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***IF YOU'VE GOT TIME...
WAGE AND HOUR LAWS AND OTHER EMPLOYER NIGHTMARES
FOR CALIFORNIA EMPLOYERS***

**PRESENTATION FOR
THE LOS ANGELES COMPENSATION AND BENEFITS ASSOCIATION'S
CURRENT TRENDS AND CHALLENGES
IN COMPENSATION AND BENEFITS CONFERENCE**

April 21, 2004

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I. Selected New California Laws Effective January 1, 2004

A. Whistleblower Law, S.B. 777 Fortifies Existing Law.

1. Employers are prohibited from:
 - a. Making, adopting, or enforcing a policy that prevents an employee from disclosing violations of a state or federal statute; and
 - b. Retaliating against employees who report such violations or who refuse to participate such violations while working for a current or former employer.
2. A new civil penalty not to exceed \$10,000 per violation may be imposed in addition to exposure to wrongful termination and other claims.
3. The bill establishes a "whistleblower hotline" for the Attorney General to receive reports of violations of state or federal statutes, rules, or regulations and requires employers to post the new law and hotline number in the workplace.

B. Bounty for Labor Code Violations. S.B. 796 gives employees and their counsel additional financial incentives to sue employers.

1. Creates new monetary penalties for any section of the Labor Code (that does not already provide penalties) of \$100 per injured employee per pay period for an initial violation and \$200 per injured employee per pay period for each subsequent violation.
2. A prevailing Plaintiff will receive 25% of the penalty, plus any penalties that employees might otherwise recover (e.g. waiting penalty for failure to pay wages due at the end of employment) and attorneys fee recovery.

C. Increased Labor Code Penalties for Non-Payment of Wages.

1. A.B. 276 increases the penalty for an employer who unlawfully withholds wages to \$100 for a first violation and \$200 for subsequent or willful violations, plus 25% of the wage due.
2. Minimum wage violations are now \$100 for a first violation and \$250 for subsequent violations.
3. A violation is each affected employee in each pay period.

D. New Penalties for Pay Stub Violations.

1. Employers have long been required to provide each employee with an itemized statement with the paycheck of gross wages earned, total hours worked, number of piece-rate units earned, all deductions, net wages earned, start and end dates for the pay period, employee name and social security number.
2. A.B. 276 adds a new penalty for wage statement violations of (a) the greater of \$50 or actual damages for the initial pay period and (b) \$100 for each subsequent violation, up to a maximum of (c) \$4,000 per employee.

E. **Contractor “Police.”**

1. S.B. 179 requires that, if your company contracts for construction, farm labor, garment, janitorial, or security guard labor, and knows or should have known that the contractor does not comply with all applicable labor regulations, the company is jointly liable to the affected employees of the contractor for any injury or labor violation.
2. Liability may be avoided if all the disclosures and information listed in the statute are written into the services contract and then updated for material changes.

F. **Labor Board Appeals Are Now Even less Inviting for Employers.**

1. A Labor Commissioner Award can be appealed to the Superior Court where there is a new trial and the employee is entitled to recover attorneys fees if he or she “prevails.”
2. A.B. 223 now defines “prevail” as any judgment in favor the employee, even if it is less than the Award. Basically, it is now all or nothing for employers on appeal.

II. Wage and Hour Rules.

A. **California Wage Orders v. Federal Fair Labor Standards Act.**

1. The employee receives the benefit of the state or federal wage law that is the most generous to the employee – that is usually the California wage law
2. California Minimum Wage -- \$6.75 per hour effective January 1, 2002. (See AAAA attached).
3. There are 17 California Industrial Welfare Commission Wage Orders, each governing certain industries:
 - a. The Wage Orders can be found at: www.dir.ca.gov/IWC/iwc.html (See BBBB attached).
 - b. Requirement to post the applicable Wage Order
 - c. For example, Wage Order 1 governs the manufacturing industry. (See CCCC attached)
4. The FLSA rules are found at www.dol.gov/fairpay

B. **California Overtime Rules**

1. Exemptions from Overtime Rules – two tests must be met for exemption: salary basis and duties.
 - a. Salary basis test – the employee must earn a monthly salary equivalent to no less than two times the state minimum wage in a 40-hour full time week.

- (1) Currently, \$2,340 per month (\$28,080 a year).
- (2) Includes part-time workers.
- (3) Deductions and additions based on hours worked are inconsistent with “salary” for all hours worked.
 - (i) Full day deductions are ok if vacation, sick or other paid leave time is exhausted.

b. Duties test.

- (1) Professional Exemption.
 - (i) The employee must be licensed in California and is primarily engaged in the practice of law, medicine, dentistry, optometry, architecture, engineering, teaching, or accounting; or
 - (ii) primarily engaged in an occupation commonly recognized as a learned or artistic profession as defined in the Wage Order; and
 - (iii) customarily and regularly exercising discretion and independent judgment in the performance of the foregoing.
- (2) Computer professionals are exempt from overtime if:
 - (i) they are primarily engaged in intellectual or creative work that requires the exercise of independent judgment and discretion;
 - (ii) more than 50% of their work time involves analysis, design, or development of computer systems and programs as described in the Wage Order.
 - (iii) they are paid at least \$42.64 per hour.

c. Executive Exemption -- the employee must spend more than 50% of his or her time:

- (1) managing the enterprise or recognized department or subdivision; and

- (2) directing the work of at least 2 other employees;
 - (3) and exercising the authority to hire or fire other employees or having his or her recommendations as to the advancement and promotion or any other change of status of other employees given particular weight; and
 - (4) customarily and regularly exercising discretion and independent judgment in the work.
- d. Administrative Exemption -- the employee must spend more than 50% of his or her time:
- (1) exercising duties and responsibilities that involve the performance of office or non-manual work directly related to management policies or general business operations of his employer or his employer's customers, and
 - (2) exercising discretion and independent judgment; and
 - (3) regularly and directly assisting a proprietor, or an employee employed in a bona fide executive or administrative capacity (as defined above), or
 - (4) performing under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge, or
 - (5) executing under only general supervision special assignments and tasks.
- e. Some common issues in analysis of executive and administrative exemptions.
- (1) Administering the company's business affairs vs. producing the company's goods or services.
 - (2) Head vs. hands.
 - (3) Innovation or directing innovation vs. application of skills to sophisticated technical work.
 - (4) Follows vs. makes the rules
 - (5) Excercises authority to act outside the rules vs. disciplined for breaking the rules..

- (5) Supervision of others vs. working supervisor.
 - (6) “Primary” duties – does it add up to more than 50%?
 - (7) Controls the client relationship vs. just does the work
 - (8) Irrelevant – title, employee’s choice, what competitors do.
- f. Inside and outside commissioned sales people may be exempt.
2. “Daily overtime” (except for years 1998 and 1999).
- a. One and half times hourly rate for:
 - (1) Over 8 hours in a workday;
 - (2) Over 40 hours in a workweek; and
 - (3) The first 8 hours on the seventh day in any workweek.
 - b. Two times the hourly rate for:
 - (1) Over 12 hours worked in a workday; and
 - (2) Over 8 hours on the seventh day in a workweek.
 - c. No pyramiding of daily overtime and weekly overtime.
 - d. “Regular rate of pay” for calculation of overtime rates is 1/40 of weekly salary.
3. Make-up Time.
- a. Encourages employers to permit employees work extra in one day to make up for work they missed because of a personal obligation.
 - b. Excludes up to three hours per day of make- up time from daily overtime pay calculation.
 - c. Eases daily overtime; but, it does not eliminate 40-hour overtime threshold.

- d. The employee must request the leave in writing and make up time in advance and the employer may grant the request in its discretion.
- e. Make-up time must be taken in the same week in which the time was lost.
- f. The employer cannot solicit employees to make such a request to avoid overtime pay.

4. Alternate Work Schedules (AWS).

- a. Permits 4/10 in one week and 9/80 in two weeks schedules.
- b. Straight time maximum of 10 hours in one day and 40 in one week.
- c. 2/3 secret vote required by all employees in the work unit to approve.
- d. “Work unit” means” all employees in a readily identifiable work unit, such as a division, a department, a job classification, a shift, a separate physical location, or a recognized subdivision of such a work unit.”
- e. Employer can either offer a single AWS or a “menu” of alternatives from which employees can chose.
- f. Employer must report results the Department of Industrial Relations within 30 days of the vote.
- g. Reasonable Accommodation.
 - (1) For employees eligible to vote but whom are “unable” to work the AWS. “Unable” is not defined.
 - (2) Employer is permitted to give new employees who are “unable” to work the AWS an 8 hour schedule.
- h. Repeal vote must be taken on petition of 1/3 of affected employees and requires a 2/3 vote to repeal – applies to AWS approved after January 1, 2000.

- i. Grandfathers AWS agreed after January 1, 1998 (under the prior Wage Order rules) and was still in effect on July 1, 1999.
- j. Restrictions on Employer.
 - (1) If employer requires employee to work less hours than the AWS, then employer must pay daily overtime rate that day.
 - (2) Employer cannot reduce regular rate of pay as a result of adoption, repeal, or nullification of an AWS.

5. Compensatory Time Off in California.

- a. Non-Exempt Employees.
 - (1) Are entitled to overtime pay.
 - (2) The FLSA, which tends to cover all but small employers who do no business with or have clients outside of California basically bans CTO. The limited exception is not much more helpful to employers and employees than make-up time under California law.
 - (2) On the small chance that the FLSA does not barred CTO, California Labor Code Section 204.3 would then permit CTO if all of the following conditions are met:
 - (i) Employer is covered by Wage Order 2, 4, 6, 9, 11, 12 or 15;
 - (ii) Employee requests CTO in writing in lieu of overtime;
 - (iii) Employee is regularly scheduled to work no less than 40-hour workweeks;
 - (iv) CTO must be granted at the applicable overtime rate of the hour worked;
 - (v) Employer and employee must sign a written CTO agreement before the work is performed;
 - (vi) 240 hour maximum CTO accrual; after that, overtime pay must be paid each payroll period;

- (vii) If CTO is paid to employee in lieu of paid time off, it must be based on the employee's wage at the time the CTO is paid;
- (viii) On termination of employment, unused CTO must be paid in full at the higher of final wage or average wage rate for last 3 years;
- (ix) Employee permitted to use CTO within reasonable period after request to employer;
- (x) as long as the CTO does not unduly disrupt employer's operations;
- (xi) If employee requests, employer must pay in overtime compensation cash in lieu of CTO that has accrued in the last 2 payroll periods; and
- (xi) Employer must keep records of CTO accrual and use.

C. Record Keeping Duties of the Employer as to Each Employee.

1. Full name, home address, occupation and social security number.
2. Birth date, if under 18 years, and designation as a minor.
3. Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
4. Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
5. Total hours worked in the payroll period and applicable rates of pay. (this information shall be made readily available to the employee upon reasonable request.)
6. All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three years.

D. Paycheck Itemized Statement Duties of the Employer.

1. All deductions (although all deductions made on written orders of the employee may be aggregated and shown as one item);
2. The inclusive dates of the period for which the employee is paid;
3. The name of the employee or the employee's social security number; and
4. The name of the employer
5. Penalty – See, e.g., Section I, above.

E. Meal Periods

1. 30 minutes relief of all work for each 5 hours worked in a day.
2. Second meal break if 10 hours or more worked
3. Penalty of 1 hour straight time pay for not permitting meal period(s) in a day.

F. Breaks

1. 10 minutes every 4 hours or major fraction thereof.
2. Penalty 1 hour straight time pay for not permitting breaks in a day.

G. Days of Rest – if the nature of the work requires more than 7 consecutive days of work, the employee must have one day off for each 7 days in a month.

H. Enforcement.

1. Burden of proof – does the employer have records?
2. 3 year statute of limitations via existing enforcement mechanisms by the Division of Labor Standards Enforcement of the Department of Industrial Relations or in the Civil Courts.
 - a. Four year statute of limitations in Unfair Business Practices cases.

3. Legal 10% Interest.
4. Attorneys fees for civil action.
5. Civil penalties for failure to pay overtime in addition to unpaid wages.
 - a. See, e.g., Section I, above.
 - b. Who is liable?
 - (1) Employers.
 - (2) “Persons acting on behalf of employers.”
 - (i) Focus appears to be in-house decision makers (e.g., human resources personnel, supervisors, and managers).

III. Independent Contractors – Overview

- A. **Some sources of attack: IRS, FTB, EDD, Labor Commissioner, Workers Comp., ERISA (retirement, health and welfare plans), and civil courts.**
- B. **I/C registration.**
- C. **Risks.**
- D. **Analysis – EDD’s “Employment Determination Guide” (See www.edd.ca.gov).**

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Amends General Minimum Wage Order and IWC Industry and Occupation Orders

Please Post Next to Your IWC Industry or Occupation Order



OFFICIAL NOTICE

**California
Minimum Wage**

MW-2001

Minimum Wage - Every employer shall pay to each employee wages not less than the following:

\$6.25
per hour beginning January 1, 2001

\$6.75
per hour beginning January 1, 2002

To employers and representatives of persons working in industries and occupations in the State of California:

SUMMARY OF ACTIONS

TAKE NOTICE that on October 23, 2000, the Industrial Welfare Commission (IWC), having proceeded according to its authority in the Labor Code and Constitution of California, Article 14, § 1, amended Sections 1, 2, 3, and 5 of the General Minimum Wage Order, MW-98. Section 4, Separability, has not been changed. The IWC adopted increases to the minimum wage and to meals and lodging credits in this general minimum wage order and in all of the IWC's industry and occupation orders. The IWC also repealed and/or amended the following non-statutory full and partial exemptions from the minimum wage for certain employees that are contained in this order as well as in its industry and occupation orders: student nurses, professional actors, full-time carnival ride operators, employees of the State or local governments and any political subdivision thereof, personal attendants in private homes except for persons under the age of eighteen who are employed as baby sitters for a minor child of the employer in the employer's home, and minors paid not less than 85% of the minimum wage rounded to the nearest nickel. The present partial exemption for learners was amended to include minors. The IWC took these actions after holding investigative public hearings as required by Labor Code § 1178, considering the report of the Wage Board on the minimum wage selected pursuant to Labor Code § 1178.5, and subsequently holding public hearings according to the requirements of Labor Code § 1181.

This summary must be made available to employees in accordance with the IWC's wage orders. Copies of the full text of the amended wage orders may be obtained at www.dir.ca.gov/IWC or by mail from the IWC.

1. APPLICABILITY

The provisions of this Order shall not apply to outside salespersons and individuals who are the parent, spouse, or children of the employer previously contained in this Order and the IWC's industry and occupation orders. The IWC has eliminated other exemptions from the minimum wage previously contained in this Order and in sections of the IWC's industry and occupation orders. (See Section 5, Amended Provisions, below.) Exceptions and modifications provided by statute or in Section 1, Applicability, and in other sections of the IWC's industry and occupation orders may be used where any such provisions are enforceable and applicable to the employer.

2. MINIMUM WAGES

Every employer shall pay to each employee wages not less than six dollars and twenty-five cents (\$6.25) per hour for all hours worked, effective January 1, 2001, and not less than six dollars and seventy-five cents (\$6.75) per hour for all hours worked, effective January 1, 2002.

3. MEALS AND LODGING

Meals or lodging may not be credited against the minimum wage without a voluntary written agreement between the employer and the employee. When credit for meals or lodging is used to meet part of the employer's minimum wage obligation, the amounts so credited may not be more than the following:

	Effective January 1, 2001	Effective January 1, 2002
LODGING		
Room occupied alone	\$29.40 per week	\$31.75 per week
Room shared	\$24.25 per week	\$26.20 per week
Apartment – two-thirds (2/3) of the ordinary rental value, and in no event more than: ... Where a couple are both employed by the employer, two-thirds (2/3) of the ordinary rental value, and in no event more than:	\$352.95 per month	\$381.20 per month
	\$522.10 per month	\$563.90 per month
MEALS		
Breakfast	\$2.25	\$2.45
Lunch	\$3.10	\$3.35
Dinner	\$4.15	\$4.50

4. SEPARABILITY

If the application of any provision of this Order, or any section, subsection, subdivision, sentence, clause, phrase, word or portion of this Order should be held invalid, unconstitutional, unauthorized, or prohibited by statute, the remaining provisions thereof shall not be affected thereby, but shall continue to be given full force and effect as if the part so held invalid or unconstitutional had not been included herein.

5. AMENDED PROVISIONS

This Order amends the minimum wage and meals and lodging credits in MW-98, as well as in the IWC's industry and occupation orders. (See Orders 1-15, Secs. 4 and 10; and Order 16, Secs. 4 and 9.) This Order also amends the following other provisions of the IWC's industry and occupations orders to be consistent with the IWC's actions regarding the elimination of certain exemptions from the minimum wage: Order 1, Secs. 1(B) and 4(A)(1) and (2); Order 2, Secs. 1(B) and 4(A)(1) and (2); Order 3, Secs. 1(B) and 4(A)(1) and (2); Order 4, Secs. 1(B) and 4(A)(1) and (2); Order 5, Secs. 1(A) and (C), and 4(A)(1) and (2); Order 6, Secs. 1(B) and 4(A)(1) and (2); Order 7, Secs. 1(B) and 4(A)(1) and (2); Order 8, Secs. 1(B) and 4(A)(1) and (2); Order 9, Secs. 1(B) and 4(A)(1) and (2); Order 10, Secs. 1(B) and (D), and 4(A)(1) and (2); Order 11, Secs. 1(B) and (C) and 4(A)(1) and (2); Order 12, Secs. 1(B) and (C) and 4(A)(1) and (2); Order 13, Secs. 1(B) and 4(A)(1) and (2); Order 14, Secs. 1(B) and 4(A)(1) and (2); Order 15, Secs. 1(B) and 4(A)(1) and (2); and, Order 16, Sec. 1(B). These amendments were adopted on October 23, 2000, in Sacramento.

These Amendments to the Wage Orders shall be in effect as of January 1, 2001.

Questions about enforcement should be directed to the Division of Labor Standards Enforcement. Consult the white pages of your telephone directory under CALIFORNIA, State of, Industrial Relations for the address and telephone number of the office nearest you. The Division has offices in the following cities: Bakersfield, Eureka, Fresno, Long Beach, Los Angeles, Oakland, Redding, Sacramento, Salinas, San Bernardino, San Diego, San Francisco, San Jose, Santa Ana, Santa Barbara, Santa Rosa, Stockton, and Van Nuys.



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iwc@dir.ca.gov

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- [Which IWC order? Classification program](#)

Industrial Welfare Commission Wage orders

Listed below are brief historical perspectives on each of the Industrial Welfare Commission's seventeen (17) individual industrial and/or occupational wage orders. Each effective date cell displays an individual wage order and its evolution since 1980. The effective date usually represents the point in time when significant changes to a wage order were to be implemented. However, in some instances, minor revisions and amendments to the wage order not previously incorporated, may be included as of that particular effective date.

Also provided as another informational aid is a link that will allow you to review the summary for each individual wage order. This link can be used two different ways to access all wage order summaries: by clicking on the link here, or when you access a particular wage order there will be another link to that wage order's specific summary.



Wage order	Effective date	HTML version	PDF version
Summary of Interim Wage order 2000	March 2000	Interim wage order	Interim wage order
Wage orders - 1 - 13, 15 & 17	January 1, 2001	Statement as to the basis	Statement as to the basis
Wage orders - 1 - 13, 15 & 17	January 1, 2001	Summary	Summary
Wage order 16	January 2001	Statement as to the basis	Statement as to the basis
Wage order 16	January 2001	Summary	Summary
Wage order #1 Manufacturing Industry	January 1, 2004	#1-2001 (Annual update to section 1 (A)(3))	#1-2001 (Annual update to section 1 (A)(3))
	January 1, 2003	#1-2001 (Annual update to section 1 (A)(3))	#1-2001 (Annual update to section 1 (A)(3))
	July 1, 2002	#1-2001 (Amendments to section 11)	#1-2001 (Amendments to section 11)
	July 1, 2002	Statement as to the basis	Statement as to the basis
	July 1, 2002	Summary	Summary
	October 1, 2000	#1-2000	#1-2000
	July 1, 2002	Summary	Summary
	January 1, 2001	#1-2001	#1-2001
	October 1, 2000	#1-2000	#1-2000
	January 1, 1998	#1-1998	#1-1998
Wage order #2 Personal Services Industry	January 1, 2004	#2-2001 (Annual update to section 1 (A)(3))	#2-2001 (Annual update to section 1 (A)(3))
	January 1, 2003	#2-2001 (Annual update to section 1 (A)(3))	#2-2001 (Annual update to section 1 (A)(3))
	January 1, 2002	#2-2001 (Annual update to section 1 (A)(3))	#2-2001 (Annual update to section 1 (A)(3))
	January 1, 2001	#2-2001	#2-2001
	October 1, 2000	#2-2000	#2-2000
	July 1, 1988	#2-1980 (Updated)	#2-1980 (Updated)
Wage order #3 Canning, Freezing, and Preserving Industry	January, 1, 2004	#3-2001 (Annual update to section 1 (A)(3))	#3-2001 (Annual update to section 1 (A)(3))
	January 1, 2003	#3-2001 (Annual update to section 1 (A)(3))	#3-2001 (Annual update to section 1 (A)(3))
	January 1, 2002	#3-2001 (Annual update to section 1 (A)(3))	#3-2001 (Annual update to section 1 (A)(3))
	January 1, 2001	#3-2001	#3-2001
	October 1, 2000	#3-2000	#3-2000


	July 1, 1988	#3-1980	#3-1980
Wage order #4 Professional, Technical, Clerical, Mechanical and Similar Occupations	January 1, 2004	#4-2001 (Annual update to section 1 (A)(3))	#4-2001 (Annual update to section 1 (A)(3))
	January 1, 2003	#4-2001 (Annual update to section 1 (A)(3))	#4-2001 (Annual update to section 1 (A)(3))
	January 1, 2002	#4-2001 (Annual update to section 1 (A)(3))	#4-2001 (Annual update to section 1 (A)(3))
	January 1, 2001	#4-2001	#4-2001
	October 1, 2000	#4-2000	#4-2000
	January 1, 1998	#4-1998	#4-1998
	August 21, 1993	#4-1989 (Amendments to sections 2, 3, & 11)	#4-1989 (Amendments to sections 2, 3, & 11)
Wage order #5 Public Housekeeping Industry	January 1, 2004	#5-2001 (Annual update to section 1 (B)(3))	#5-2001 (Annual update to section 1 (B)(3))
	July 1, 2003	#5-2001 (Amendments to sections 3)	#5-2001 (Amendments to sections 3)
	January 1, 2003	#5-2001 (Annual update to section 1 (B)(3))	#5-2001 (Annual update to section 1 (B)(3))
	January 1, 2002	#5-2001 (Amendments to section 3, 11 & 12)	#5-2001 (Amendments to section 3, 11 & 12)
	January 1, 2002	Statement as to the basis	Statement as to the basis
	January 1, 2002	Summary	Summary
	January 1, 2001	#5-2001	#5-2001
	October 1, 2000	#5-2000	#5-2000
	January 1, 1998	#5-1998	#5-1998
August 21, 1993	#5-1989 (Amendments to sections 2, 3, & 11)	#5-1989 (Amendments to sections 2, 3, & 11)	
Wage order #6 Laundry, Linen Supply, Dry Cleaning and Dyeing Industry	January 1, 2004	#6-2001 (Annual update to section 1 (A)(3))	#6-2001 (Annual update to section 1 (A)(3))
	January 1, 2003	#6-2001 (Annual update to section 1 (A)(3))	#6-2001 (Annual update to section 1 (A)(3))
	January 1, 2002	#6-2001 (Annual update to section 1 (A)(3))	#6-2001 (Annual update to section 1 (A)(3))
	January 1, 2001	#6-2001	#6-2001
	October 1, 2000	#6-2000	#6-2000
	July 1, 1988	#6-1980 (Updated)	#6-1980 (Updated)
Wage order #7 Mercantile Industry	January 1, 2004	#7-2001 (Annual update to section 1 (A)(3))	#7-2001 (Annual update to section 1 (A)(3))
	January 1, 2003	#7-2001 (Annual update to section 1 (A)(3))	#7-2001 (Annual update to section 1 (A)(3))
	January 1, 2002	#7-2001 (Annual update to section 1 (A)(3))	#7-2001 (Annual update to section 1 (A)(3))
	January 1, 2001	#7-2001	#7-2001
	October 1, 2000	#7-2000	#7-2000
	January 1, 1998	#7-1998	#7-1998
Wage order #8 Industries Handling Products After Harvest	January 1, 2004	#8-2001 (Annual update to section 1 (A)(3))	#8-2001 (Annual update to section 1 (A)(3))
	January 1, 2003	#8-2001 (Annual update to section 1 (A)(3))	#8-2001 (Annual update to section 1 (A)(3))
	January 1, 2002	#8-2001 (Annual update to section 1 (A)(3))	#8-2001 (Annual update to section 1 (A)(3))
	January 1, 2001	#8-2001	#8-2001
	October 1, 2000	#8-2000	#8-2000
	July 1, 1988	#8-1980 (Revised)	#8-1980 (Revised)
Wage order #9 Transportation Industry	July 1, 2004	#9-2004	#9-2004
	July 1, 2004	Statement as to the basis	Statement as to the basis
	July 1, 2004	Summary	Summary
	January 1, 2004	#9-2001 (Annual update to section 1 (A)(3))	#9-2001 (Annual update to section 1 (A)(3))
	January 1, 2003	#9-2001 (Annual update to section 1 (A)(3))	#9-2001 (Annual update to section 1 (A)(3))
	January 1, 2002	#9-2001 (Annual update to section 1 (A)(3))	#9-2001 (Annual update to section 1 (A)(3))
	January 1, 2001	#9-2001	#9-2001

	October 1, 2000	#9-2000	#9-2000
	January 1, 1998	#9-1998	#9-1998
Wage order #10 Amusement and Recreation Industry	January 1, 2004	#10-2001 (Annual update to section 1 (A)(3))	#10-2001 (Annual update to section 1 (A)(3))
	January 1, 2003	#10-2001 (Annual update to section 1 (A)(3))	#10-2001 (Annual update to section 1 (A)(3))
	January 1, 2002	#10-2001 (Annual update to section 1 (A)(3))	#10-2001 (Annual update to section 1 (A)(3))
	January 1, 2001	#10-2001	#10-2001
	October 1, 2000	#10-2000	#10-2000
	July 1, 1989	#10-1989	#10-1989
Wage order #11 Broadcasting Industry	January 1, 2004	#11-2001 (Annual update to section 1 (A)(3))	#11-2001 (Annual update to section 1 (A)(3))
	January 1, 2003	#11-2001 (Annual update to section 1 (A)(3))	#11-2001 (Annual update to section 1 (A)(3))
	January 1, 2002	#11-2001 (Annual update to section 1 (A)(3))	#11-2001 (Annual update to section 1 (A)(3))
	January 1, 2001	#11-2001	#11-2001
	October 1, 2000	#11-2000	#11-2000
	July 1, 1988	#11-1980 (Updated)	#11-1980 (Updated)
Wage order #12 Motion Picture Industry	January 1, 2004	#12-2001 (Annual update to section 1 (A)(3))	#12-2001 (Annual update to section 1 (A)(3))
	January 1, 2003	#12-2001 (Annual update to section 1 (A)(3))	#12-2001 (Annual update to section 1 (A)(3))
	January 1, 2002	#12-2001 (Annual update to section 1 (A)(3))	#12-2001 (Annual update to section 1 (A)(3))
	January 1, 2001	#12-2001	#12-2001
	October 1, 2000	#12-2000	#12-2000
	July 1, 1988	#12-1980 (Revised)	#12-1980 (Revised)
Wage order #13 Industries Preparing Agricultural Products for Market, on the Farm	January 1, 2004	#13-2001 (Annual update to section 1 (A)(3))	#13-2001 (Annual update to section 1 (A)(3))
	January 1, 2003	#13-2001 (Annual update to section 1 (A)(3))	#13-2001 (Annual update to section 1 (A)(3))
	January 1, 2002	#13-2001 (Annual update to section 1 (A)(3))	#13-2001 (Annual update to section 1 (A)(3))
	January 1, 2001	#13-2001	#13-2001
	October 1, 2000	#13-2000	#13-2000
	July 1, 1988	#13-1980 (Revised)	#13-1980 (Revised)
Wage order #14 Agricultural Occupations	July 1, 2001	#14-2001	#14-2001
	July 1, 2001	#14-2001 (Amended)	#14-2001 (Amended)
	July 1, 2001	Statement as to the basis	Statement as to the basis
	July 1, 2001	Summary	Summary
	January 1, 2001	#14-2001	#14-2001
	October 1, 2000	#14-2000	#14-2000
	July 1, 1988	#14-1980 (Revised)	#14-1980 (Revised)
Wage order #15 Household Occupation	January 1, 2004	#15-2001 (Annual update to section 1 (A)(3))	#15-2001 (Annual update to section 1 (A)(3))
	January 1, 2003	#15-2001 (Annual update to section 1 (A)(3))	#15-2001 (Annual update to section 1 (A)(3))
	January 1, 2002	#15-2001 (Annual update to section 1 (A)(3))	#15-2001 (Annual update to section 1 (A)(3))
	January 1, 2001	#15-2001	#15-2001
	October 1, 2000	#15-2000	#15-2000
	April 2, 1986	#15-1986	#15-1986
Wage order #16 Certain On-Site Occupations in the Construction, Drilling, Logging and Mining Industries	January 1, 2001	#16-2001	#16-2001
	October 1, 2000	#16-2000	#16-2000
	January 1, 2004	#17-2001 (Annual update to section 1 (B)(3))	#17-2001 (Annual update to section 1 (B)(3))

Wage order #17 Miscellaneous Employees	January 1, 2003	#17-2001 (Annual update to section 1 (B)(3))	#17-2001 (Annual update to section 1 (B)(3))
	January 1, 2002	#17-2001 (Annual update to section 1 (B)(3))	#17-2001 (Annual update to section 1 (B)(3))
	January 1, 2001	#17-2001	#17-2001

Updates to section 1 (A)(3)

- January 2004 - \$44.63
- January 2003 - \$43.58
- January 2002 - \$42.64
- January 2001 - \$41.00

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NOTE: The Internet version of this Industrial Welfare Commission order may be posted as is required at places of employment. To obtain the official printed order, you may call 415.703.5070 and it will be mailed to you free of charge. You may also request copies by writing to the Department of Industrial Relations, Public Information Office, P.O. Box 420603, San Francisco, CA 94142-0603.

**Industrial Welfare Commission
order No. 1-2001
Regulating wages, hours and working conditions in the
Manufacturing Industry
(Effective July 1, 2002 as amended)
(Updated effective January 1, 2004)**

1. Applicability of Order This order shall apply to all persons employed in the manufacturing industry whether paid on a time, piece rate, commission, or other basis, except that:

(A) Provisions of Sections 3 through 12 of this order shall not apply to persons employed in administrative, executive, or professional capacities. The following requirements shall apply in determining whether an employee's duties meet the test to qualify for an exemption from those sections:

(1) Executive Exemption A person employed in an executive capacity means any employee:

(a) Whose duties and responsibilities involve the management of the enterprise in which he/she is employed or of a customarily recognized department or subdivision thereof; and

(b) Who customarily and regularly directs the work of two or more other employees herein; and

(c) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; and

(d) Who customarily and regularly exercises discretion and independent judgment; and

(e) Who is primarily engaged in duties which meet the test of the exemption. The activities constituting exempt work and non-exempt work shall be construed in the same manner as such items are construed in the following regulations under the Fair Labor Standards Act effective as of the date of this order: 29 C.F.R. Sections 541.102, 541.104-111, and 541.115-116. Exempt work shall include, for example, all work that is directly and closely related to exempt work and work which is properly viewed as a means for carrying out exempt functions. The work actually performed by the employee during the course of the work week must, first and foremost, be examined and the amount of time the employee spends on such work, together with the employer's realistic expectations and the realistic requirements of the job, shall be considered in determining whether the employee satisfies this requirement.

(f) Such an employee must also earn a monthly salary equivalent to no less than two (2) times the state minimum wage for full-time employment. Full-time employment is defined in Labor Code Section 515(c) as 40 hours per week.

(2) Administrative Exemption A person employed in an administrative capacity means any employee:

(a) Whose duties and responsibilities involve either:

(i) The performance of office or non-manual work directly related to management policies or general business operations of his employer or his employer's customers, or

(ii) The performance of functions in the administration of a school system, or educational establishment or institution, or of a department or subdivision thereof, in work directly related to the academic instruction or training carried on therein; and

(b) Who customarily and regularly exercises discretion and independent judgment; and

(c) Who regularly and directly assists a proprietor, or an employee employed in a bona fide executive or administrative capacity (as such terms are defined for purposes of this section); or

(d) Who performs under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge; or

(e) Who executes under only general supervision special assignments and tasks; and

(f) Who are primarily engaged in duties that meet the test of the exemption. The activities constituting exempt work and non-exempt work shall be construed in the same manner as such terms are construed in the following regulations under the Fair Labor Standards Act effective as of the date of this order: 29 C.F.R. Sections 541.201-205, 541.207-208, and 541.210, 541.215. Exempt work shall include, for example, all work that is directly and closely related to exempt work and work which is properly viewed as a means for carrying out exempt functions. The work actually performed by the employee during the course of the work week must, first and foremost, be examined and the amount of time the employee spends on such work, together with the employer's realistic expectations and the realistic requirements of the job, shall be considered in determining whether the employee satisfies this requirement.

(g) Such employee must also earn a monthly salary equivalent to no less than two times the state minimum wage for full-time employment. Full-time employment is defined in Labor Code Section 515(c) as 40 hours per week.

(3) Professional Exemption A person employed in a professional capacity means any employee who meets all of the following requirements:

(a) Who is licensed or certified by the State of California and is primarily engaged in the practice of one of the following recognized professions: law, medicine, dentistry, optometry, architecture, engineering, teaching, or accounting; or

(b) Who is primarily engaged in an occupation commonly recognized as a learned or artistic profession. For the purposes of this subsection, "learned or artistic profession" means an employee who is primarily engaged in the performance of:

(i) Work requiring knowledge of an advanced type in a field or science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes, or work that is an essential part of or necessarily incident to any of the above work; or

(ii) Work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee or work that is an essential part of or necessarily incident to any of the above work; and

(iii) Whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time.

(c) Who customarily and regularly exercises discretion and independent judgment in the performance of duties set forth in paragraphs (a) and (b).

(d) Who earns a monthly salary equivalent to no less than two (2) times the state minimum wage for full-time employment. Full-time employment is defined in Labor Code Section 515 (c) as 40 hours per week.

(e) Subparagraph (b) above is intended to be construed in accordance with the following provisions of federal law as they existed as of the date of this wage order: 29 C.F.R. Sections 541.207, 541.301(a)-(d), 541.302, 541.306, 541.307, 541.308, and 541.310.

(f) Notwithstanding the provisions of this subparagraph, pharmacists employed to engage in the practice of pharmacy, and registered nurses employed to engage in the practice of nursing, shall not be considered exempt professional employees, nor shall they be considered exempt from coverage for the purposes of this subparagraph unless they individually meet the criteria established for exemption as executive or administrative employees.

(g) Subparagraph (f) above, shall not apply to the following advanced practice nurses:

(i) Certified nurse midwives who are primarily engaged in performing duties

for which certification is required pursuant to Article 2.5 (commencing with Section 2746) of Chapter 6 of Division 2 of the Business and Professions Code.

(ii) Certified nurse anesthetists who are primarily engaged in performing duties for which certification is required pursuant to Article 7 (commencing with Section 2825) of Chapter 6 of Division 2 of the Business and Professions Code.

(iii) Certified nurse practitioners who are primarily engaged in performing duties for which certification is required pursuant to Article 8 (commencing with Section 2834) of Chapter 6 of Division 2 of the Business and Professions Code.

(iv) Nothing in this subparagraph shall exempt the occupations set forth in clauses (i), (ii), and (iii) from meeting the requirements of subsection 1(A)(3) (a)-(d) above.

(h) Except, as provided in subparagraph (i), an employee in the computer software field who is paid on an hourly basis shall be exempt, if all of the following apply:

(i) The employee is primarily engaged in work that is intellectual or creative and requires the exercise of discretion and independent judgment.

(i) The employee is primarily engaged in duties that consist of one or more of the following:

- The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications.

- The design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications.

- The documentation, testing, creation, or modification of computer programs related to the design of software or hardware for computer operating systems.

(iii) The employee is highly skilled and is proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming, and software engineering. A job title shall not be determinative of the applicability of this exemption.

(iv) The employee's hourly rate of pay is not less than forty-four dollars and sixty-three cents (\$44.63). The Division of Labor Statistics and Research shall adjust this pay rate on October 1 of each year to be effective on January 1 of the following year by an amount equal to the percentage increase in the California Consumer Price Index for Urban Wage Earners and Clerical Workers.

(j) The exemption provided in subparagraph (h) does not apply to an employee if any of the following apply:

(i) The employee is a trainee or employee in an entry-level position who is learning to become proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming, and software engineering.

(ii) The employee is in a computer-related occupation but has not attained the level of skill and expertise necessary to work independently and without close supervision.

(iii) The employee is engaged in the operation of computers or in the manufacture, repair, or maintenance of computer hardware and related equipment.

(iv) The employee is an engineer, drafter, machinist, or other professional whose work is highly dependent upon or facilitated by the use of computers and computer software programs and who is skilled in computer-aided

design software, including CAD/CAM, but who is not in a computer systems analysis or programming occupation.

(V) The employee is a writer engaged in writing material, including box labels, product descriptions, documentation, promotional material, setup and installation instructions, and other similar written information, either for print or for on screen media or who writes or provides content material intended to be read by customers, subscribers, or visitors to computer-related media such as the World Wide Web or CD-ROMs.

(vi) The employee is engaged in any of the activities set forth in subparagraph (h) for the purpose of creating imagery for effects used in the motion picture, television, or theatrical industry.

(B) Except as provided in Sections 1, 2, 4, 10, and 20, the provisions of this order shall not apply to any employees directly employed by the State or any political subdivision thereof, including any city, county, or special district.

(C) The provisions of this order shall not apply to outside salespersons.

(D) Provisions of this order shall not apply to any individual who is the parent, spouse, child, or legally adopted child of the employer.

(E) The provisions of this order shall not apply to any individual participating in a national service program, such as AmeriCorps, carried out using assistance provided under Section 12571 of Title 42 of the United States Code. (See Stats. 2000, ch. 365, amending California Labor Code Section 1171.)

2. Definitions

(A) An "alternative workweek schedule" means any regularly scheduled workweek requiring an employee to work more than eight (8) hours in a 24-hour period

(B) "Commission" means the Industrial Welfare Commission of the State of California.

(C) "Division" means the Division of Labor Standards Enforcement of the State of California.

(D) "Employ" means to engage, suffer, or permit to work.

(E) "Employee" means any person employed by an employer.

(F) "Employer" means any person as defined in Section 18 of the Labor Code, who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person.

(G) "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.

(H) "Manufacturing Industry" means any industry, business, or establishment operated for the purpose of preparing, producing, making, altering, repairing, finishing, processing, inspecting, handling, assembling, wrapping, bottling, or packaging goods, articles, or commodities, in whole or in part; EXCEPT when such activities are covered by Orders in the: Canning, Preserving, and Freezing Industry; Industries Handling Products After Harvest; Industries Preparing Agricultural Products for Market, on the Farm; or Motion Picture Industry.

(I) "Minor" means, for the purpose of this Order, any person under the age of 18 years.

(J) "Outside salesperson" means any person, 18 years of age or over, who customarily and regularly works more than half the working time away from the employer's place of business selling tangible or intangible items or obtaining orders or contracts for products, services or use of facilities.

(K) "Primarily" as used in Section 1, Applicability, means more than one-half the employee's work time.

(L) "Shift" means designated hours of work by an employee, with a designated beginning time and quitting time.

(M) "Split shift" means a work schedule, which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods.

(N) "Teaching" means, for the purpose of Section 1 of this order, the profession of teaching under a certificate from the Commission for Teacher Preparation and Licensing or teaching in an accredited college or university.

(O) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.

(P) "Workday" and "day" means any consecutive 24-hour period beginning at the same time each calendar day.

(Q) "Workweek" and "week" means any seven (7) consecutive days, starting with the same calendar day each week. "Workweek" is a fixed and regularly recurring period of 168 hours, seven (7) consecutive 24-hour periods.

3. Hours and Days of Work

(A) Daily Overtime-General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 1/2) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

(c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

(2) The provisions of this section are not applicable to employees whose hours of service:

(a) The United States Department of Transportation Code of Federal Regulations, Title 49, Sections 395.1 to 395.13, Hours of Service of Drivers; or

(b) Title 13 of the California Code of Regulations, subchapter 6.5, Section 1200 and the following sections, regulating hours of drivers.

(B) Alternative Workweeks

(1) No employer shall be deemed to have violated the daily overtime provisions by instituting, pursuant to the election procedures set forth in this wage order, a regularly scheduled alternative workweek schedule of not more than ten (10) hours per day within a 40 hour workweek without the payment of an overtime rate of compensation. All work performed in any workday beyond the schedule established by the agreement up to 12 hours a day or beyond 40 hours per week shall be paid at one and one-half (1 1/2) times the employee's regular rate of pay. All work performed in excess of 12 hours per day and any work in excess of eight (8) hours on those days worked beyond the regularly scheduled number of workdays established by the alternative workweek agreement shall be paid at double the employee's regular rate of pay. Any alternative workweek agreement adopted pursuant to this section shall provide for not less than four (4) hours of work in any shift. Nothing in this section shall prohibit an employer, at the request of the employee, to substitute one day of work for another day of the same length in the shift provided by the alternative workweek agreement on an occasional basis to meet the personal needs of the employee without the payment of overtime. No hours paid at either one and one-half (1 1/2) or double the regular rate of pay shall be included in determining when 40 hours have been worked for the purpose of computing overtime compensation.

(2) Any agreement adopted pursuant to this section shall provide not less than two (2) consecutive days off within a workweek.

(3) If an employer, whose employees have adopted an alternative workweek agreement permitted by this order requires an employee to work fewer hours than those that are regularly scheduled by the agreement, the employer shall pay the employee overtime compensation at a rate of one and one-half (1 1/2) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours, and double the employee's regular rate of pay for all hours worked in excess of 12 hours for the day the employee is required to work the reduced hours.

(4) An employer shall not reduce an employee's regular rate of hourly pay as a result of the adoption, repeal or nullification of an alternative workweek schedule.

(5) An employer shall explore any available reasonable alternative means of accommodating the religious belief or observance of an affected employee that conflicts with an adopted alternative workweek schedule, in the manner provided by subdivision (j) of Section 12940 of the Government Code.

(6) An employer shall make a reasonable effort to find a work schedule not to exceed eight (8) hours in a workday, in order to accommodate any affected employee who was eligible to vote in an election authorized by this section and who is unable to work the alternative workweek schedule established as the result of that election.

(7) An employer shall be permitted, but not required, to provide a work schedule not to exceed eight (8) hours in a workday to accommodate any employee who is hired after the date of the election and who is unable to work the alternative workweek schedule established by the election.

(8) Arrangements adopted in a secret ballot election held pursuant to this order prior to 1998, or under the rules in effect prior to 1998, and before the performance of the work, shall remain valid after July 1, 2000 provided that the results of the election are reported by the employer to the Division of Labor Statistics and Research by January 1, 2001, in accordance with the requirements of subsection (C) below (Election Procedures). If an employee was voluntarily working an alternative workweek schedule of not more than ten (10) hours a day as of July 1, 2000, that alternative workweek schedule was based on an individual agreement made after January 1, 1998 between the employee and employer, and the employee submitted, and the employer approved, a written request on or before May 30, 2000 to continue the agreement, the employee may continue to work that alternative workweek schedule without payment of an overtime rate of compensation for the hours provided in the agreement. The employee may revoke his or her voluntary authorization to continue such a schedule with 30 days written notice to the employer. New arrangements can only be entered into pursuant to the provisions of this section.

(C) Election Procedures

Election procedures for the adoption and repeal of alternative workweek schedules require the following:

(1) Each proposal for an alternative workweek schedule shall be in the form of a written agreement proposed by the employer. The proposed agreement must designate a regularly scheduled alternative workweek in which the specified number of work days and work hours are regularly recurring. The actual days worked within that alternative workweek schedule need not be specified. The employer may propose a single work schedule that would become the standard schedule for workers in the work unit, or a menu of work schedule options, from which each employee in the unit would be entitled to choose. If the employer proposes a menu of work schedule options, the employee may, with the approval of the employer, move from one menu option to another.

(2) In order to be valid, the proposed alternative workweek schedule must be adopted in a secret ballot election, before the performance of work, by at least a two-thirds (2/3) vote of the affected employees in the work unit. The election shall be held during regular working hours at the employees' work site. For purposes of this subsection, "affected employees in the work unit" may include all employees in a readily identifiable work unit, such as a division, a department, a job classification, a shift, a separate physical location, or a recognized subdivision of any such work unit. A work unit may consist of an individual employee as long as the criteria for an identifiable work unit in this subsection is met.

(3) Prior to the secret ballot vote, any employer who proposed to institute an alternative workweek schedule shall have made a disclosure in writing to the affected employees, including the effects of the proposed arrangement on the employees' wages, hours, and benefits. Such a disclosure shall include meeting(s), duly noticed, held at least 14 days prior to voting, for the specific purpose of discussing the effects of the alternative workweek schedule. An employer shall provide that disclosure in a non-English language, as well as in English, if at least five (5) percent of the affected employees primarily speak that non-English language. The employer shall mail the written disclosure to employees who do not attend the meeting. Failure to comply with this paragraph shall make the election null and void.

(4) Any election to establish or repeal an alternative workweek schedule shall be held at the work site of the affected employees. The employer shall bear the costs of conducting any election held pursuant to this section. Upon a complaint by an affected employee, and after an investigation by the Labor Commissioner, the Labor Commissioner may require the employer to select a neutral third party to conduct the election.

(5) Any type of alternative workweek schedule that is authorized by the Labor Code may be repealed by the affected employees. Upon a petition of one-third (1/3) of the affected employees, a new secret ballot election shall be held and a two-thirds (2/3) vote of the affected employees shall be required to reverse the alternative workweek schedule. The election to repeal the alternative workweek schedule shall be held not more than 30 days after the petition is submitted to the employer, except that the election shall be held not less than 12 months after the date that the same group of employees voted in an election held to adopt or repeal an alternative workweek schedule. The election shall take place during regular working hours at the employees' work site. If the alternative workweek schedule is revoked, the employer shall comply within 60 days. Upon proper showing of undue hardship, the Division of Labor Standards Enforcement may grant an extension of time for compliance.

(6) Only secret ballots may be cast by affected employees in the work unit at any election held pursuant to this section. The results of any election conducted pursuant to this section shall be reported by the employer to the Division of Labor Statistics and Research within 30 days after the results are final, and the report of election results shall be a public document. The report shall include the final tally of the vote, the size of the unit, and the nature of the business of the employer.

(7) Employees affected by a change in the work hours resulting from the adoption of an alternative workweek schedule may not be required to work those new work hours for at least 30 days after the announcement of the final results of the election.

(8) Employers shall not intimidate or coerce employees to vote either in support of or in opposition to a proposed alternative workweek. No employees shall be discharged or discriminated against for expressing opinions concerning the alternative workweek election or for opposing or supporting its adoption or repeal. However, nothing in this section shall prohibit an employer from expressing his/her position concerning that alternative workweek to the affected employees. A violation of this paragraph shall be subject to Labor Code Section 98 et seq.

(D) One and one-half (1 ½) times a minor's regular rate of pay shall be paid for all work over 40 hours in any workweek except minors 16 or 17 years old who are not required by law to attend school and may therefore be employed for the same hours as an adult are subject to

subsection (A) or (B) and (C) above.

(VIOLATIONS OF CHILD LABOR LAWS are subject to civil penalties of from \$500 to \$10,000 as well as to criminal penalties. Refer to California Labor Code sections 1285 to 1312 and 1390 to 1399 for additional restrictions on the employment of minors and for descriptions of criminal and civil penalties for violation of the child labor laws. Employers should ask school districts about any required work permits.)

(E) An employee may be employed on seven (7) workdays in one workweek when the total hours of employment during such workweek do not exceed 30 and the total hours of employment in any one workday thereof do not exceed six (6).

(F) The provisions of Labor Code Sections 551 and 552 regarding one (1) day's rest in seven (7) shall not be construed to prevent an accumulation of days of rest when the nature of the employment reasonably requires the employee to work seven (7) or more consecutive days; provided, however, that in each calendar month, the employee shall receive the equivalent of one (1) day's rest in seven (7).

(G) If a meal period occurs on a shift beginning or ending at or between the hours of 10 p.m. and 6 a.m., facilities shall be available for securing hot food and drink or for heating food or drink, and a suitable sheltered place shall be provided in which to consume such food or drink.

(H) Except as provided in subsections (D) and (F), this section shall not apply to any employee covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work, and working conditions of the employees, and if the agreement provides premium wage rates for all overtime hours worked and a regular hourly rate of pay for those employees of not less than 30 percent more than the state minimum wage.

(I) Notwithstanding subsection (H) above, where the employer and a labor organization representing employees of the employer have entered into a valid collective bargaining agreement pertaining to the hours of work of the employees, the requirement regarding the equivalent of one (1) day's rest in seven (7) (see section (F) above) shall apply, unless the agreement expressly provides otherwise.

(J) If an employer approves a written request of an employee to make up work time that is or would be lost as a result of a personal obligation of the employee, the hours of that makeup work time, if performed in the same workweek in which the work time was lost, may not be counted toward computing the total number of hours worked in a day for purposes of the overtime requirements, except for hours in excess of 11 hours of work in one (1) day or 40 hours of work in one (1) workweek. If an employee knows in advance that he or she will be requesting makeup time for a personal obligation that will recur at a fixed time over a succession of weeks, the employee may request to make up work time for up to four (4) weeks in advance; provided, however, that the make up work must be performed in the same week that the work time was lost. An employee shall provide a signed written request for each occasion that the employee makes a request to make up work time pursuant to this subsection. While an employer may inform an employee of this makeup time option, the employer is prohibited from encouraging or otherwise soliciting an employee to request the employer's approval to take personal time off and make up the work hours within the same workweek pursuant to this subsection.

4. Minimum Wages

(A) Every employer shall pay to each employee wages not less than six dollars and twenty-five cents (\$6.25) per hour for all hours worked effective January 1, 2001, and not less than six dollars and seventy-five cents (\$6.75) per hour for all hours worked effective January 1, 2002, except:

LEARNERS: Employees during their first 160 hours of employment in occupations in which they have no previous similar or related experience, may be paid not less than 85% percent of the minimum wage rounded to the nearest nickel.

(B) Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.

(C) When an employee works a split shift, one hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment.

(D) The provisions of this section shall not apply to apprentices regularly indentured under the State Division of Apprenticeship Standards.

5. Reporting Time Pay

(A) Each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.

(B) If an employee is required to report for work a second time in any one workday and is furnished less than two hours of work on the second reporting, said employee shall be paid for two (2) hours at the employee's regular rate of pay, which shall not be less than the minimum wage.

(C) The foregoing reporting time pay provisions are not applicable when:

(1) Operations cannot commence or continue due to threats to employees or property; or when recommended by civil authorities; or

(2) Public utilities fail to supply electricity, water, or gas, or there is a failure in the public utilities, or sewer system; or

(3) The interruption of work is caused by an Act of God or other cause not within the employer's control.

(D) This section shall not apply to an employee on paid standby status who is called to perform assigned work at a time other than the employee's scheduled reporting time.

6. Licenses for Disabled Workers

(A) A license may be issued by the Division authorizing employment of a person whose earning capacity is impaired by physical disability or mental deficiency at less than the minimum wage. Such licenses shall be granted only upon joint application of employer and employee and employee's representative if any.

(B) A special license may be issued to a nonprofit organization such as a sheltered workshop or rehabilitation facility fixing special minimum rates to enable the employment of such persons without requiring individual licenses of such employees.

(C) All such licenses and special licenses shall be renewed on a yearly basis or more frequently at the discretion of the Division.

(See California Labor Code, Sections 1191 and 1191.5)

7. Records

(A) Every employer shall keep accurate information with respect to each employee including the following:

(1) Full name, home address, occupation and social security number.

(2) Birth date, if under 18 years, and designation as a minor.

(3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.

(4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.

(5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.

(6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

(B) Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee's social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.

(C) All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day, and year and shall be kept on file by the employer for at least three (3) years at the place of employment or at a central location within the State of California. An employee's records shall be available for inspection by the employee upon reasonable request.

(D) Clocks shall be provided in all major work areas or within reasonable distance thereto insofar as practicable.

8. Cash Shortage and Breakage

No employer shall make any deduction from the wage or require any reimbursement from an employee for any cash shortage, breakage, or loss of equipment, unless it can be shown that the shortage, breakage, or loss is caused by a dishonest or willful act, or by the gross negligence of the employee.

9. Uniforms and Equipment

(A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer. The term "uniform" includes wearing apparel and accessories of distinctive design or color.
NOTE: This section shall not apply to protective apparel regulated by the Occupational Safety and Health Standards Board.

(B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft. This subsection (B) shall not apply to apprentices regularly indentured under the State Division of Apprenticeship Standards.

NOTE: This section shall not apply to protective equipment and safety devices on tools regulated by the Occupational Safety and Health Standards Board.

(C) A reasonable deposit may be required as security for the return of the items furnished by the employer under provisions of subsection (A) and (B) of this section upon issuance of a receipt to the employee for such deposit. Such deposits shall be made pursuant to Section 400 and following of the Labor Code or an employer with the prior written authorization of the employee may deduct from the employee's last check the cost of an item furnished pursuant to subsections (A) and (B) above in the event said item is not returned. No deduction shall be made at any time for normal wear and tear. The employee upon completion of the job shall return all items furnished by the employer.

10. Meals and Lodging

(A) "Meal" means an adequate, well-balanced serving of a variety of wholesome, nutritious foods.

(B) "Lodging" means living accommodations available to the employee for full-time occupancy, which are adequate, decent, and sanitary according to usual and customary standards. Employees shall not be required to share a bed.

(C) Meals or lodging may not be credited against the minimum wage without a voluntary written agreement between the employer and the employee. When credit for meals or lodging is used to meet part of the employer's minimum wage obligation, the amounts so credited may not be more than the following:

Effective Dates:	January 1, 2001	January 1, 2002
Lodging:		
Room occupied alone	\$29.40 per week	\$31.75 per week
Room shared	\$24.25 per week	\$26.20 per week
Apartment-two thirds (2/3) of the ordinary rental value, and in no event more than	\$352.95 per month	\$381.20 per month
Where a couple are both employed by the employer, two-thirds (2/3) of the ordinary rental value, and in no event more than	\$522.10 per month	\$563.90 per month
Meals:		
Breakfast	\$2.25	\$2.45
Lunch	\$3.10	\$3.35
Dinner	\$4.15	\$4.50

(D) Meals evaluated, as part of the minimum wage must be bona fide meals consistent with the employee's work shift. Deductions shall not be made for meals not received or lodging not used.

(E) If, as a condition of employment, the employee must live at the place of employment or occupy quarters owned or under the control of the employer, then the employer may not charge rent in excess of the values listed herein.

11. Meal Periods

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and employee. In the case of employees covered by a valid collective bargaining agreement, the parties to the collective bargaining agreement may agree to a meal period that commences after no more than six (6) hours of work.

(B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

(C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

(D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the meal period is not provided.

(E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

12. Rest Periods

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.

However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

13. Change Rooms and Resting Facilities

(A) Employers shall provide suitable lockers, closets, or equivalent for the safekeeping of employees' outer clothing during working hours, and when required, for their work clothing during non-working hours. When the occupation requires a change of clothing, change rooms or equivalent space shall be provided in order that employees may change their clothing in reasonable privacy and comfort. These rooms or spaces may be adjacent to but shall be separate from toilet rooms and shall be kept clean.

NOTE: This section shall not apply to change rooms and storage facilities regulated by the Occupational Safety and Health Standards Board.

(B) Suitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours.

14. Seats

(A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.

(B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

15. Temperature

(A) The temperature maintained in each work area shall provide reasonable comfort consistent with industry -wide standards for the nature of the process and the work performed.

(B) If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort. Where the nature of the employment requires a temperature of less than 60° F., a heated room shall be provided to which employees may retire for warmth, and such room shall be maintained at not less than 68°.

(C) A temperature of not less than 68° shall be maintained in the toilet rooms, resting rooms, and change rooms during hours of use.

(D) Federal and State energy guidelines shall prevail over any conflicting provision of this section.

16. Elevators

Adequate elevator, escalator or similar service consistent with industry-wide standards for the nature of the process and the work performed shall be provided when employees are employed four floors or more above or below ground level.

17. Exemptions

If, in the opinion of the Division after due investigation, it is found that the enforcement of any provision contained in Section 7, Records; Section 12, Rest Periods; Section 13, Change Rooms and Resting Facilities; Section 14, Seats; Section 15, Temperature; or Section 16, Elevators, would not materially affect the welfare or comfort of employees and would work an undue hardship on the employer, exemption may be made at the discretion of the Division. Such exemptions shall be in writing to be effective and may be revoked after reasonable notice is given in writing. Application for exemption shall be made by the employer or by the employee and/or the employee's representative to the Division in writing. A copy of the application shall be posted at the place of employment at the time the application is filed with the Division.

18. Filing Reports (See California Labor Code, Section 1174(a))

19. Inspection (See California Labor Code, Section 1174)

20. Penalties (See California Labor Code, Section 1199)

(A) In addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty of:

(1) Initial Violation -- \$50.00 for each underpaid employee for each pay period during which the employee was underpaid in addition to the amount which is sufficient to recover unpaid wages.

(2) Subsequent Violations -- \$100.00 for each underpaid employee for each pay period during which the employee was underpaid in addition to an amount which is sufficient to recover unpaid wages.

(3) The affected employee shall receive payment of all wages recovered.

(B) The Labor Commissioner may also issue citations pursuant to California Labor Code Section 1197.1 for non-payment of wages for overtime work in violation of this order.

21. Separability

If the application of any provision of this order, or any section, subsection, subdivision, sentence, clause, phrase, word, or portion of this order should be held invalid or unconstitutional or unauthorized or prohibited by statute, the remaining provisions thereof shall not be affected thereby, but shall continue to be given full force and effect as if the part so held invalid or unconstitutional had not been included herein.

22. Posting of Order

Every employer shall keep a copy of this order posted in an area frequented by employees where it may be easily read during the workday. Where the location of work or other conditions make this impractical, every employer shall keep a copy of this order and make it available to every employee upon request.

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16 Attorneys for Individual and Representative Plaintiffs

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA
18 IN AND FOR THE COUNTY OF ALAMEDA

19 DARIEN GODDARD, WILLIAM SWIFT,
20 and MICHAEL ANSELMO, individually,
21 on behalf of all others similarly situated,
22 and on behalf of the general public,

23 Plaintiffs,

24 vs.

25 LONGS DRUG STORES
26 CORPORATION, LONGS DRUG
27 STORES CALIFORNIA, INC. and
28 DOES 1 through 50 inclusive,

Defendants.

CASE NO.: _____

CLASS ACTION

**COMPLAINT FOR DAMAGES,
RESTITUTION AND INJUNCTIVE RELIEF**

- (1) **Violation of California Labor Code Sections 510, 1194 and 1198, and IWC Wage Orders**
- (2) **Waiting Time Penalties**
- (3) **Failure to Provide Itemized Wage Statements**
- (4) **Failure to Provide and/or Authorize Meal and Rest Periods/Unpaid Wages Thereon**
- (5) **Penalties Pursuant to California Labor Code Sections 226.3, 558, 1198 and 2699**
- (6) **Violation of California Business and Professions Code Section 1700 et seq.**

DEMAND FOR JURY TRIAL

1 Individual and Representative Plaintiffs Darien Goddard, William Swift, and
2 Michael Anselmo, on behalf of themselves and all others similarly situated, complain against
3 Defendants Longs Drug Stores Corporation, Longs Drug Stores California, and Does One
4 through fifty (collectively "Defendants" or "Longs") as follows:

5 **PRELIMINARY STATEMENT**

6 1. The class claims in this action are brought pursuant to Code of Civil Procedure
7 ("CCP") § 382, seeking unpaid overtime wages, missed meal period and rest period wages,
8 penalties, injunctive and other equitable relief, interest, and reasonable attorneys' fees and costs,
9 under California Labor Code §§ 201, 202, 203, 226, 226.3, 226.7, 510, 512, 551, 552, 558, 1194,
10 1198, 2699, Industrial Welfare Commission Wage Order Nos. 5-2000 and 5-2001, Business and
11 Professions Code § 17200 *et seq.*, and CCP §1021.5 on behalf of the following proposed class:

12
13 Plaintiffs and all other persons who are or have been employed by
14 Defendants, or any one of them, as Store Managers and Assistant
15 Store Managers at Longs Drug Stores in the State of California at
16 any time since February 17, 2000.

17 2. Under California Business and Professions Code ("Cal. Bus. & Prof. Code") §
18 17200 *et seq.*, and pursuant to both the class action and representative action procedures provided
19 for in these statutes, Plaintiffs, on behalf of themselves and proposed Class Members, also seek
20 injunctive relief and restitution of all benefits Defendants have received from their unlawful
21 actions as alleged herein.

22 3. The "Class Period" is designated as the time from February 17, 2000 through the
23 trial date, based upon the allegation that the violations of California's wage and hour laws, as
24 described more fully below, have been ongoing for at least the four years prior to the filing of this
25 Complaint. During the Class Period, Defendants have had a consistent policy and/or practice of:
26 (1) classifying Store Managers and Assistant Store Managers as exempt from California's
27 overtime laws; (2) failing to pay Store Managers and Assistant Store Managers overtime wages as
28 required by law; (3) Denying meal and rest periods to Store Managers and Assistant Store

1 Managers; and (4) failing to provide Store Managers and Assistant Store Managers with accurate
2 and complete itemized wage statements required by law.

3 **THE PARTIES**

4 4. Plaintiff Darien Goddard ("Goddard") is and has been employed by Longs in
5 Alameda County continuously since approximately May 1999. He worked as an Assistant Store
6 Manager from approximately August 2003 until January 2004, when he was promoted to his
7 current Store Manager position.

8 5. Plaintiff William Swift ("Swift") is and has been employed by Longs in Alameda
9 County continuously since 1998. He worked as an Assistant Store Manager from approximately
10 January 2000 until August 2003, when he was promoted to a Store Manager position.

11 6. Plaintiff Michael Anselmo ("Anselmo") is and has been employed by Longs since
12 1985, the majority of time in Alameda County. He became an Assistant Store Manager in
13 approximately 1995, and a Store Manager in approximately 1999.

14 7. Defendant Longs Drug Stores Corporation is a corporation with its principal place
15 of business in California.

16 8. Defendant Longs Drug Stores California is a California Corporation with its
17 principal place of business in California.

18 9. Defendants DOES 1-50, inclusive, are sued herein under fictitious names. Their
19 true names and capacities are unknown to Plaintiffs. When their true names and capacities are
20 ascertained, Plaintiffs will amend this complaint by inserting their true names and capacities
21 herein. Plaintiffs are informed and believe and thereon allege that each of the fictitiously-named
22 defendants is responsible in some manner for the occurrences herein alleged, and that the
23 damages of Plaintiffs and the Class Members herein alleged were proximately caused by such
24 defendants.

25 10. Plaintiffs are informed, believe, and thereon allege that each of the Defendants
26 herein was, at all times relevant to this action, the agent, employee, representing partner, and/or
27 joint venturer of the remaining Defendants and was acting within the course and scope of the
28 relationship. Plaintiffs are further informed, believe, and thereon allege, that each of the

1 Defendants herein gave consent to, ratified and authorized the acts alleged herein to the remaining
2 Defendants.

3 **JURISDICTION AND VENUE**

4 11. This court has jurisdiction over all causes of action asserted herein pursuant to the
5 California Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in
6 all cases except those given to other trial courts. The Court also has jurisdiction over certain
7 causes of action pursuant to Business and Professions Code §§ 17203 and 17204, which provide
8 for exclusive jurisdiction for enforcement of this statute in any court of competent jurisdiction.

9 12. Venue in this County is proper under Business & Professions Code § 17203 and
10 California Code of Civil Procedure § 395.5 because part of Defendants' unlawful conduct
11 occurred in this County, Defendants conduct substantial business in this County, a substantial part
12 of the transactions at issue took place in this County, and Defendants' liability arose in part in this
13 County.

14 **GENERAL ALLEGATIONS**

15
16 **A. Defendants' Practices**

17 13. Defendants currently operate approximately 380 drug stores within the State of
18 California. Upon information and belief, each of Defendants' stores normally employs both a
19 Store Manager and an Assistant Store Manager.

20 14. Throughout the class period, Defendants have uniformly classified their Store
21 Managers and Assistant Store Managers (collectively "managers") as exempt from overtime
22 wages. Managers regularly work in excess of 8 hours per day and 40 hours per week without
23 compensation for their overtime hours. In addition, managers customarily are not afforded the
24 opportunity to take rest breaks, and they do not receive a 30 minute meal break within the first
25 five hours of their shift as required by state law.

26 15. Despite their job titles, Defendants' managers are not engaged primarily in
27 management duties. Rather, they spend the vast majority of their time performing non-
28 managerial tasks, including work performed by the nonexempt employees whom the managers

1 purportedly supervise. Nor do managers customarily and regularly exercise discretion and
2 independent judgment in performing their work. To the contrary, Defendants have a uniform,
3 company-wide policy and practice of denying managers such discretion. For example:

4 (a) Defendants have tightly controlled the amount of overtime hours
5 that hourly store employees may work, and managers are currently restricted from scheduling or
6 permitting hourly employees to work any significant overtime. As a result, managers are required
7 to work overtime performing the non-managerial, nonexempt tasks typically assigned to hourly
8 employees.

9 (b) Defendants have affirmatively removed managerial functions from
10 managers, and centralized those functions in their corporate headquarters. Instead of exercising
11 discretion and independent judgment, managers receive uniform and specific direction on how to
12 perform even the most routine functions from Defendants' corporate offices through mandatory
13 monthly guides, merchandising guides, and other directives.

14 **B. Class Action Allegations**

15 16. Plaintiffs bring this action on behalf of themselves and as a class action on behalf
16 of all persons or entities proximately damaged by Defendants' conduct, including, but not
17 necessarily limited to, the following Class:

18 Plaintiffs and all other persons who are or have been employed by
19 Defendants, or any one of them, as Store Managers and Assistant
20 Store Managers (or equivalent positions) at Longs Drug Stores in
the State of California at any time since February 17, 2000.

21 17. This action is brought, and may properly be maintained, as a class action under
22 Code of Civil Procedure § 382 because there is a well-defined community of interest in the
23 litigation and the proposed class is easily ascertainable. This action satisfies the predominance,
24 typicality, numerosity, superiority, and adequacy requirements of these provisions.

25 (a) Numerosity: The plaintiff class is so numerous that the individual
26 joinder of all members is impractical under the circumstances of this case. While the exact
27 number of class members is unknown to Plaintiffs at this time, Plaintiffs are informed and believe
28

1 and thereon allege that, in California, over 1000 current and former employees of Defendants at
2 their stores in salaried Store Manager and Assistant Store Manager positions were not paid
3 overtime compensation for their work during the period covered by this action;

4 (b) Commonality: Common questions of law and fact exist as to all
5 members of the plaintiff class and predominate over any questions that affect only individual
6 members of the class. The common questions of law and fact include, but are not limited to:

7 (i) Whether Defendants' practice of not paying overtime pay to
8 employees who share common classifications, duties, responsibilities, and perform their common
9 duties in common retail settings, was unlawful;

10 (ii) Whether Defendants' policies and practices provide and/or
11 authorize meal and rest periods;

12 (iii) Whether former managers and assistant managers are
13 entitled to waiting time penalties pursuant to 203;

14 (iv) Whether Defendants provided adequate itemized wage
15 statements to the Class pursuant to Labor Code § 226;

16 (v) Whether Defendants violated Business and Professions
17 Code § 17200 by not paying overtime compensation to the class members;

18 (vi) Whether Defendants unlawfully computed wages of the
19 class members; and

20 (vii) Whether the common duties performed by the class qualify
21 as exempt duties or non-exempt duties.

22 (c) Typicality: Plaintiffs' claims are typical of the claims of the class
23 members. Plaintiffs and the members of the class sustained damages arising out of Defendants'
24 common practice of failing to pay overtime compensation. As managers, Plaintiffs, like the other
25 class members, routinely worked more than 40 hours per week, and more than 8 hours per day,
26 during the period covered by this action, and were treated and classified by Defendants as exempt
27 from overtime pay requirements. Plaintiffs performed the same duties and had the same
28 responsibilities as the other class members.

1 (d) Adequacy: Plaintiffs will fairly and adequately protect the interests
2 of the members of the class. Plaintiffs have no interest that is adverse to the interests of the other
3 class members.

4 (e) Superiority: A class action is superior to other available means for
5 the fair and efficient adjudication of this controversy. Because individual joinder of all members
6 of the class is impractical, class action treatment will permit a large number of similarly situated
7 persons to prosecute their common claims in a single forum simultaneously, efficiently, and
8 without unnecessary duplication of effort and expense that numerous individual actions would
9 engender. The expenses and burdens of individual litigation would make it difficult or impossible
10 for individual members of the class to redress the wrongs done to them, while important public
11 interests will be served by addressing the matter as a class action. The cost to and burden on the
12 court system of adjudication of individualized litigation would be substantial, and substantially
13 more than the costs and burdens of a class action. Class litigation would also prevent the
14 potential for inconsistent or contradictory judgments.

15 (f) Public Policy Considerations: When employers violate state wage
16 and hour laws as is the case here, current employees are often afraid to assert their rights out of
17 fear of direct or indirect retaliation. Former employees are fearful of bringing actions because
18 they perceive their former employers can frustrate their efforts to find future employment through
19 negative references and other means. Class actions provide the class members who are not
20 named in the complaint with a type of anonymity that allows for vindication of their rights.

21
22 **FIRST CAUSE OF ACTION**
23 **UNLAWFUL FAILURE TO PAY REQUIRED OVERTIME**
24 **(Wage Order Nos. 5-2000, 5-2001;**
25 **California Labor Code §§ 510, 1194, 1198)**

26 18. Plaintiffs incorporate by reference in this cause of action each allegation of
27 paragraphs 1 through 17 inclusive, as though fully set forth herein.

28 19. Pursuant to California Labor Code § 510, employees in California are entitled to
overtime pay after working eight (8) hours in a day and/or forty (40) hours in a week.

1 25. Under Labor Code §§ 201, 202, and 203, those Class Members who no longer
2 work for Defendants are also entitled to waiting time penalties for not having been paid overtime
3 compensation upon their separation from employment.

4
5 **THIRD CAUSE OF ACTION**
6 **FAILURE TO PROVIDE ITEMIZED WAGE STATEMENTS**
7 **(California Labor Code §§ 226)**

8 26. Plaintiffs incorporate by reference in this cause of action each allegation of
9 paragraphs 1 through 25 inclusive, as though fully set forth herein.

10 27. California Labor Code § 226(a) provides that, at the time of each payment of
11 wages, an employer shall provide each employee with a wage statement itemizing, among other
12 things, the total hours worked by the employee in the pay period.

13 28. California Labor Code § 226(e) provides that an employee suffering injury as a
14 result of a knowing and intentional failure by an employer to comply with Labor Code § 226(a) is
15 entitled to recover the greater of his or her actual damages or a penalty of \$50 for the initial pay
16 period in which a violation occurs and \$100 per employee for each violation in a subsequent pay
17 period (up to a maximum of \$4,000), in addition to attorneys fees and costs.

18 29. Defendants knowingly and intentionally failed to provide timely, accurate,
19 itemized wage statements to Plaintiffs and Class Members in accordance with Labor Code §226.
20 The statements provided to Plaintiffs and Class Members have not accurately reflected actual
21 gross wages earned, and the total hours worked by employees. Plaintiffs and the Class are
22 therefore entitled to the damages and penalties provided for under Labor Code § 226(e).

23 **FOURTH CAUSE OF ACTION**
24 **FAILURE TO PROVIDE REST BREAKS AND MEAL PERIODS**
25 **(California Labor Code §§ 226.7, 512**
26 **Wage Order No. 5)**

27 30. Plaintiffs incorporate by reference in this cause of action each allegation of
28 paragraphs 1 through 29 inclusive, as though fully set forth herein.

 31. California Labor Code § 226.7 prohibits any employer from requiring any
employee to work during any meal or rest period mandated by an applicable IWC wage order,

1 and provides that an employer which fails to provide an employee with a required rest break or
2 meal period shall pay that employee one additional hour of pay at the employee's regular rate of
3 compensation for each work day that the meal or rest period is not provided.

4 32. California Labor Code § 512 prohibits an employer from employing an employee
5 for a work period of more than five hours per day without providing the employee with a meal
6 period of not less than 30 minutes, or for a work period of more than 10 hours per day without
7 providing the employee with a second meal period of not less than 30 minutes.

8 33. Section 11 of Wage Order No. 5 provides in relevant part that:
9 No employer shall employ any person for a work period of more
10 than five (5) hours without a meal period of not less than 30
11 minutes, except that when a work period of not more than six (6)
12 hours will complete the day's work the meal period may be waived
13 by mutual consent of the employer and employee. Unless the
14 employee is relieved of all duty during a 30 minute meal period, the
15 meal period shall be considered an "on duty" meal period and
16 counted as time worked. An "on duty" meal period shall be
17 permitted only when the nature of the work prevents an employee
18 from being relieved of all duty and when by written agreement
19 between the parties an on-the-job paid meal period is agreed to. The
20 written agreement shall state that the employee may, in writing,
21 revoke the agreement at any time. If an employer fails to provide
22 an employee a meal period in accordance with the applicable
23 provisions of this Order, the employer shall pay the employee one
24 (1) hour of pay at the employee's regular rate of compensation for
25 each work day that the meal period is not provided.

26 34. Section 12 of Wage Order No. 5 provides in relevant part that:
27 Every employer shall authorize and permit all employees to take
28 rest periods, which insofar as practicable shall be in the middle of
each work period. The authorized rest period time shall be based on
the total hours worked daily at the rate of ten (10) minutes net rest
time per four (4) hours or major fraction thereof. However, a rest
period need not be authorized for employees whose total daily work
time is less than three and one-half (3 ½) hours. Authorized rest
period time shall be counted, as hours worked, for which there shall
be no deduction from wages. If an employer fails to provide an
employee a rest period in accordance with the applicable provisions
of this Order, the employer shall pay the employee one (1) hour of
pay at the employee's regular rate of compensation for each work
day that the rest period is not provided.

1 which the employee was underpaid in addition to any
2 amount sufficient to recover underpaid wages.

3 39. Defendants have violated the following provisions contained within Division 2,
4 Part 2, Chapter 1 of the California Labor Code: 510 (overtime), 512 (meal period requirements),
5 551 (right to day of rest), and 552 (number of days in work week). Plaintiffs seek to recover the
6 above-described penalties for said violations.

7 40. California Labor Code § 226.3 provides that any employer which violates Labor
8 Code § 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation
9 in an initial citation and one thousand dollars (\$1,000) per employee for each violation, in a
10 subsequent citation, “for which the employer fails to provide the employee a wage deduction
11 statement or fails to keep the records required in subdivision (a) of Section 226.” Among the
12 records which the employer is required to keep under Labor Code Section 226(a) are wage
13 statements reflecting total hours worked by each nonexempt employee.

14 41. Defendants have violated California Labor Code §§ 226(a) and 226.3 by failing to
15 maintain wage statements reflecting the hours worked by Plaintiffs and the Class. Plaintiffs seek
16 to recover the above-described penalties for said violations.

17 42. California Labor Code § 1198 provides in relevant part that “[t]he employment of
18 any employee for longer hours than those fixed by [the IWC wage order applicable to that
19 employee] or under conditions of labor prohibited by [such wage order] is unlawful.” Plaintiffs
20 seek penalties under Labor Code § 2699(e)(2) for Defendants’ violations of this section.

21
22 **SIXTH CAUSE OF ACTION**
23 **UNFAIR PRACTICE UNDER THE UNFAIR COMPETITION ACT**
(California Business and Professions Code §§ 17200-17208)

24 43. Plaintiffs incorporate by reference in this cause of action each allegation of
25 paragraphs 1 through 42 inclusive, as though fully set forth herein.

26 44. Defendants’ failure to pay overtime in violation of California law, as well as the
27 other statutory and regulatory violations alleged herein, constitute an unlawful business action
28 and practice in violation of Business and Professions Code § 17200 *et seq.*

1 I. That Defendants be ordered and enjoined to pay restitution to Plaintiffs and the
2 Class due to Defendants' unlawful activities, pursuant to Business and Professions Code §§
3 17200-05;

4 J. That Defendants further be enjoined to cease and desist from unlawful activities in
5 violation of California Business and Professions Code § 17200;

6 K. An award of reasonable attorneys' fees and costs pursuant to Code of Civil
7 Procedure § 1021.5, Labor Code § 1194, and/or other applicable law; and

8 L. For such other and further relief, in law or equity, as this Court may
9 deem appropriate and just.

10
11 DATED: February 17, 2004

THE LAW OFFICE OF PETER RUKIN

12
13 By: _____
14 PETER RUKIN

15
16 James M. Finberg
17 Steven M. Tindall
18 LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP

19
20 Attorneys for Individual and Representative Plaintiffs



Sort it Out

MISSING THE MARK ON EMPLOYEE CLASSIFICATION OR COMPENSATION WILL COST YOU

By

Mark E. Terman, Esq. &
Lin M. Meyer, Esq.

PERSONAL BANKERS for Bank of America's wealthiest clients settled for \$22 million. Farmers Insurance Exchange claims adjusters were awarded more than \$90 million. Starbucks, PacBell and RadioShack "working" managers are poised to receive millions.

To what do employees owe these sizable awards? Their employers failed to properly classify them as exempt or nonexempt from overtime pay. As a result, the employers find themselves saddled with costs that include up to four years of unpaid wages—plus interest, statutory penalties and attorney fees.

Employer misclassifications of employees can quickly erupt into class action lawsuits sparked by just one disgruntled former or current employee. California and federal laws are onerous in this area, and both permit personal liability upon the officers and managers who controlled the decision not to pay overtime.

CONSIDER YOURSELF WARNED

Employers who look to others in their industry and rationalize, "They don't comply, so I won't either" or "Our industry is too important to the state to be a target" should beware.

Over the past several years, California's Department of Industrial Relations, the federal Department of Labor and employee-side class action law firms have targeted working managers in a variety of industries—and it's not letting up.

The legal profession once perceived the work performed by paralegals to be exempt. Yet in 1998, the DOL said that paralegals more appropriately fit into the category of nonexempt employees who apply particular skills and knowledge in carrying out assignments, but do not regularly exercise independent judgment or discretion.

The lesson learned is that this is a risk employers can't ignore. Dealing with this risk means employers must analyze and satisfy two basic tests to determine whether or not an

employee is exempt. The tests, among other wage and hour rules, can be found in the California Industrial Welfare Commission wage orders posted at www.dir.ca.gov/IWC/WageOrderIndustries.htm.

Employers are required to conspicuously post applicable wage orders in the workplace. Wage Order 1, for example, applies to manufacturing companies. Wage Order 7 applies to mercantile businesses. Wage Order 4 applies to professional, technical, mechanical and clerical occupations, including professional service firms. The focus of this article is on the essence of Wage Order 4's overtime and exemption rules.

THE SALARY BASIS TEST

To satisfy the first test, the "salary basis" test, the employee, whether full or part time, must be paid at least a \$2,340 per month salary. This is based on the rule's twice minimum wage requirement. The salary amount cannot be deducted from or added to because of actual hours worked.

THE DUTIES TEST: THE ROOT OF MANY PROBLEMS

The duties test requires that employees routinely spend more than 50 percent of their working time performing exempt duties. Most of the overtime litigation is borne from this more difficult test.

Keep in mind that the law and the California Department of Industrial Relations state that job titles, large salaries and highly skilled work are not determinative. Instead, employers must analyze the work performed by each employee under professional, administrative and executive exemptions.

EXEMPT DUTIES UNDER THE PROFESSIONAL EXEMPTION

To be considered exempt from overtime pay under the professional exemption, employees must be:

- Licensed in California and spend more than 50 percent of their time engaged in the practice

of law, medicine, dentistry, optometry, architecture, engineering, teaching or accounting; or primarily engaged in an occupation commonly recognized as a learned or artistic profession as defined in Wage Order 4; and

- Customarily and regularly exercising discretion and independent judgment when performing that work.

Unlicensed professionals typically must satisfy one of the other exemptions.

EXEMPT DUTIES UNDER THE ADMINISTRATIVE EXEMPTION

For the administrative exemption, employees must spend more than 50 percent of their time performing the following duties:

- Office or non-manual work directly related to management policies or general business operations of the employer or its customers;
- Regularly exercise discretion and independent judgment; and
- Regularly and directly assists a proprietor, other executive or administrator; or perform, under only general supervision, specialized work requiring specialized training, experience or knowledge; or executes, under only general supervision, special assignments and tasks.

EXEMPT DUTIES UNDER THE EXECUTIVE EXEMPTION

The executive exemption applies to employees who spend more than 50 percent of their time performing the following duties:

- Managing a unit, department or enterprise of the employer;
- Directing or supervising the work of at least two full-time employees;
- Exercising authority to hire, fire, promote or change the status of other employees or their recommendations for such changes are given deference; and
- Customarily and regularly exercising discretion and independent judgment.

ANALYSIS OF THE DUTIES TESTS

Let's take a typical office-based business. The officers, department heads, certain licensed professionals and even the office manager probably are exempt. The receptionist and file clerks are clearly nonexempt. The secretarial, payroll, payables and receivables employees are typically nonexempt. But what about everyone in the middle, including those who may be called "managers" and have a high job responsibility and skills?

Determining if these employees are exempt is not easy. Job titles alone, the employee's stated desire to be treated as exempt and what others in your profession do have been made nearly irrelevant in overtime exemption litigation.

A helpful starting place in exemption analysis is to list, for all employees, how much of their working time is spent:

- Administering business affairs of the company or producing the goods or services that the company is in business to produce;
- Using their head more than their hands;
- Innovating or directing innovation more than merely applying sophisticated skills to technical work;
- Making the company's rules and policies more than following them;

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- Exercising authority to act outside the rules and policies rather than being disciplined for doing so;

- Supervising others and making supervisory decisions more than personally doing the work; and

- Being the trusted adviser to the client rather than just doing the client's work proficiently.

Do the five or six most important "exempt" job functions exceed 50 percent of the employee's time? Test your preliminary conclusions by asking: Do the five or six least important "nonexempt" job functions take more than 50 percent of the employee's time?

ALTERNATIVES TO LIMIT OVERTIME PAY

Since you always have nonexempt

employees, you have four primary ways to limit overtime pay exposure:

1. LIMITING OT

Manage your business so that employees do not work more, or much more, than the eight-hour-a-day threshold for daily overtime pay entitlement. For employers with seasonal workloads, this is easier said than done. During busy season, overtime is a given and layoffs during slow times may frustrate the ability to recruit and retain skilled employees.

2. MAKE-UP TIME

Make-up time exists under California law to encourage employers to permit employees to work up to three hours extra in one day to make up for work they missed because of a personal obligation in the same week.

These make-up hours are paid at straight time and not at the time and a half overtime rate if some basic rules are followed:

- The employee must request the time off and the make-up time in writing in advance and the employer may grant the request in its discretion;
- Make-up time must be taken in the same week in which the time off was taken;
- The employer cannot solicit employees to ask for make-up time to avoid overtime pay; and
- The employer pays overtime on hours worked in a week in excess of 40 anyway.

3. ALTERNATIVE WORK SCHEDULES

On a two-thirds secret vote of employees in a work unit, an alternate work schedule (AWS) can be adopted that permits employees to work longer days at straight time pay in exchange for fewer days in a work week. For AWS purposes, "work unit" means employees in a readily identifiable group, such as a division, a department, a job classification, a shift, a separate physical location or a recognized subdivision of one of those groups. An AWS must have a straight time maximum of 10 hours in one day and 40 in one week.

Among several AWS rules contained in the wage orders, the employer must:

- Report results to the Department of Industrial Relations within 30 days of the vote;
- Provide reasonable accommodation to employees who are unable to work the AWS;
- Conduct a secret repeal vote on petition of one-third of affected employees and then repeal the AWS if two-thirds of the employees vote to repeal;
- Pay daily overtime in any day that the employer requires an employee to work less hours than the AWS, but more than eight hours; and
- Not reduce the regular rate of pay as a result of adoption, repeal or nullification of an AWS.

In addition, employers are permitted to give new employees who are unable to work the AWS an eight-hour schedule. Finally, certain AWS in effect July 1, 1999 are exempt from some of these rules if the work schedule complied with prior wage orders.

4. COMP TIME-OFF

A make-up time program can help employers manage overtime exposure in a given week. An AWS basically recasts work week hours to possibly improve work efficiency and morale, while protecting against overtime exposure. Yet, neither of these methods give employers the flexibility to limit overtime pay, normalize payroll expense over the course of a year, and have employees available or on paid time off depending on seasonal workloads.

In lieu of overtime pay, some employers use statutory compensatory time off (CTO) programs to “bank” extra hours worked during busy times, while paid time off is given during slower times. However, the Legislature intended CTO law to be difficult to comply with because CTO is a form of compensation deferral that is inconsistent with basic labor rules that require employers to pay employees for work in regular payrolls when or shortly after the work is done.

Both California and stricter federal rules apply. Some say that it is nearly impossible to leap through all the required flaming compliance hoops and not get burned.

The Federal Fair Labor Standards Act (FLSA) essentially bans CTO for nonexempt employees who do not work for the government, although in some cases the FLSA permits CTO accrual and use within a two-week period. The FLSA applies to:

- Employees who are engaged in commerce or the production of goods for commerce; and
- Employers with at least \$500,000 annual revenue and have employees engaged in commerce or in the production of goods for commerce, or who handle, sell or work on goods or materials that have been moved in or produced for commerce.

The interstate commerce analysis is easier for vessel and marine equipment builders, electrical power suppliers and companies that ship their products or provide services across state lines. They are typically FLSA governed.

The analysis can be tricky for others since “commerce” includes trade, transportation, transmission and communication directed outside the state. “Goods” includes tangible products, as well as written materials, such as brochures, newsletters and lawyers’ briefs that move in interstate or foreign commerce.

For example, a provider of professional services from a single California office who does little or no work for out-of-state clients and who does little or no out-of-state marketing may not be FLSA governed, while a provider with offices in multiple states probably is FLSA governed.

If the FLSA does not apply, California law permits CTO for nonexempt employees if all of the following conditions are met:

- The employer is not covered by one of five wage orders (i.e. manufacturing; canning, freezing, and preserving; public house-keeping; amusement and recreation; and agricultural, farm product preparation and post-harvest product handling);
- The employer and employee must sign a written agreement, or be subject to a collective bargaining agreement, permitting CTO before the work is performed;
- The employee can accrue a 240-hour maximum of CTO and overtime pay must be paid each payroll period after that;
 - The employee requests CTO in writing in lieu of overtime pay; and
 - The employee must be regularly scheduled to work no less than a 40-hour week.

Among the numerous rules affecting CTO program operation that employers frequently neglect is that CTO must be granted at the applicable overtime rate (i.e., 1.5 or two times hourly wage) of each overtime hour worked. For example, an employee who works two hours of overtime in a day must be credited three CTO hours.

The employer also must keep records of all CTO accrual and use. Employees

must be permitted to use CTO within a reasonable period after making a request to their employers as long as the CTO does not unduly disrupt the employer’s operations. If requested by the employee, the employer must pay overtime compensation in lieu of CTO that has accrued in the last two payroll periods. On termination of employment, unused CTO must be paid in full at the higher of the final wage or the employee’s average wage rate for the last three years.

CTO seems like an attractive option to manage OT pay and retain great employees. Yet, an employer needs an asbestos coat to avoid getting burned by all the rules that it may be breaking.

EVERYONE’S DOING IT IS NOT A DEFENSE

Anyone who ignores these rules or thinks they are easily applied is asking to be a defendant. If you are taken to court or the labor board on overtime issues, the employer has, what litigators call, the “burden of proof.”

Employers need experienced labor counsel or human resource professionals to effectively deal with these risks. 

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