

Remote Work and Wage-Hour Compliance

SESSION 2 | CALIFORNIA LABOR & EMPLOYMENT LAW UPDATE 2021 WEBINAR SERIES

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Overview

- Business Expenses
- Timekeeping
- Workplace Safety
- Work From Home Policy
- Unexpected Impacts

Business Expenses



Wage & Hour Claims – Expenses

- Labor Code section 2802(a):

“An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties....”

Wage & Hour Claims – Expenses

- “Necessary expenditures or losses” includes all reasonable job-related costs
- “Course and scope of employment” is broadly construed – includes things incidental to the work enterprise
- Employer’s obligations are triggered once it knows **or has reason to know** employee incurred an expense.
(*Stuart v. RadioShack Corp.* (N.D. Cal. 2009) 641 F.Supp.2d 901, 904.)

Wage & Hour Claims – Expenses

- Furniture/Physical Equipment
 - Provided by employer
 - Stipend to purchase
 - Employee's own

Wage & Hour Claims – Expenses

- Work from Home
 - Phone
 - Internet
 - Copying
 - Office supplies
 - Mileage expenses
 - New “errands”



Wage & Hour Claims – Expenses



- COVID-Specific Expenses
 - Masks
 - Gloves
 - Hand sanitizer

Timekeeping – Work Hours



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Wage & Hour Claims – Timekeeping

- Tracking Work Hours
- Tracking Overtime
- Tracking Meal Breaks
- Rest Break Compliance

Wage & Hour Claims – Hours

- “‘Labor’ includes labor, work, or service ...” (Labor Code section 200 (b))
- "Hours worked" means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so. (E.g. Wage Order No. 7 at section 2(G).)

Wage & Hour Claims – Hours

- Remote work can create compliance concerns :
 - Do employees work hours before/after their ordinary shift?
 - Do they jump on quickly to just complete some task?
 - Travel time for new work “errands”
 - Depositing money at bank
 - Going to copy center
 - Overtime
 - Are employees taking lunch and rest breaks?

Wage & Hour Claims – Hours

- Tracking Hours
 - Install restrictive software on computers
 - Remote Clocking In and Out
 - Written certifications
 - Policy prohibiting “off-the-clock” work
- Daily Assignment
 - Require the employee to document the time it takes to complete the assignments

Wage & Hour Claims – Hours

- How are employers “aware” of work



Computer
Log-Ons



Emails



Phone Calls



Text
Messages

Meal & Rest Breaks

A high-angle, slightly desaturated photograph of a person's hands typing on a laptop keyboard. The laptop is on a light-colored wooden table. In the foreground, there is a cup of coffee with a latte art design and a sandwich on a wooden board. The background shows a window with blinds and a chair.

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Wage & Hour Claims – Breaks (Meal Periods)

- **Meal Periods – Labor Code 512 – In general, must provide a 30-minute period before the end of the 5th hour of work and second meal period before the end of the 10th hour of work.**
- **First meal period can be voluntarily waived if shift is six hours or less**
- **Second meal period can be voluntarily waived if shift is twelve hours or less and first meal period was not waived**

Wage & Hour Claims – Breaks (Meal Periods)

- Employee must be free of all duty during meal period.
- Meal period cannot be interrupted.
- Failure to provide or providing a non-complaint meal period results in liability for a “meal period premium” equal to hour of pay at employee’s regular hourly rate.

Wage & Hour Claims – Breaks (Rest Breaks)

- **Must “authorize and permit” rest breaks:**
 - At least 10 minutes
 - Must be paid
 - Employee must be free of all duties
 - Should be taken in the middle of each 4-hour work period
 - Failure to provide or providing a non-compliant rest period results in liability for a “rest period premium” equal to one hour of pay at employee’s regular hourly rate.

Wage & Hour Claims – Breaks (Rest Breaks)

- **Rest Break Compliance Chart:**

Hours Worked	Breaks
Less than 3.5 Hours	0
3.5 hours to 6 hours	1
6.1 hours to 10 hours	2
10.1 hours to 14 hours	3
Etc.	Etc.

Wage & Hour Claims – Breaks

- Tracking Meal Periods
 - Requirement to maintain records (E.g. Wage Order No. 7 at section 7(A)(3))
- How to Ensure Breaks are Available
 - Make sure breaks are scheduled and everyone knows times
 - Make sure employees are aware of and reminded of policy
 - Follow-up/investigate when an employee fails to log meal periods

“Workplace” Safety



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Workplace Safety

- Requirement to Provide Safe Environment
 - Labor Code 6400 – “safe and healthful” place of employment
 - Employers can ask to inspect home workspaces
 - OSHA guidance – OSHA will not inspect employees’ home office and do not expect employer to inspect home office of their employees

Workplace Safety

- Workers Compensation
 - Labor Code section 3600
 - Employee is performing service growing out of and incidental to employment and is acting within the course of employment
 - Code of Regulations section 14300.5, subp. 7 - Determination of work-relatedness for work at home
 - Considered work-related if the injury or illness occurs while the employee is performing work for pay or compensation in the home, and the injury or illness is directly related to the performance of work rather than to the general home environment or setting
 - *Warner v. Workers' Compensation Appeal Board*

Work From Home Policy



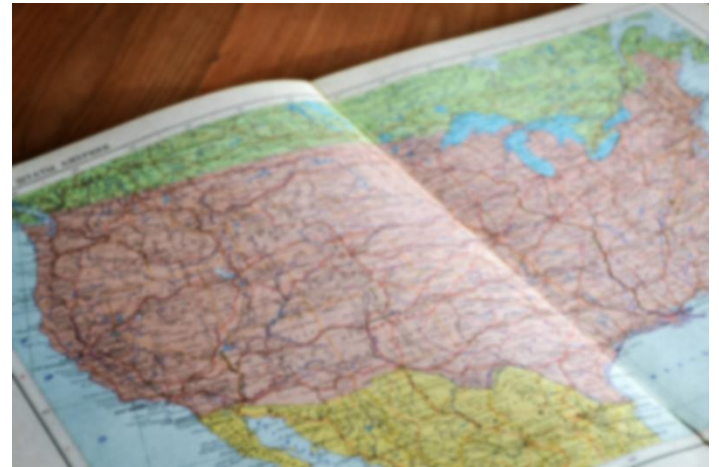
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Work From Home Policy

- Individualized
 - What is expected
 - How working time is documented
- Reinforce Policies
 - Hours and breaks
 - Office setup and safety
 - Equipment
 - Expenses

Final Considerations

- Tax and Jurisdictional Consequences
 - Taxes in states where employees work
 - Different state laws
 - New venues for lawsuits



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