

Guide to Wage-and-Hour Compliance in **California** for In-House Counsel

With some of the strictest labor laws in the country, California presents significant challenges that demand careful attention and proactive management from in-house lawyers. Among those are wage-and-hour laws, which, combined with federal statutes, impose stringent requirements on employee compensation, classification and breaks.

In-house counsel who stay informed and implement robust compliance measures will reduce the risk of costly litigation and penalties. Here's what you need to know.



Key areas of wage-and-hour compliance

1 Minimum wage and overtime

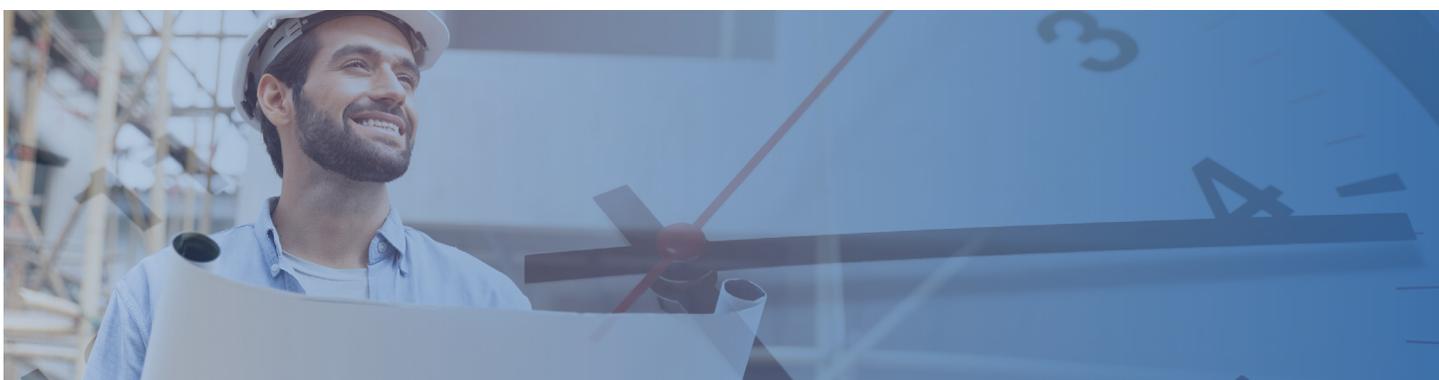
Most California workers must be paid at least the minimum wage of \$16 per hour, unless they're covered by higher minimums specific to an industry or [city](#). Fast food employees, for instance, must be paid at least \$20 an hour, while [certain healthcare facility employees](#) will be eligible for higher minimums from October 16, 2024.

Most employees also must receive overtime pay – 1.5 times their regular pay – if they work more than eight hours a day or 40 hours a week. Those who work more than 12 hours a day or more than eight hours on the seventh straight day of work must receive double their regular rate. Some jobs are exempt from these rules, meaning overtime doesn't apply, and others have special exceptions with different rules, such as agricultural workers.

2 Meal and rest breaks

California employees are generally entitled to the following breaks:

- A 30-minute unpaid meal break if they work more than five hours in a day
- An extra 30-minute unpaid meal break if they work more than 12 hours in a day
- A paid 10-minute rest break for every four hours they work



Some employees, such as domestic and farm workers, have different rules for meal and rest breaks. Companies with outdoor workers must [follow stricter rules](#) to prevent heat illness and allow employees to cool off in the shade.

3 Employee classification

Understanding the difference between exempt and nonexempt status is important, and it's different from classifying someone as an independent contractor or an employee.

Employees can be categorized as:

- Exempt – meaning they do not receive overtime pay
- Nonexempt – meaning they are entitled to overtime pay and must meet other labor requirements

In California, misclassifying an employee as exempt when they should be nonexempt can lead to expensive legal claims related to wages and working hours.

Whether an employee is classified as exempt or nonexempt depends on two main factors: their salary and the kind of work they do. Having a job title that says “exempt” or being on a salary doesn’t automatically make someone exempt. If employees don’t meet the specific requirements for exempt status, they will be considered nonexempt and must be paid overtime.



California law allows certain employees to be exempt from overtime pay if they meet specific requirements under Labor Code section 515:

- Employees must earn at least twice the state minimum wage for full-time work (this is a higher salary requirement than federal law, which holds that employees must be paid at least \$684 per week or \$35,568 per year).
- Their job should be in an executive, administrative or professional role.
- Their main tasks must involve this type of work (meaning more than half of their time must be spent on it).
- They need to regularly use their own judgment and discretion when doing their jobs.



4 Federal vs. state: Which standard applies?

Both state and federal laws apply to workers in California, and employers must follow both sets of rules.

When state and federal laws conflict, companies must follow the one that provides the most benefits to employees. California's overtime exemption rules must also be at least as protective as federal rules. The Fair Labor Standards Act (FLSA), a federal law, does not override California's wage laws, which usually offer more rights to employees in the state.

California's wage-and-hour laws apply to anyone performing work in the state, and some residents of other states who perform work in California for a California-based employer can pursue claims for overtime compensation.

When deciphering which laws to follow, here are some important points to remember:

- Charter counties, like Los Angeles County, can set their own employee pay rules and aren't required to follow state wage laws or Labor Code provisions.
- California public agencies also don't have to follow state wage laws unless there are specific rules saying they must.
- In general, public employees are not covered by state wage laws, except for certain jobs under specific Wage Orders.
- The Fair Labor Standards Act (FLSA) only applies if there is an employer-employee relationship. It does not cover independent contractors.

5 An employee has been misclassified: What now?

When it appears that an employee or group of employees has been misclassified, there are four key factors that a plaintiffs' attorney will evaluate before proceeding.

In-house counsel should be aware of these elements as they can impact the company's legal strategy and potential liabilities:

- Are there strong legal arguments for the misclassification?
- How credible is the client and are they prepared to be involved in the legal process or represent the class?
- What is the employer's financial situation, past legal issues and potential stance in a lawsuit?
- Is it possible to pursue a class action or representative lawsuit under the Labor Code Private Attorneys General Act of 2004?

Bear in mind that plaintiffs' lawyers might choose not to include claims under FLSA because California law offers similar or better protection, and adding a federal claim might not be worth the risk of having the case moved to federal court.

In other situations, plaintiffs' lawyers might file a claim under California's Unfair Competition Law (UCL) instead of the Labor Code. This is because the UCL claim can provide a good enough remedy, and the lawyer may want to avoid a jury trial, which is not allowed in UCL cases. UCL claims also have a four-year filing deadline, which provides an extra year compared to California's three-year deadline for overtime, meal and rest break claims.

It was previously common to file claims under the Labor Code Private Attorneys General Act of 2004 (PAGA) as they typically couldn't be forced into arbitration. However, the U.S. Supreme Court ruled in 2022 that individual PAGA claims can be sent to arbitration if the agreement allows for it. This means that when a plaintiff's individual claim is sent to arbitration, they can no longer pursue the broader representative claim under PAGA, leading to its dismissal.

Lower courts have since had different responses regarding the remaining PAGA claims when an individual claim goes to arbitration. Some courts dismiss the representative claims, while others allow them to continue, arguing that the employee still has the right to pursue them. This uncertainty may be clarified by the California Supreme Court, which will review a case to see if the U.S. Supreme Court's interpretation of PAGA was correct. PAGA cases are generally governed by a one-year statute of limitations.

6 What are the potential damages and penalties?

Calculating potential damages early on can help your company understand what might be at stake if the case goes to litigation.

Here are some key factors to consider as you assess financial exposure and develop your litigation strategy:

- Employee wage rates
- Hours worked per day or per week
- Full-time positions or full-time equivalents (i.e., two half-time employees who equal one full-time employee), for group or class litigation
- The total number of workdays or workweeks in the employment or class period



For example, the average employee compensation is \$50,000 per year in a California class action exempt status misclassification case. Most employees work an average of 55 hours per week with approximately 300 full-time equivalents in the position, and the relevant recovery period extends over four years under the applicable statute of limitations.



Using this data, you can perform the following calculation:

$40 \text{ hours per week} \times 52 \text{ weeks per year} = 2,080 \text{ hours per year}$

$\$50,000 \text{ (average compensation)} / 2080 = \text{regular hourly rate of } \$24^* \text{ (and time-and-a-half overtime rate of } \$36)$

$55 \text{ hours minus } 40 \text{ hours} = 15 \text{ hours per week overtime}$

$\$36 \times 15 \text{ hours per week overtime} = \$540 \text{ overtime owed per week per employee}$

$\$540 \times 50 \text{ weeks worked per year} = \$27,000 \text{ overtime owed per employee annually}$

$\$27,000 \times 300 \text{ employees} = \$8.1 \text{ million per year; and } \$8.1 \text{ million} \times \text{four-year liability period} =$

\$32.4 million

*Note that the way hourly rates are calculated for misclassification cases differs for California state law and federal law (FLSA).

For California state law claims, you find the hourly rate by dividing the employee's weekly salary by 40 hours (or if you use the yearly salary, divide it by 2,080 hours). For FLSA claims, calculate the hourly rate by dividing the employee's weekly salary by the actual number of hours they worked that week. This means that the FLSA rate is usually lower than the rate calculated under California law.

California law includes several penalties for employers who break wage-and-hour laws. They include:

Minimum wage violations: Employers that don't pay the minimum wage face penalties of \$100 for each employee affected for the first violation and \$250 for each employee for any violations after that. They also must pay back the owed wages and could face additional penalties for late payments if an employee has quit or been fired.

Wage order violations: Employers that break any rules in a wage order owe \$50 for each employee affected for the first violation and \$100 per employee for later violations.

PAGA penalties: For certain labor law violations that don't have specific penalties, PAGA allows for fines ranging from \$100 to \$500 per violation or per employee. Employees can also recover attorney fees and costs, including a \$75 filing fee for PAGA claims.

Misdemeanor charges: Employers that fail to pay minimum wage or overtime can be charged with a misdemeanor, which may result in a fine of at least \$100, at least 30 days in jail, or both.

Additional costs: Consider potential costs like attorney fees, interest and litigation expenses that may arise when trying to recover unpaid wages or overtime.

7 Best practices for in-house counsel

As in-house counsel plays a critical role in navigating wage-and-hour compliance, adopting best practices not only mitigates risk but also strengthens morale and productivity. Employees will feel valued and respected when they know their rights regarding pay and working hours are upheld, and they're more likely to stay and put forth their best efforts when they feel their employer cares about their well-being.

These strategies can ensure your company operates within the legal framework while also fostering a fair and equitable work environment.



Regular audits of wage-and-hour policies

Regularly audit payroll practices, timekeeping systems and employee classifications to uncover discrepancies or areas of noncompliance. This can involve checking for correct wage payments, proper classification of employees as exempt or nonexempt, and adherence to break and meal period regulations. Use reliable timekeeping systems to track hours worked, overtime and breaks, and ensure payroll records are accurate and well-maintained.

Review company policies related to overtime, breaks and time tracking to ensure they align with current laws. If any policies are outdated or unclear, revise them before they create misunderstandings or disputes. Analyzing past wage-and-hour claims or disputes can also help you spot any recurring issues that need to be addressed.

Train management and HR staff

Knowledgeable staff are less likely to make mistakes that could lead to litigation. Provide regular training on wage-and-hour laws so that all employees involved in payroll and HR practices understand their obligations and the potential risks of noncompliance.



Stay informed on evolving wage-and-hour laws

Wage-and-hour compliance is an ongoing priority for in-house counsel in California, where labor laws are frequently updated and reinterpreted. Beyond financial impact, wage-and-hour disputes can harm a company's reputation, disrupt operations and lower employee morale.

CEB's [Employment Law Practice Guide](#) delves deeper into wage-and-hour considerations, covering common challenges and practical strategies, including how to determine an [employee's exempt status](#), how to [assess the merits](#) of a case and what evidence employers [need to provide](#) in misclassification cases.



Find out how CEB can assist with compliance issues by [scheduling a demo](#) – and check out these [frequently asked questions](#).



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