

Basics of Employment Law



Workers' Right to Minimum Wage



- CA Minimum Wage
 - \$15.50 per hour
 - Adjusted for inflation every year
 - \$16 per hour starting in 2024
- Federal Minimum Wage
 - \$7.25 per hour
- Local Minimum Wage
 - City of L.A. \$16.78, raised every July
- Promised Wage
 - Employer must pay the rate promised.



■ Minimum Wage

- You must get paid minimum wage even if you work by the piece or get tips
- For employees paid by piece rate, divide piece rate earnings by total productive hours, result must be at least minimum wage
- Non-productive hours under employer's control must be separately compensated at least at minimum wage – no averaging.
- Piece rate employees also get paid breaks and overtime.

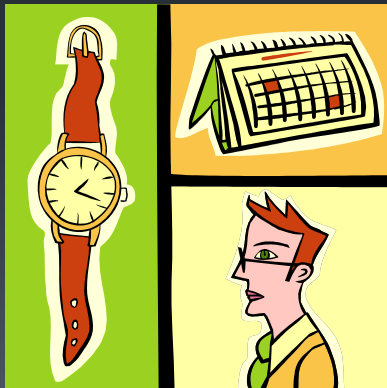
Minimum Wage and Contracts

- An employee may not waive the minimum wage requirement. Such a contract is illegal and unenforceable.

Overtime

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- You must be paid overtime (time and a 1/2 your regular hourly rate or pay)
 1. Over 8 hours of work in one day.
 2. Over 40 hours in one week.
 3. The first 8 hours of work on the 7th day consecutive day.



Double Time

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- You must be paid double-time for:
 1. All hours worked over 12 in one day.
 2. After the first 8 hours of work on the 7th consecutive work day.



Sick Time/ Vacation Time

- Your Boss must grant you *at least* one hour paid sick leave per 30 hours worked. Your Boss must allow you to use *at least* 24 hours of paid sick leave per year. (Starting in 2024, this will increase to 5 days or 40 hours per year.)
- Your Boss *IS NOT REQUIRED* to give you:
 - Holiday Pay
 - Vacation Pay
 - Extra Pay for working on holidays
- BUT: If your boss promises them - then boss must pay



Meal and Rest Breaks

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- **Paid** 10-minute rest break every 4 hours of work
- **Not Paid** 30-minute **uninterrupted** meal break every 5 hours of work

Exceptions:

- (1) 6 hours or less work day, waiver with mutual consent
- (2) On-duty meal break if the employee gives written consent, nature of the work requires such a break and can be revoked at any time



Breaks - Premiums

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- If your employer doesn't provide rest or meal breaks:
- Premium = 1 hour wages for each day you don't get your meal or rest break (max: 2 hourly premiums/day)
- Statute of Limitations:
3 years



Final Pay

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- Last day when laid off or fired
- Last day if you quit and give 3 days notice
- Within 3 days if you quit without notice
- Paycheck must also have unused vacation time, but not unused sick time

Waiting Time Penalty

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- 1 day's pay for each day late
- Up to 30 days

Exceptions to Wage/Hour Laws



- The rules regarding overtime and meal/rest breaks apply to private companies, not for:

■ Independent Contractors

- Employer cannot control the details of the work.
- Work must be outside the ordinary business of the employer.
- Worker must have an independent business.

■ Exempt Employees

- Executives/Managers
- High Level Administrators
- Artistic/Learned Professionals
- Personal Attendants (different overtime rules)
- Outside Salespersons
- Highly Compensated Computer Professionals

■ Collective Bargaining Agreement

Workers' Rights to Wages Regardless of Immigration Status

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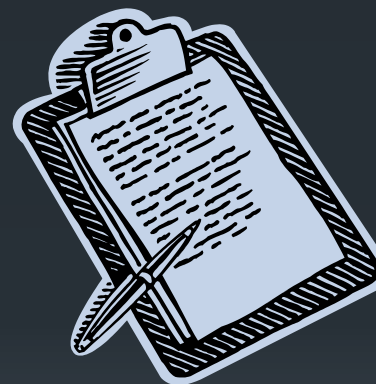


- State and federal wage/hour protections apply irrespective of immigration status)
- *Exceptions:* Remedies of reinstatement and back pay

How to Protect Your Rights

■ **Keep Written Records**

- Hours Worked
- Promises Made
- Problems
- Witnesses
- Name/contact info for other workers



How to Protect Your Rights

- Save Copies
 - Time Cards
 - Checks
 - Pay Stubs
 - Employee Manual
 - Union Contract
 - Hand-outs



How to Protect Your Rights

- Get information about your employer
 - Name of Company
 - Name(s) of supervisors and/or owners
 - Address
 - Phone
 - City License Numbers
 - Garment Labels
 - Day laborers: employers auto license



Recover Unpaid Wages:

- Demand payment: either write a letter or talk to your boss (preferably in a group)



Recover Unpaid Wages:

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- File a claim with the Labor Commissioner or Small Claims Court
- *Advantages and Disadvantages of Each Route*





Other Civil Rights at Work



At Will Employment

“At Will” Employment – Employer can discharge an employee at any time for any reason (Cal. Labor Code Section 2922)

Exceptions:

Anti-discrimination laws

Breach of contract (written or oral)

Breach of collective bargaining agreement

Breach of public policy grounded in statute or state constitution

Discrimination

Race	Sexual Orientation
Color	National Origin/Ancstry
Religion	Age (40+)
Sex (includes pregnancy)	Genetic Info

Marital Status
Disability
Leave Denial
Medical Condition

Disparate treatment
Disparate impact



TYPES OF DISCRIMINATION

- Hiring
- Firing
- Discipline
- Pay
- Benefits
- Accommodation
- Other

Harassment

What is *Sexual Harassment*?

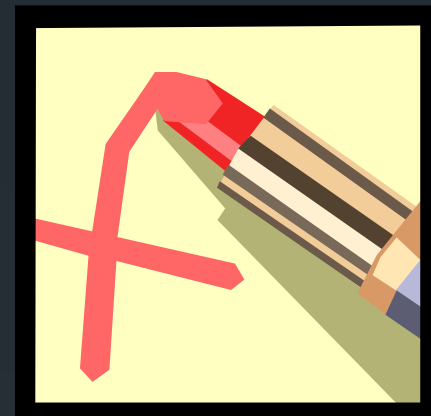
Unwanted and unwelcome
sex-based or of a sexual nature

Types of Sexual Harassment

1. Quid Pro Quo (“something for something”)
2. Hostile Work Environment (severe or pervasive)

Verbal Conduct Emails Innuendos Touching
Sexual Advances “Jokes” Leering Blocking path

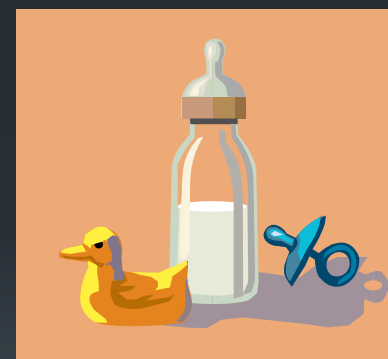
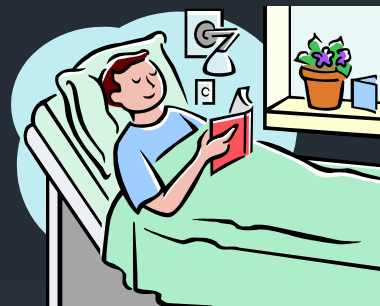
Harassment for other protected classes too



Leave Requirements –CFRA, PDL

- Employers with 50+ employees (in 75 mile radius) must allow eligible employees (1250 hours in last year) to take up to 12 weeks leave for:
 - Birth of a child
 - Placement of child in adoption/ foster care
 - Employee's own serious health condition
 - To Care for a parent, spouse, child, domestic partner with serious health condition

Pregnancy disability leave is 4 months unpaid (in addition)



Reasonable Accommodation

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Religious

Sincere religious belief interferes with job duties.

Disability (Mental, Physical, HIV, Cancer)

Enable to perform essential job functions.

“Interactive process” to determine whether a reasonable accommodation exists.

Pregnancy

Advice of healthcare provider – childbirth, pregnancy, and related medical conditions

Domestic Violence, Sexual Assault, Stalking

Time off, schedule changes, transfer, security, etc.

- Job restructuring/modification
- Job Reassignment
- Allowing time off
- Equipment

Language Rules

- Only when justified by business necessity
- Notify workers of circumstances and time when speaking only in English is required and of the consequences
- There is no alternative practice that would achieve the business goals just as effectively
- Not legal: “*No speaking Spanish during your breaks.*”



Retaliation



1. Protected activity
2. Adverse job action
3. Causal link

Employer aware of protected activity; and adverse action followed within a relatively short period in time.

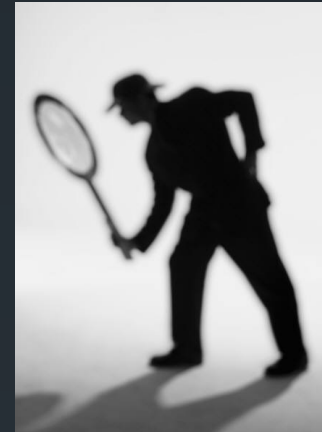
Privacy Issues

Do I have a right to privacy in the workplace?



A legally protected privacy interest;
A reasonable expectation of privacy; and
A serious invasion of the privacy interest.

Work computers and phones (email, facebook, etc)



Can a potential employer ask about my criminal record?

Employer may ask about criminal convictions but not arrests that did not lead to convictions.

5+ employees “**Ban the Box**” – employer can only ask for convictions information/background check AFTER extending conditional offer of employment. Must give a letter and opportunity to respond.



What about credit reports?

An employer shall not use a consumer credit report, with narrow exceptions.

Can a potential employer subject me to drug testing? Yes.

Employer can drug test job applicants.

Severance Pay

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Do I have the right to receive severance pay?

Exception #1: Severance pay required by an employment contract.

Exception #2: Severance pay required by a policy or practice.

Exception #3: Severance pay in exchange for a release of legal claims.

Exception #4: Mass layoff or plant closing without adequate notice.

Unemployment Benefits

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- Generally, California employees who become unemployed through no fault of their own are entitled to 6 months of benefits.
- Employee/Independent Contractor.
 - Only **Employees** are entitled to unemployment insurance, because their employers pay into the system.
 - **Misclassified** employees can ask for an audit.
- Laid Off.
 - If you are fired because your employer does not have enough work, or cannot afford to keep you, then you get unemployment.
- Voluntarily Quit.
 - If you quit your job, you can only get benefits if you can show:
 - You had **Good Cause** to quit; AND
 - You did everything reasonable to keep employment before quitting.
- Terminated for Reasons Other Than Misconduct.
 - **Misconduct** is a serious breach of the duties you owe your employer, either on purpose or with major carelessness.
 - If you are found to have committed misconduct, you can still become eligible for benefits by getting another job and earning just \$1000-\$2000.

How do Employees Protect Themselves

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- Document everything. Keep a journal. Keep all documentation of the alleged discriminatory conduct, including e-mails. Take pictures on your phone.
- Talk to other employees.
- Talk to a supervisor or management or Human Resources.
- Consult an attorney.
- File a complaint with the **DFEH (800) 884-1684**
Labor Commissioner (888) 275-9243
- File a lawsuit.



LAFLA's Contact Information:

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