

Employee Rights Newsletter

The Most Common Employer Violations Entitling Employees to Back Pay
by Michael D. Singer

With many employers being out of compliance with California labor laws, employees should be aware if they are being subjected to illegal practices that entitle them to back pay. The most common violations are those involving the right to overtime, expense reimbursements, improper wage and commissions deductions, premium pay for unprovided rest and meal breaks, and other rights to minimum pay.

The following checklist of overtime, rest and meal break, and other minimum pay violations can be used to determine the right to back pay:

Overtime violations

Being classified as a salaried, overtime exempt employee when your duties do not qualify for exemption, such as most computer technology employees

Working in excess of eight hours per day or forty hours per week without being paid one and one half times your hourly rate for such time.

Working in excess of twelve hours per day or working seven straight days without being paid double your hourly rate for such time.

Working an “alternative workweek” schedule of four ten hour days or three twelve hour days without having agreed to this arrangement in a secret ballot election.

Working an “alternative workweek” without your employer having provided secret ballot election results within 30 days to the Division of Labor Statistics and Research.

Being classified as a salaried “manager” but spending more than half of your time doing non-managerial activities (e.g., cashiering, stocking, selling).

Being classified as a salaried “manager” but not supervising at least two employees.

Being classified under the overtime exemption for “administrators” but not able to make decisions without approval by a supervisor.

Being classified under the overtime exemption for administrators but not exercising discretion and independent judgement.

Being classified under the overtime exemption for “learned professionals” (doctors, lawyers, teachers, engineers) without having completed an advanced course of specialized academic education.

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Working as a salesperson off your employer's premises less than half of the time but not being paid overtime.

Working as a salesperson for commissions without earning a minimum or one and one half times minimum wage (currently \$7.25 per hour) and earning more than half of your income from bona fide commission.

Working on a "piece-rate" basis and not being paid overtime.

Being classified as an independent contractor where your employer controls most aspects of your work.

Expense Reimbursements and Improper Deductions

Failure to reimburse automobile, cell phone, marketing, and entertainment expenses incurred as part of performing job tasks.

Deducting wages for portions of salaries or bonuses paid to assistants or other employees.

Deducting commissions for third-party fees, transactions charges, rate or price differentials.

Rest and Meal Break Violations

Not receiving an uninterrupted paid ten minute rest period for every four hours or major fraction worked.

Not receiving an uninterrupted 30 minute meal period for minimum five hour job shifts during which you are not conducting any work whatsoever and are free to leave the job premises.

Not receiving a second meal period for shifts over ten hours.

Not receiving meal periods within the first five hours of work.

Combining rest periods or rest and meal periods.

Allowing employees to leave early instead of giving them either rest or meal periods.

Including the time spent to travel to a break site in the ten or 30-minute break period.

Combining bathroom breaks of less than ten minutes and calling this a paid rest break.

Employer deducting meal period time from paychecks for meal periods that were not taken.

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Working as a salesperson for commissions but not receiving paid ten minute rest periods for every four hours worked and a minimum 30-minute meal period during which you are relieved of all duties and permitted to leave the job premises.

Minimum Pay Violations

Reporting for a **full** day's employment and not being provided at least half of the scheduled shift or commensurate pay of not less than two nor more than four hours.

Reporting for work a second time in a single work day and not being provided at least two hours of work or minimum two hours pay.

Receiving less than the minimum wage (currently \$7.25 per hour) with the remainder made up by including tips.

Employer crediting tips against minimum wage.

Working a split shift without receiving a premium each day of one hour at minimum wage (reduced by the amount of hourly pay that exceeds minimum wage times the number of hours).

Not being paid for "on call" time.

Being asked to work any time whatsoever "off the clock" (without being paid), for example, working before clocking in or after clocking out, running errands on the way to work, putting on or taking off required uniforms, or recording hours by hand or entering time into a computer time-keeping program.

Being charged by your employer for cash shortages, uniforms, breakage, or theft that was not your fault.

Pooling tips with any amount retained by the employer.