

# CALIFORNIA EMPLOYMENT LAW Wage Payment Requirements



Several federal laws regulate wage payments, including the Fair Labor Standards Act (FLSA), the Davis-Bacon Act and the Service Contract Act. California law also imposes state wage payment requirements. When federal and state laws are different, the law that is more favorable to the employee will apply.

The [Division of Labor Standards Enforcement](#) (DLSE), part of the California Department of Industrial Relations, enforces wage payment standards throughout the state.

## STATE RESOURCES

### California Department of Industrial Relations

<https://www.dir.ca.gov/dlse/dlseWagesAndHours.html>

### Publications

The DIR has published the following materials regarding wage and hour laws in the state:

- [Wage orders](#)
- [Time, manner and payment of wages](#)
- [Prevailing wage](#)

### Poster

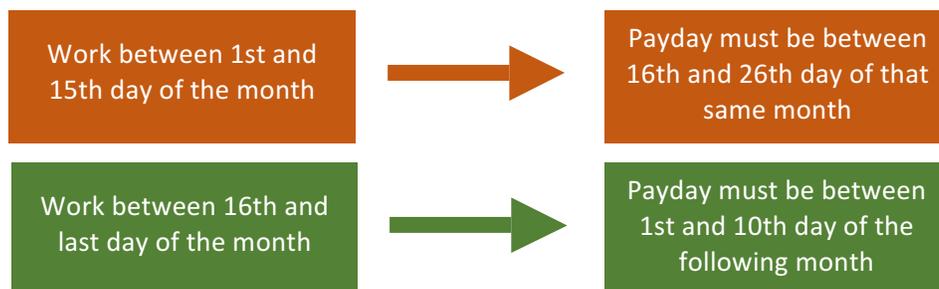
Employers can use this DIT model [poster](#) to satisfy their posting requirements.

## METHOD OF PAYMENT

California law requires employers to pay wages in lawful United States currency with cash, check, direct deposit (requires voluntary employee authorization), pay card (such as a pre-paid debit card) or any other means of payment that pose no cost to the employee.

## FREQUENCY OF PAYMENT

Employers must pay employee wages **at least twice per month**, on established, regular paydays.



Employers are permitted to pay wages at earlier days or at more frequent intervals.

## EXCEPTIONS

Frequency-of-payment regulations do not apply to all types of wages. For example overtime wages must be paid by the following regular period's payday and wages paid due to layoff, temporary work, employee resignation and commissions may be paid at different times.

In addition, certain employees are exempt, including:

- Salaried executive, administrative and professional employees covered by the FLSA (may be paid once per month, on or before the 26th day of the month during which

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the labor was performed if the entire month's salaries, including the unearned portion between the date of payment and the last day of the month, are paid at that time);

- Employees covered by a valid collective bargaining agreement;
- Employees paid on a weekly basis;
- Licensed vehicle dealer employees (may be paid once per month on a day designated in advance by their employers);
- Domestic and agricultural employees (may be paid once per month on a previously determined payday, if they receive board and lodging from their employers; paydays may not be more than 31 days apart). "Agricultural employees" includes individuals who work with crops, vineyards, stock and poultry. However, those employed by farm labor contractors do not qualify for this exception. Farm labor contractors must pay wages at least once per week.

### REGULAR PAY DAY NOTICE

California law requires employers to post a notice, conspicuously and in a place where employees frequently pass by and can see it, indicating the date, time and place of payment (if applicable). Failure to post this notice will be considered prima facie evidence of a wage payment violation.

### PAYROLL DEPOSIT

Employers in the following industries are required to maintain a deposit in a bank or other financial institution of sufficient size and liquidity to cover all of their payroll obligations:

- Mining (except for petroleum, persons with a free and unencumbered title to the property and partners of a mining partnership);
- Logging (logging and sawmill operation contractors, except for persons with a free and unencumbered title to the property);
- Door-to-door selling or telephone solicitation; and
- Theatrical enterprises (except persons with a free and unencumbered title to the property on which the theatrical enterprise is produced). A theatrical enterprise is the production of any circus, vaudeville, carnival, revues, variety shows, musical comedies, operettas, opera, drama, theatrical, endurance contest, walkathon, marathon, derby or other entertainments, exhibitions or performances.

Employers subject to the payroll deposit requirement must display a notice that indicates the name and address of the bank or trust company that holds the payroll deposit. Failure to display this information in a conspicuous place will be considered prima facie evidence of a violation.

### DISPUTED WAGES

If a dispute over the amount of wages due to an employee arises, employers must pay any undisputed amount according to the requirements described above. An employee that accepts undisputed wages does not waive any right to pursue collecting the disputed portion.

If the DLSE determines any wages are owed to the employee, it will issue a notification to the employer. Employers must pay those wages within 10 days of receiving a notification. Employers that are able but willfully fail to pay these wages within the 10-day period may be required to pay **three times the amount of any damages**, in addition to any other applicable penalty.

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### LAST PAYMENT OF WAGES

Unless a valid collective bargaining agreement applies, the table below outlines the requirements for paying an employee's last wages.

<b>Discharge</b>	<ul style="list-style-type: none"><li>• At the time of discharge</li></ul>
<b>Resignation*</b>	<ul style="list-style-type: none"><li>• At least 72 hours' notice: at the time of resignation</li><li>• No notice: no later than 72 hours after resignation</li><li>• *Does not include agreements to work for a definite term</li></ul>
<b>Layoff</b>	<ul style="list-style-type: none"><li>• Employment in oil drilling industry: no later than 24 hours after layoff (excluding weekends and holidays)</li><li>• Employment in canning, curing or drying perishable fruit, fish or vegetables: no later than 72 hours after layoff</li></ul>
<b>Any Reason</b>	<ul style="list-style-type: none"><li>• Employment in motion picture production or broadcasting</li><li>• By the next regular payday</li></ul>

When calculating an employee's last wages, employers must include any unused vacation time and other vested employment benefits. In general, an employee's last wages may be paid by mail, if the employee requests it and provides a mailing address. Payments that are mailed must be postmarked within the required payment period.

### WITHHOLDINGS AND DEDUCTIONS

Employers may not withhold an employee's wages (in whole or in part), unless the withholding or deduction is **authorized** (by law or by the employee) **in writing**.

Common deductions authorized by law include taxes, union dues, FICA contributions, garnishments and court-ordered deductions (such as child support). Common deductions authorized by employees include funds for employee participation in hospitalization and medical insurance plans, savings plans and deposits to financial institutions, stock purchases, charitable donations, retirement plans, supplemental retirement plans, loan payments, loan or wage advances, employer goods or services and employer equipment or property. These authorizations must be made through a valid and legal agreement.

Employers must record each withholding with accuracy. In general, wage deductions and withholdings cannot reduce an employee's gross wages below the minimum wage rate, unless authorized by law. Employers may not derive any financial gain from wage deductions.

### WAGE ASSIGNMENTS

A wage assignment occurs when an individual gives another party the right to collect his or her future wages. Wage assignments do not include deductions made at the employee's request for:

- Life, retirement, disability or unemployment insurance premiums;
- Taxes owed by the employee;
- Contributions to death, retirement, disability, unemployment or other benefit funds, plans or systems;
- Employer goods or services; or
- Charitable, educational, patriotic or similar purposes.

This guide is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. It is provided for general informational purposes only. Readers should contact legal counsel for legal advice.

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Valid wage assignments must be made in writing and signed by the wage earner, and must include written statements from the employee specifying:

- His or her marital status;
- Whether he or she is an adult; and
- That no other assignment exists in connection with the same transaction.

Assignments made by a married person must include either the spouse's written consent or a written statement that the spouses are legally separated or divorced and living separately. Assignments made by a minor must include a parent or guardian's written consent.

A notarized copy of the assignment must be filed with the employer. Employers may rely on the employee's statements in the assignment without incurring any liability, and without having to verify whether they are true. When making a wage assignment, an employee may not:

- Assign more than **50 percent** of his or her wages;
- Assign wages while an earnings withholding order is in force;
- Have more than one wage assignment in force; or
- Assign wages that they have not yet earned, unless the assignment is made to cover for life necessities (certain restrictions may apply).

Wage assignments may be revoked at any time.

### WAGE STATEMENTS

Employers must provide each employee with an itemized wage statement at the time wages are paid. The itemized wage statement must show:

- Gross wages earned;
- The employee's applicable wage rate (or rates);
- The number of hours the employee worked for each applicable rate;
- The total number of hours worked (unless the employee is salaried and is exempt from overtime wage payment provisions);
- The number of piece-rate units earned and any applicable piece rate, if the employee is paid on a piece-rate basis;
- All withholdings and deductions for that pay period (must be printed in indelible ink);
- Net wages earned;
- The inclusive dates of the pay period;
- The employee's name and the last four digits of his or her Social Security (or other identification) number; and
- The employer's name and address.

Employers must keep copies of these records for **at least three years**, and must allow current and former employees to inspect or copy their own statements **within 21 days of receiving a request**. Employers may take reasonable steps to protect the identity of a current or former employee. Employees are responsible for the cost of copying their statements.

### PENALTIES

Employers that violate California's wage payment laws may be subject to the criminal, civil and administrative penalties described below. Usually, these sanctions are imposed in addition to applicable court costs, reasonable attorneys' fees and any enforcement expenses.

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### CRIMINAL PENALTIES

Wage payment violations may result in misdemeanor charges, punishable by a fine, imprisonment or both. Possible sanctions depend on the type of violation.

Violation	Fine	Imprisonment
General failure to follow wage payment requirements	Up to \$1,000	Up to six months
Failure to post a regular pay day notice	Up to \$1,000	Up to six months
Failure to maintain a required payroll deposit	Up to \$1,000	Up to six months
Willfully refusing to pay wages that the employer is able to pay	Up to \$1,000	Up to six months
Willfully refusing to pay an employee's last wages*	Between \$1,000 and \$10,000 per offense if unpaid wages are \$1,000 or less	Up to six months if unpaid wages are \$1,000 or less
	Between \$10,000 and \$20,000 per offense if unpaid wages are more than \$1,000	Up to one year if unpaid wages are more than \$1,000
General failure to follow wage statement requirements (intentionally and with knowledge)**	Up to \$1,000	Up to one year
Falsely denying the amount or validity of an employee's wages with the intent to: <ul style="list-style-type: none"> <li>Secure any discount on the amount of wages due; or</li> <li>Annoy, harass, oppress, hinder, delay or defraud the employee</li> </ul>	Up to \$1,000	Up to six months
Unlawfully withholding or deducting from employee wages	Up to \$1,000	Up to six months
Failure to remit any withheld or deducted funds to their intended recipient (willful or with intent to defraud)	Up to \$1,000	Up to six months for a total of unpaid wages below or equal to \$500
		Up to one year for a total of unpaid wages greater than \$500
Knowing and intentional violations of wage statement requirements	Up to \$1,000	Up to six months

*\*If the amount of unpaid wages is not more than \$1,000, only one penalty will apply (fine or imprisonment). Each failure to provide an employee's last wages is a separate offense. However, the DLSE will consider the aggregate total amount of unpaid wages to determine the level of fine and imprisonment.*

*\*\* State law exempts employers from this penalty, if they can show that the violation was an isolated occurrence and an unintentional payroll error due to a clerical or inadvertent mistake.*

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### CIVIL PENALTIES

Employers that fail to pay wages as required, or unlawfully withhold wages due, will be fined as follows:

Violation	Sanctions
Willful or intentional failure to follow withholding and deduction requirements	An order to deliver all unpaid wages plus interest and: <ul style="list-style-type: none"> <li>• <b>\$100</b> for each initial violation; or</li> <li>• <b>\$200 plus 25 percent</b> of the amount unlawfully withheld for each subsequent violation.</li> </ul>
Failure to follow last payment of wages requirements	An fine equal to up to the sum the employer would have paid the employee for <b>30 days of work</b> . However, employees cannot enforce this penalty for the number of days they are unreachable (they avoid or refuse to accept full payment).
Failure to follow wage statement requirements (intentionally and with knowledge)	A <b>fine of between \$250 and \$1,000</b> per affected employee and up to \$4,000 in actual employee damages. State law exempts employers from this penalty, if they can show that the violation was an isolated occurrence and an unintentional payroll error due to a clerical or inadvertent mistake.
Failure to allow a current or former employee to examine or copy his or her own wage statements	A <b>\$750 fine</b> and <b>actual damages</b> (or \$50, if greater), for the initial pay period in which the violation occurs, plus \$100 per employee for each violation in a subsequent pay period (up to \$4,000).
Failure to provide a wage statement	<ul style="list-style-type: none"> <li>• <b>\$250 per employee</b> per violation, for an initial citation; and</li> <li>• <b>\$1,000 per employee</b> per violation, for each subsequent citation.</li> </ul> However, an employer may not be penalized for a first violation if it can show that the violation was due to a clerical error or inadvertent mistake.

### MORE INFORMATION

Contact Denesha Insurance Agency for more information on wage payment and work hour laws in California.