

# California Labor Commissioner's Office



**State of California  
Gavin Newsom  
Governor**

# Mission of the California Labor Commissioner's Office

To ensure a just day's pay in every workplace in the State and promote economic justice through robust enforcement of labor laws.

By combating wage theft, protecting workers from retaliation, and educating the public, we put earned wages into workers' pockets and help level the playing field for law-abiding employers.



# Disclaimer

*This information is provided for general information only. None of the information provided here should be interpreted as providing legal advice or a separate attorney client relationship.*

*Applicability of the information discussed may differ in individual situations. You should not act on the information presented here without consulting an attorney about your particular situation.*



# Federal, California, or Local Law?



# Background on Residential Facilities

- California has six times more residential care facility operators than nursing home operators. There are currently 7,412 Residential Care Facilities for the Elderly (RCFEs).
- Adult Residential Facilities (ARFs) are residential homes for adults age 18-59 with mental health needs or who have physical or developmental disabilities and require or prefer assistance with care and supervision. There are currently 7,033 ARF facilities in CA.



# Wage and Hour Violations are Widespread

- ✓ From 2011 - 2019, the DOL has recovered \$6.8 million dollar in damages for residential care workers.
- ✓ Similarly, the Labor Commissioner has actively pursued violations in residential and adult care facilities, recovering millions of dollars in unpaid wages.
- ✓ From 2011-2019, caregivers have filed 526 wage theft claims against RCFES with the Labor Commissioner. Of those cases that went to hearing, workers were found to be owed \$2.5 million dollars.
- ✓ In-depth investigation by the press showed that of the 1,400 federal wage and hour cases in this industry, 35% of them were in California.



# California Minimum Wage Order

Schedule for California Minimum Wage rate 2017-2023.

Date	Minimum Wage for Employers with 25 Employees or Less	Minimum Wage for Employers with 26 Employees or More
January 1, 2019	\$11.00/hour	\$12.00/hour
January 1, 2020	\$12.00/hour	\$13.00/hour
January 1, 2021	\$13.00/hour	\$14.00/hour
January 1, 2022	\$14.00/hour	\$15.00/hour
January 1, 2023	\$15.50/hour	\$15.50/hour



[https://www.dir.ca.gov/dlse/faq\\_minimumwage.htm](https://www.dir.ca.gov/dlse/faq_minimumwage.htm)

# Meals and Lodging Credit

- Voluntary written agreement.
- No deduction for meals not received nor for lodging not used.
- **Meal** –Adequate well-balanced meal with a variety of wholesome nutritious foods.
- **Lodging**- Living accommodations for full time occupancy that are adequate, decent & sanitary, according to usual customary standards of living. No bed sharing.





# Meals and Lodging Credit

## 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:  For an employer who employs:	JANUARY 1, 2020		JANUARY 1, 2021		JANUARY 1, 2022		JANUARY 1, 2023
	26 or More Employees	25 or Fewer Employees	26 or More Employees	25 or Fewer Employees	26 or More Employees	25 or Fewer Employees	All Employers regardless of number of Employees
<b>LODGING</b>							
Room occupied alone	\$61.13 /week	\$56.43 /week	\$65.83 /week	\$61.13 /week	\$70.53 /week	\$65.83 /week	\$70.53 /week
Room shared	\$50.46 /week	\$46.58 /week	\$54.34 /week	\$50.46 /week	\$58.22 /week	\$54.34 /week	\$58.22 /week
Apartment — two thirds (2/3) of the ordinary rental value, and in no event more than:	\$734.21 /month	\$677.75 /month	\$790.67 /month	\$734.21 /month	\$847.12 /month	\$790.67 /month	\$847.12 /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:	\$1086.07 /month	\$1002.56 /month	\$1169.59 /month	\$1086.07 /month	\$1253.10 /month	\$1169.59 /month	\$1253.10 /month
<b>MEALS</b>							
Breakfast	\$4.70	\$4.34	\$5.06	\$4.70	\$5.42	\$5.06	\$5.42
Lunch	\$6.47	\$5.97	\$6.97	\$6.47	\$7.47	\$6.97	\$7.47
Dinner	\$8.68	\$8.01	\$9.35	\$8.68	\$10.02	\$9.35	\$10.02

(D) Meals evaluated, as part of the minimum wage, must be bona fide meals consistent with the employee's work shift.



# Hours Worked

The time during which an employee is subject to the control of an employer

- All the time suffered or permitted to work
- In residential facilities, the definition of “hours worked” is borrowed from federal law.



# Sleep Time

## Less than 24 hours duty

- Employee who is required to be on duty for less than 24 hours is working even if permitted to sleep or engage in personal activities when not busy.

## 24 hours duty or Live-in

- If required to be on duty for 24 hours or more, parties can agree to deduct sleep time and bona fide meal period from hours worked under certain circumstances.



# Sleep Time Deduction

- Reasonable sleep-time agreement entered into in advance (express or implied)
- No more than 8 hours deducted
- At least 5 hours of uninterrupted sleep per night.
- Paid for all sleep interruptions
- Type of quarters you must provide:
  - A) Employee resides on premises or spends at least 5 consecutive nights in week → private quarter in home-like environment.
  - B) 24-hour shifts → adequate sleeping facilities.



# Daily & Weekly Overtime

Hours worked over 8 hours in a workday  
or over 40 hours in a workweek

- **1-1/2 times the regular rate**
  - In excess of 8 hours up to 12 hours in a day
  - First 8 hours on the 7<sup>th</sup> consecutive day in a week
- **Double the regular rate**
  - In excess of 12 hours in a day
  - In excess of 8 hours on the 7<sup>th</sup> consecutive day



# Example of Overtime Calculation

Mon	Tue	Wed	Thu	Fri	Sat	Sun	Total
8	10	14	6	2	2	10	52
8 R	8 R	8 R	6 R	2 R	2 R		34 R
	2 OT	4 OT				8 OT	14 OT
		2 DT				2 DT	4 DT

Regular Rate (R): \$15 per hour  
 Overtime Rate (OT): \$22.50 per hour  
 Double Time Rate (DT): \$30 per hour  
 Workweek: Monday through Sunday

## Calculation:

34 R X \$15	= \$510
14 OT X \$22.50	= 315
4 DT X \$30	= <u>120</u>
Total Due	= \$945



# Regular Rate of Pay: Flat Rates

- Flat rates only cover regular pay, not overtime pay.
- Two examples:
  - Flat rate \$100 for 10 hr day
    - $\$100/8 \text{ hrs} = \$12.50/\text{hour}$  violates minimum wage and nothing for 2 hrs. overtime
  - Flat rate \$160 for 10 hr day →
    - $\$160/8 \text{ hrs} = \$20/\text{hr}$  for first 8 hrs, but still nothing for overtime.
    - Must additionally pay \$30/hr for 2 overtime hours, add \$60 to flat rate.



# Meal Periods

- 30 minute meal period must be provided when work period is more than five hours
- Must be completely relieved from duty
- Bona fide meal periods are not work hours and not compensable





# On-Duty Meal Periods

- Only when the nature of work prevents an employee from being relieved of all duty
- Written agreement between the parties which shall state that the employee may in writing revoke the agreement at any time.
- Counted as time worked and compensable



# 24-hour Residential Care Facilities

## Employees may be required to work On-Duty meal period

- Employees eat with the residents during the residents' meals and are provided with the same meal at no charge
- The employee is in sole charge of the residents and is provided with meal at no charge
- Right to off-duty meal period upon 30 days notice to employer. No more than one off-duty meal period every 2 weeks



# Rest Period

- Rest period in the middle of each work period based on total daily work hours
- Minimum 10 minutes rest time per 4 hours or major fraction thereof
- Counted as hours worked



# 24-hour Residential Care Facilities

Employee may be required to remain on the premises and maintain general supervision of residents during rest periods if employee is in sole charge of residents.

If rest break is interrupted to respond to the needs of residents, another rest period shall be authorized and permitted.



# Paid Sick Leave ( PSL)

## Accrual

- Accrue 1 hour of sick leave for every 30 hours of worked
- Employer may limit use at 24 hours or 3 days per year.
- Accrued PSL must carry over to the following year
- May be capped at 48 hours (or 6 days)

## Front Loaded

- Employer can provide 24 hours or 3 days at the beginning of each year
- No need to track accrual or carry over to next year

**Available PSL balance must be included on the Itemized wage statements or in a separate writing to be provided on pay day.**



# 2022 Supplemental Paid Sick Leave (SPSL)

- January 1, 2022 to December 31, 2022
- 26 or more employees
- Up to 80 hours of SPSL for COVID-19 related reasons

**40 hours** for isolation & quarantine, vaccines, and caring for a child whose school or place of care is closed

**40 additional** hours only when an employee, or family member for whom the employee provides care, tests positive for COVID-19.

- Number of SPSL hours used must be listed on the itemized wage statement separate from PSL



# Recordkeeping

- **Accurate records for each employee**
  - Personnel records: name, address, occupation
  - Time records: time in & out for each workday, split shift intervals & meal period
  - Payroll records: pay rate, total hours & wages paid for each pay period
- Itemized Wage Statements each pay day with paid sick leave accrual and use

**Required records must be kept on file  
for at least 3 years**



# Itemized Wage Statement (Pay Stub)

<b>SMITH AND COMPANY, INC.</b>		123 West Street Smalltown, CA 98765	
<b>EMPLOYEE</b>	<b>SOCIAL SECURITY NO.</b>	<b>PAY RATE</b>	<b>PAY PERIOD</b>
Johnson, Bob	XXX-XX-6789	18.00 regular 27.00 overtime	1/7/XX to 1/13/XX
<b>EARNINGS</b>	<b>HOURS</b>	<b>AMOUNT</b>	<b>DEDUCTIONS</b>
Regular	40.00	720.00	Federal W/H
Overtime	2.00	54.00	FICA
<b>GROSS EARNINGS:</b>		774.00	Medicare
<b>TOTAL DEDUCTED:</b>		213.29	CA State W/H
<b>NET EARNINGS:</b>		560.71	CA State DI
			401k
<b>SICK LEAVE:</b>	24.00 HOURS AVAILABLE		

Example itemized wage statement (pay stub) for a worker paid hourly.  
As required by Labor Code section 226(a).





# What recourse do employees have if they are owed wages?

- Employees can file a **wage claim** if their employer has failed to pay them.
- If an employer is violating multiple workers' rights, an individual (it need not be an employee) can file a **report of labor law violation**.
- If an employer has retaliated against a worker for exercising protected rights, the worker can file a **retaliation claim**.



# Labor Commissioner's Office Resources

Visit our Website: [www.dir.ca.gov/dlse](http://www.dir.ca.gov/dlse)

Call the toll-free information helpline at:  
833-LCO-INFO (833-526-4636)

Or contact our Business Engagement Program at  
[MakeItFair@dir.ca.gov](mailto:MakeItFair@dir.ca.gov)

