



WAGE & HOUR COMPLIANCE

Proud Allied Member of the
California Craft Brewery Association
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STEVE RODRIGUEZ, HR DIRECTOR
888-540-0752 | www.omegacomp.com

WAGE & HOUR LAWS – Why do they matter?

California has over 711,000 businesses, which report employing 13.4 million workers. Numerous studies put the incidence of wage theft at staggering levels. The US Department of Labor reported minimum wage law is violated in California 372,000 times per week and that more than one in 10 workers in California is paid less than the minimum wage.

RISK

EXPOSURE

In 2018, California had 4,344 employment law charges - 5.7% of the national average.

WHO ENFORCES THESE LAWS?

The California Labor Commissioner's Office acts as a "watch dog" for wage theft and uses an enforcement division (Bureau of Field Enforcement - BOFE) to increase compliance and recover employee's wages. As a direct result of this rigorous enforcement, the BOFE has found more wages owed to workers in California than at any time in BOFE's history.

FLSA Status – Exempt vs. Non-Exempt

- ❑ FLSA – Fair Labor Standards Act, Federal law
- ❑ In California, we also have 13 Wage Orders and a Minimum Wage Order
 - Define minimum wage, requirements on scheduling, overtime, meal and rest breaks
 - Appropriate Wage Orders must be posted in your workplace
- ❑ Default assumption = Non-Exempt. Meaning that the terms in the above orders apply to all employees
- ❑ Wage Orders allow/provide that some employees can be Exempted from some of those protections
- ❑ Exempt workers do not have to be given overtime pay, or specific meal and rest breaks, and can be paid a salary
 - Simply being paid a salary DOES NOT make them exempt from overtime and rest break protections

Exempt vs. Non-Exempt Status

- ❑ To be “Exempt,” an employee must meet Salary test AND Duties test
- ❑ Salary Test – 2 times minimum wage per month
 - Higher for some jobs like computer professionals and doctors
- ❑ Duties Test - Regularly exercises discretionary powers and/or independent judgment
 - Must spend more than half their time on exempt duties, or more in some cases
 - Must meet the SPECIFIC requirements of one of 6 specific exemptions
- ❑ Is not up to employer or employee choice

Types of Exemption, Part 1

- ❑ Administrative - Responsible for office or non-manual work directly related to the management policies or general business operations
- ❑ Executive - Primary duty managing a corporation, or a department, or subdivision of a corporation
 - Must have authority or significant influence to hire and fire
- ❑ Professional Employees - Requires advanced knowledge in a field of science or learning (often college degree) or work that is original and creative in nature
 - At least 80 % of time spent on professional duties

Types of Exemption, Part 2

- ❑ Sales – Different rules for outside and inside
 - Depends on a number of additional factors: Where they work, Amount of income that is wages vs commissions
 - At least 80 % of time spent on sales
- ❑ Computer Professional Employees - Employee considered highly skilled and proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming, and software engineering
- ❑ **Devil is in the details! DO NOT take these slides and go try to evaluate your employees!**

Basic Overtime Requirements

- ❑ 1.5 times the employee's regular rate of pay for:
 - All hours worked beyond eight in a single workday
 - The first eight hours worked on the seventh consecutive day worked in a single workweek
- ❑ Double the employee's regular rate of pay for both:
 - All hours worked beyond 12 in a single workday
 - The hours worked beyond eight on the seventh consecutive day worked in a single workweek

Meal and Rest Breaks

- ❑ Law mandates specific meal and rest breaks for Non-Exempt employees
- ❑ Rest breaks are paid and employees do not “clock out”
- ❑ Meal breaks are unpaid and employees must “clock out”
- ❑ In some rare circumstances, an employee may be eligible for an “On-Duty Meal Period”
 - But not at employee choice and without serious consideration and potentially legal counsel

Meal Break Requirements

- Work more than 5 hours – must provide an unpaid, off-duty meal period of at least 30 minutes
- Must begin no later than 4 hours and 59 minutes after start
- Second meal break if an employee works more than 10 hours
- Ideally in the middle of the shift
- Employees should be directed that if they cannot take their break for some reason, they need to let their supervisor know

Rest Break Requirements

- For every 4 hours (or major fraction thereof) – must provide a 10-minute paid rest break
- Treat rest periods as hours worked
- Cannot require to remain on premises (not for meal break)
- Employees should be directed that if they cannot take their break for some reason, they need to let their supervisor know

Meal and Rest Breaks: Waivers

By law, an employee does NOT have ability to waive their meal break at any time, UNLESS:

- ❑ The employee works at least 5 hours during their shift, but less than 6 hours and chooses not to take a meal break
- ❑ An employee may waive their 2nd meal break under the following conditions:
 - *They must have worked at least 10 hours, but less than 12*
 - *They must have taken their 1st meal break*
- ❑ An employee has a “one of” position, and there is no one available to relieve them of their duties

Meal and Rest Breaks: Other Points

- Meal breaks can be longer than 30 minutes
- Meal and rest breaks should not be combined
- Meal Period Waivers
 - Work period of not more than six hours
 - Waived by mutual consent of the employer and the employee
 - Must document
- On-Duty Meal Breaks – only in VERY limited circumstances
- Extended Rest Breaks for Breastfeeding Mothers
 - Reasonable amount of break time and a private place
- Watch out for “de minimus” work

Meal and Rest Breaks: Penalties and Responsibilities

- Premium Pay for Missed Meal/Rest Breaks
 - One hour of pay for any missed meal or rest break
 - Maximum of two hours per day
- Employers are not required to ensure that no work is done
 - You must relieve employees of all duty
- Relinquish control over the employee's time
 - Permit them a reasonable opportunity to take 30-minute break
 - Not impede or discourage them from doing so

Meal & Rest Breaks: Key Points

Tip #1

Provide employees with a meal & rest break policy in your Employee Handbook.

Tip #2

Remind employees to take their full 30+ minute meal break.

Tip #2

Ensure that all non-exempt employees are recording their meal breaks.

Tip #4

If applicable, make sure that employees have the appropriate meal break waivers in place.

Payment of Final Wages

Final Pay & Voluntary Quit: MORE than 72 Hours' Notice

You must pay all wages and accrued vacation earned but unpaid on the last day of work.

Quitting employees who provide more than 72 hours' notice are entitled to be paid on their last day of work.

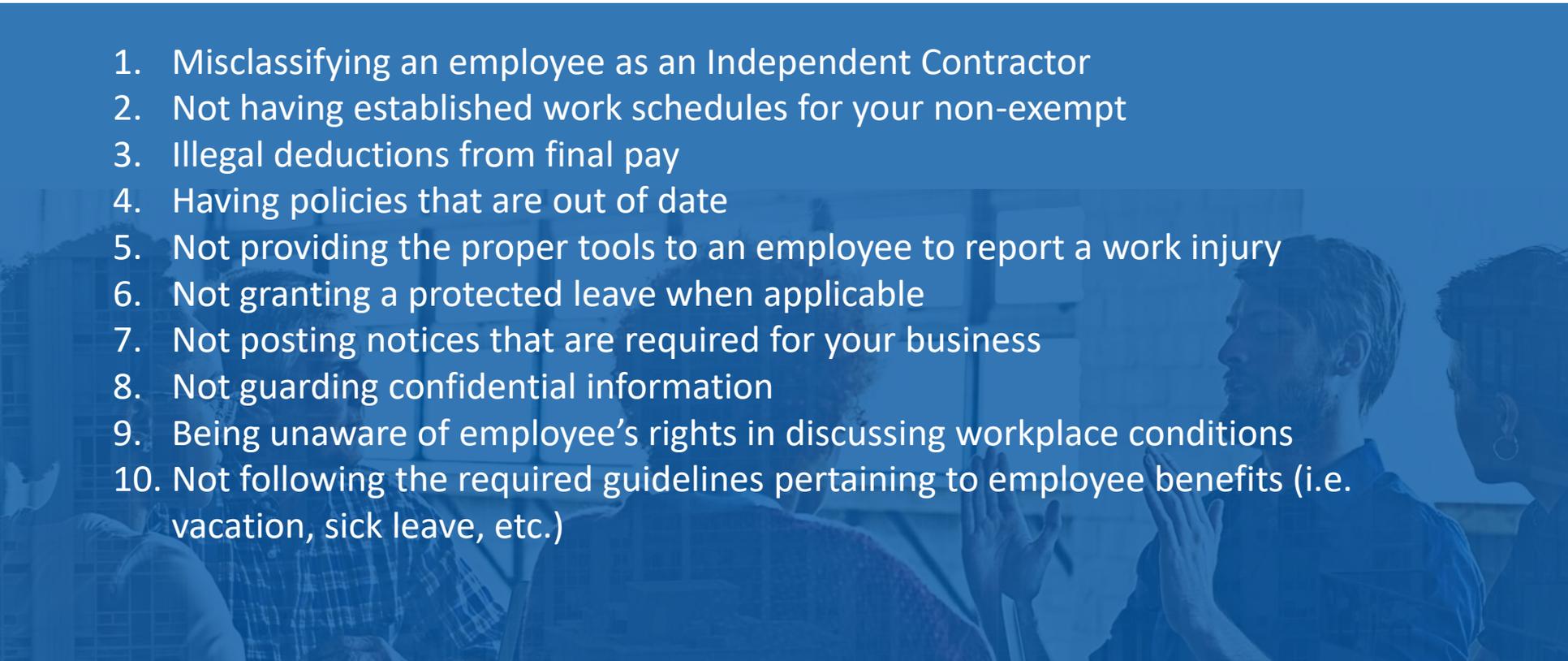
Final Pay & Voluntary Quit: LESS than 72 Hours' Notice

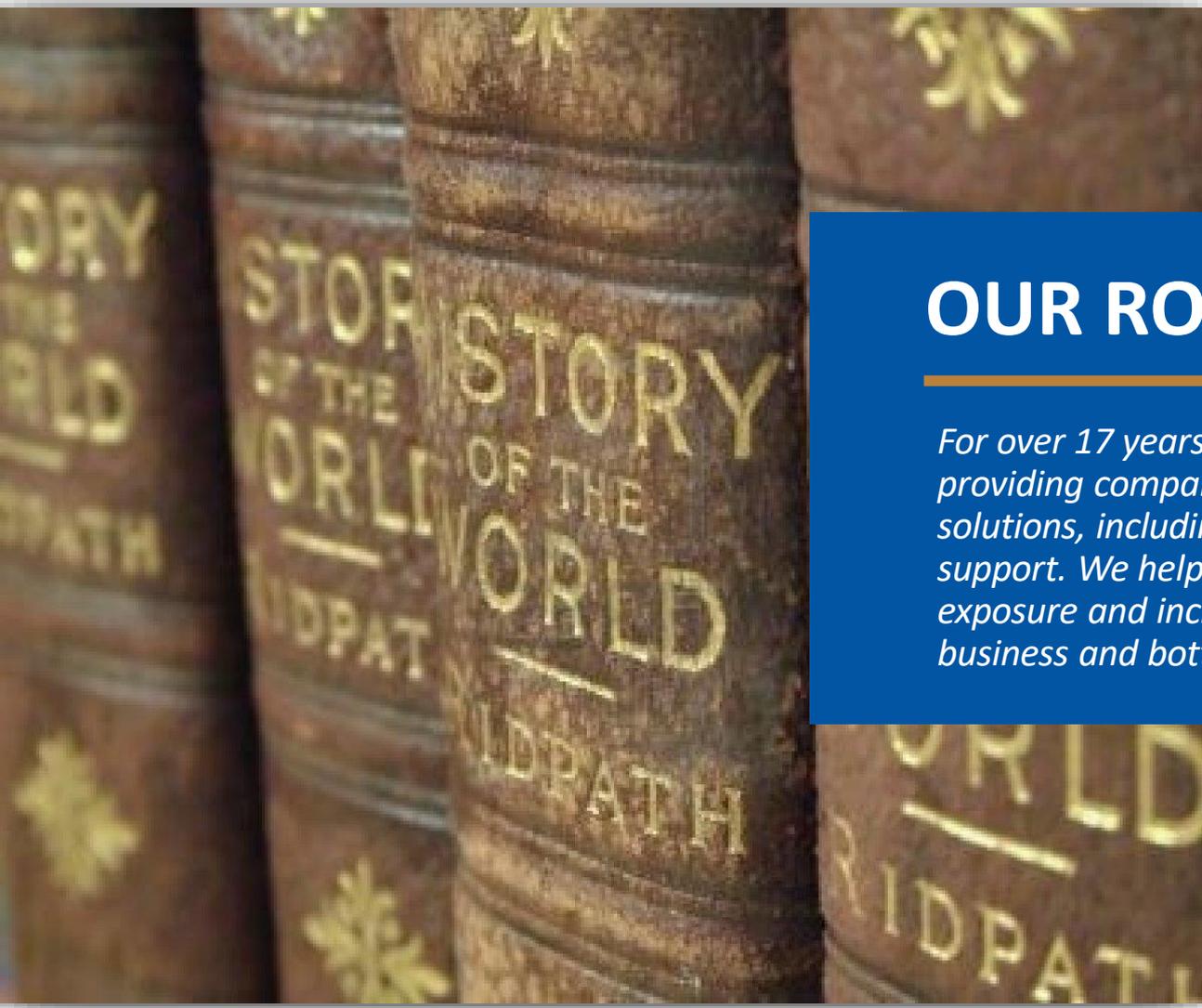
Employers must pay all wages and accrued vacation earned but unpaid within 72 hours after notice is given.

Mailing the Final Check

Unless the employee who quit specifically requests payment by mail, you may hold his/her final paycheck until it is picked up.

10 Other Items that May Land You in Hot Water

1. Misclassifying an employee as an Independent Contractor
 2. Not having established work schedules for your non-exempt
 3. Illegal deductions from final pay
 4. Having policies that are out of date
 5. Not providing the proper tools to an employee to report a work injury
 6. Not granting a protected leave when applicable
 7. Not posting notices that are required for your business
 8. Not guarding confidential information
 9. Being unaware of employee's rights in discussing workplace conditions
 10. Not following the required guidelines pertaining to employee benefits (i.e. vacation, sick leave, etc.)
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- A blue-tinted background image showing a group of people in a meeting or office setting. The image is semi-transparent and serves as a backdrop for the text.



OUR ROOTS

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THANK YOU!

Next Steps: Reach out to our firm for an assessment of your pay practices.

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