
- Wage theft laws
- Mini-WARN Acts
- Drug testing policies
- Contract enforceability

- Background and credit check requirements
- New hire notices/reporting
- Salary history inquiry regulations and pay transparency in job postings
- Cybersecurity

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LEGAL CONSIDERATIONS

UNIQUE TO CALIFORNIA

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LEGAL CONSIDERATIONS – UNIQUE TO CALIFORNIA

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- California ERs have significant state-specific compliance requirements
- Multi-state ERs who hire even one CA EE must also comply with state-specific compliance requirements
- Several municipalities also have applicable local employment laws



- CA is one of the most heavily regulated states for L&E
- Focus on:
  - Leave Entitlements
    - CFRA | PDL | Paid Sick Leave
  - FEHA
  - Expenses
  - Wage and Hour | PAGA

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LEGAL CONSIDERATIONS – UNIQUE TO CALIFORNIA

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LEAVE ENTITLEMENTS - CA Family Rights Act (CFRA)

- **Covered ER:** 5+ EEs, at least 1 in CA, and CA state and local gov't
- **What Is It?:** Up to 12 wks/yr of job-protected leave for EE to care for their own serious health condition, or a family member's serious health condition, or to bond with a new child.
- **Eligibility:** EE must have worked for a covered ER for at least 12 months and for at least 1,250 hours during the past 12 months.
- **Family Member:** Covered family members are more expansive than FMLA. Includes: Child, parent, spouse, and registered domestic partner, parent-in-law, grandparent, grandchild, sibling, or "designated person."
- **Paid?:** Leave under CFRA is not required to be paid, but ER can choose to pay.
- **Notice and Certification:** If leave is foreseeable, EE must provide reasonable notice. If not, notice must be given "as soon as practicable". As with FMLA, ER can require certification.
- **Return Rights:** Same position or a comparable position that is "virtually identical" to original position.
- Does not cover medical conditions related to pregnancy and child birth, but they are covered by PDL.

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LEAVE ENTITLEMENTS - CA Pregnancy Disability Leave (PDL)

- **Covered ER:** 5+ EEs, at least 1 in CA
- **What Is It?:** Up to 4 months of job-protected leave for EEs disabled by pregnancy, childbirth, or related medical condition
- **Eligibility**: All EEs are eligible regardless of number of months worked, or hours
- **Reinstatement:** ERs must reinstate EE to same, or comparable position EE had before taking leave, and an EE may request this guarantee in writing
  PDL does not protect EE from employment actions unrelated to pregnancy (e.g., layoffs)
- **Paid?:** No, unless ER pays EEs for other temporary disability leave, then yes
- **Notice:** If possible, EE must provide ER with at least 30 days' notice. If not possible, notice must be given as soon as practicable
- **Certification:** ER may require written certification stating reasons and duration

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LEAVE ENTITLEMENTS – Paid Sick Leave

- 5 Days/40 hrs paid sick leave per year for any EE who completes at least 30 days of work in CA within a year
- ERs must roll over all unused, accrued leave to next year, but can cap total accrual at 80 hrs or 10 days
- Tracking and reporting requirements also apply
- Local: Berkeley, Emeryville, Los Angeles, Oakland, San Diego, San Francisco, Santa Monica, West Hollywood, all have their own requirements
- No payout at termination (generally, unless combined with vacation time)

- Note: No requirement to provide vacation benefits. But if ER provides vacation PTO, "use it or lose it" policies are prohibited, and CA law treats vacation as earned wages, and requires payout at termination. When an ER combines vacation and sick leave into a general PTO plan, which EEs can use for any purpose, the CA Labor Commissioner generally applies the same rules against forfeiting accurred benefits. Thus, all earned and unused time must be paid out at termination.

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LEAVE ENTITLEMENTS – Other Paid and Unpaid Job Protected Leaves

- Bereavement leave
- Military leave
- Jury duty and witness leave
- Voting leave
- Organ and bone marrow donor leave
- School activities and childcare leave, and school disciplinary leave
- Reproductive loss leave
- Among others

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CA FAIR EMPLOYMENT AND HOUSING ACT (FEHA)

- **CA's Primary Law Prohibiting Workplace Discrimination, Harassment, and Retaliation Based on Protected Characteristics - recognized and declared to be civil rights**
- **Covered ER:** Public and private ERs, labor organizations, employment agencies, and training programs with 5 or more EEs
- **Protected Classes:** Race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, reproductive health decisionmaking, or veteran or military status
- **ER Obligations:** ERs must prevent and address discrimination, harassment, and retaliation, and provide reasonable accommodations when required. ERs must have a written policy

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FEHA: Interactive Process

When To Initiate

- ERs **must initiate** an "interactive process" when an applicant or EE requests reasonable accommodations
- ERs must also **offer to initiate** an interactive process when ER becomes aware of the possible need for an accommodation

What The Process Requires

- It is unlawful for an ER to fail to engage in a **timely, good faith**, interactive process
- The process requires an **individualized assessment** of both the job and the specific physical or mental limitations of the individual that are directly related to the need for reasonable accommodation

Accommodation Obligation

- Similar to ADA, **absent undue hardship**, ERs are required to provide reasonable accommodations for individuals with physical or mental disabilities to perform the essential functions of their jobs

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NECESSARY BUSINESS EXPENSES

The question is whether the EE reasonably incurred a necessary work expense

Mileage & travel
Business mileage, parking/tolls where required by policy/law

Phone & data
Required use of a personal device or service

Tools & supplies
Necessary equipment, tools or materials

Remote work
Necessary incremental or allocated work-related costs, based on facts/policy

Do not reject a necessary expense merely because it lacked pre-approval. Send it through the reimbursement process, then address approval rules separately

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WAGE AND HOUR

CLASSIFICATIONS - EE vs. Independent Contractor ("IC") and Exempt v. Non-Exempt

EE v. IC

- CA generally presumes a worker is an EE unless the hiring entity can establish all three parts of the ABC test.
  - A – Freedom from control & direction
  - B – Outside the usual business
  - C – Independently established trade or business

  Red flags: • same work as EEs • company-set schedule • close supervision • ongoing/core operational role • no real outside business
- Different "*Borello* test" may apply with certain occupations

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EXEMPT vs. NON-EXEMPT

High pay alone does not create a CA exemption

Salary Test

Executive, Administrative, Professional Exemption Standard Salary Threshold = **$70,304/yr in CA**

Announced for Jan. 1 2027: Standard EAP salary threshold = **$72,384**

Duties test

The actual job must satisfy the specific exemption - not a generic "manager" label

Time test

CA generally requires more than 50% of work time on exempt duties

Reassessment is necessary when duties, staffing, authority, or business needs change

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MINIMUM WAGE / OVERTIME

Minimum wage

- 2026 CA statewide: **$16.90/hr**
- Unincorporated LA County: **$18.47**
- Local rules vary by industry (e.g., fast food and health care) and location
- Announced for Jan 1, 2027: CA statewide minimum wage = **$17.40/hr**

Overtime

- Over 40 hrs/week
- 1.5x after 8 hrs and up to 12 hrs/day
- 2x over 12 hrs/day
- 7th day: Special rules may apply

Unauthorized overtime is payable. Approval rules can be enforced separately

Final pay

- Involuntary termination: Due immediately
- Resignation with 72+ hrs notice: Due on the resignation date
- Otherwise: within 72 hrs of notice

Must pay all accrued unused vacation/PTO

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MEAL AND REST BREAKS: Required for non-exempt EEs

Meal breaks:

First 30-min meal period for EEs who work 5 hrs or more per day

- Must begin no later than the end of the 5th hr of work
- May be waived by mutual consent when EE's total workday will not exceed 6 hrs

Second 30-min meal period for EEs who work 10 hrs or more per day.

- Must begin no later than the end of the 10th hr of work
- May be waived by mutual consent when EE works no more than 12 hrs, provided 1st meal was not waived

Rest breaks:

10-min paid break for each 4 hrs worked (or major fraction thereof)

- Less than 3.5 hrs worked: Generally no break
- At least 3.5 hrs and up to 6 hrs worked: Generally, one (1) 10-minute rest break
- More than 6 hrs and up to 10 hrs worked: Generally two (2) 10-minute rest breaks
- More than 10 hrs and up to 14 hrs worked: Generally, three (3) 10-minute rest breaks

Certain industries and occupations may be subject to different rules or exceptions

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Premium Pay When A Break Is Missed

Premium pay is a wage consequence of a missed or noncompliant break—not a substitute for providing the break

MEAL-PERIOD PREMIUM

If a required compliant meal period is not provided, the EE may be owed 1 additional hour of pay at their regular rate of pay

Examples: late, short, missed, interrupted, or not genuinely duty-free

REST-PERIOD PREMIUM

If required rest period(s) are not permitted, the EE may be owed 1 additional hour of pay at their regular rate of pay

The rest premium is per workday—not one hour for each missed rest break

WHAT MANAGERS SHOULD DO	Keep the actual time record. Flag the missed or non-compliant break promptly. Give payroll/HR the facts. Do not edit punches or ask the EE to "waive" a premium after the fact

Meal and rest obligations are separate.
A single workday can require separate premium for each category

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Private Attorneys General Act of 2004 ("PAGA")

- Allows eligible EEs to act as private attorneys general and seek civil penalties on behalf of themselves and other current or former EEs
- Claims generally involve alleged violations of the CA Labor Code including missed or interrupted meal and rest breaks, unpaid wages or overtime, inaccurate wage statements, unreimbursed business expenses, and final-pay violations
- Civil penalties may be calculated per EE and pay period, with potential exposure to attorney's fees
- The CA Labor and Workforce Development Agency (LWDA) retains a portion of the recovered penalties
- Written policies alone may not protect an ER if actual practices violate CA law. ERs should conduct regular W&H audits

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2024 PAGA Reforms

CA law now expressly recognizes compliance steps to demonstrate reasonable efforts to comply with CA labor laws. These steps are examples of reasonable compliance, not a checklist that automatically guarantees legal protection

Payroll audits
Conduct periodic audits and act on results

Lawful written policies
Keep rules current and usable in actual operations

Supervisor training
Train managers on Labor Code and Wage Order compliance

Corrective action
Address supervisor practices that undermine compliance

Risk-Management Takeaway: Documented, functioning compliance efforts can matter. Training should be paired with audits, correction and follow-through

Do not let a PAGA notice from LWDA sit in an inbox. Escalate immediately

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Five Preventable Patterns Drive Disproportionate Wage and Hour Risks

Managers often see these issues before HR, payroll, or legal does

1	**Unrecorded work**	After-hours messages, startup/shutdown, pre/post-shift tasks
2	**Break pressure**	Late, short, interrupted, or "working" meals/rest breaks
3	**Timecard manipulation**	Rounding, meals, shaving time, unexplained edits
4	**Pay-plan drift**	Bonuses, commissions, differentials changed informally
5	**Delayed timing/ Slow escalation**	Final pay, expense reimbursement, wage payment, or complaint sits too long

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FIVE WAGE AND HOUR RELATED RULES/PRACTICES TO REMEMBER

1	**Record all work**	No off-the-clock work - small time counts
2	**Protect breaks**	Schedule and staff appropriately so duty-free breaks can happen
3	**Pay accurately**	Unauthorized does not mean unpaid
4	**Escalate early**	Classification, final pay, expenses and complaints are team issues
5	**Document facts**	Record what happened, when it happened, and the actions taken

When in doubt: Contact an experienced CA employment lawyer.

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PRACTICAL CONSIDERATIONS FOR EMPLOYERS



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PRACTICAL CONSIDERATIONS FOR EMPLOYERS

- How to handle all of the above?
  - Limit states/localities from which employees can work
  - Partner with vendors to navigate nuances (law firms, PEOs, consultants)
  - Examine internal operational system capabilities (IT, payroll, HR)



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PRACTICAL CONSIDERATIONS FOR EMPLOYERS

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- Creating and organizing handbook policies:
  - Two approaches: "one-size-fits-all" handbook policies, or handbook with state addenda
  - Can do both – do not have to exclusively pick one or the other
  - Considerations:
    - "One-size-fits-all" leave policies usually not the best choice in heavily regulated states (e.g., CA, NY)
    - Employment laws set a floor, not a ceiling. If one state provides protections similar to another, but to some extent greater, employer may want to use "one-size-fits all" policy for easier administration and/or employee relations purposes



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PRACTICAL CONSIDERATIONS FOR EMPLOYERS

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- Other considerations?
  - Handling requests for remote work
    - Must consider where employees are living and working. Particularly important if employee lives/works in multiple locations (e.g., Seattle Paid Sick and Safe Time Law – applies to any employee who performs more than 240 hours of work within Seattle City limits within a calendar year)
    - Consider whether state/local expense reimbursement laws will apply
    - Privacy and cybersecurity
  - Consider time zones impacting work hours and employee retention issues
  - Paying for travel – must determine whether time is compensable and whether expenses must be reimbursed



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