

# EMPLOYMENT MATTERS

## NEW CALIFORNIA LAWS

### RULES REGARDING ITEMIZED WAGE STATEMENTS ARE CLARIFIED

Certain provisions of the California Labor Code impose strict requirements for the timely payment of wages. Other provisions of the Labor Code require that each employee be

the wage payment statute allows the employer to pay for the overtime on the payday for the following payroll period.

A recent amendment to the Labor Code clarifies that an

employer is in compliance with the itemized wage statement requirements if overtime hours worked in one pay period are itemized as “corrections” on the paystub for the next regular pay period. However, the amendment also

requires that “[a]ny corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.”

furnished an itemized wage statement at the time of each wage payment.

In addition to other information, the itemized wage statement must show the total hours worked by the employee. However, when an employee works overtime in one payroll period,



### INCREASE IN CALIFORNIA AND SAN FRANCISCO MINIMUM WAGE RATES

Effective January 1, 2007, the California minimum wage has increased from \$6.75 per hour to \$7.50 per hour. A second increase will take effect January 1, 2008, when the state’s minimum wage becomes \$8.00 per hour.

The city of San Francisco has its own minimum wage that applies to every employer that employs anyone to do at least 2 hours of work in any week within the geographic boundaries of the city of San Francisco. Effective January 1, 2007, San Francisco’s minimum wage is \$9.14 per hour.

### THE REQUIREMENTS OF CALIFORNIA’S SEXUAL HARASSMENT TRAINING LAW ARE CLARIFIED

Under a 2004 state law, all employers with 50 or more employees are required to provide supervisors with at least two hours of interactive, classroom training on the subject of sexual harassment. The law requires that covered supervisors receive their initial training within six months of becoming a supervisor, and they must

be retrained on the subject of sexual harassment at least once every two years beginning January 1, 2006. A recent amendment clarifies that the training is mandated only for supervisors *in California*.

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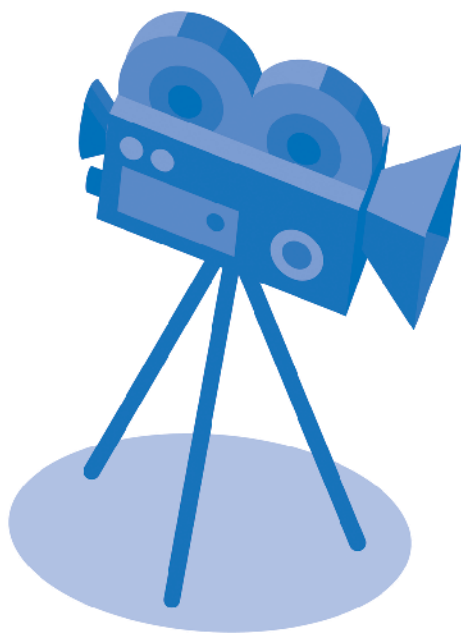
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## PAYMENT OF WAGES TO TERMINATED EMPLOYEES IN THE MOTION PICTURE INDUSTRY AND EMPLOYEES ENGAGED IN LIVE THEATRICAL EVENTS OR CONCERTS

The California Labor Code requires that terminated employees be paid all of their earned wages (including accrued and unused vacation) at the time of



termination. Employees who quit are entitled to receive all of the wages they are owed within 72 hours of giving notice that they are quitting. Employers who intentionally fail to pay wages at the time they are due to employees who quit or are terminated are subject to “waiting time” penalties equal to a day’s wages for each day that the final pay remains unpaid, up to a maximum of 30 days.

Until now, the only exceptions to the requirements for the payment of final wages have been for

employers in the following industries: (1) seasonal employment in the curing, canning, or drying of perishable fruit, fish, or vegetables; (2) employees in the motion picture industry; and (3) employees in the oil drilling business.

Effective January 1, 2007, a new exception has been added to the Labor Code for employees who work at a venue that hosts live theatrical or concert events and who are enrolled in and routinely dispatched to employment through a hiring

hall “or other system of regular short-term employment” that is established in accordance with a collective bargaining agreement. The new law provides that these employees and their employers may establish, by express terms in their collective bargaining agreement, time limits for the payment of wages to an employee who is discharged or laid off.

The California legislature has also amended the exception that applies to employees in the motion picture industry. Previ-

ously, that exception said that employees in the motion picture industry “whose unusual or uncertain terms of employment require special computation in order to ascertain the amount due,” could be paid their final wages the next regular payday in the case of a layoff, and within 24 hours in the case of a discharge. The new statute says that an employee in the motion picture industry whose job duties relate to or support the production or broadcasting of motion pictures or the facilities or equipment

used in the production or broadcasting of motion pictures, and who is hired for a period of limited duration to render services relating to or supporting a particular motion picture production or broadcasting project, or who is hired on the basis of one or more daily or weekly calls, can be paid his final wages the next regular payday after his employment terminates, whether by reason of discharge, layoff, resignation, completion of employment for a specified term, or otherwise.

## OVERTIME EXEMPTION ADDED TO THE LABOR CODE FOR PRIVATE SCHOOL TEACHERS

Effective January 1, 2007, section 515.8 has been added to the California Labor Code to provide that private school K-12 teachers are exempt from overtime if they meet the following requirements: (1) they must be primarily engaged in (spend more than 50% of their time) imparting knowledge to students, (2) they must customarily and regularly exercise discretion and independent judgment, (3) they must earn a monthly salary of at least two times the state minimum wage for full-time employment, and (4) they must either have a bachelor’s degree or higher or hold a teaching

credential from California or another state.





## NEW SAN FRANCISCO SICK LEAVE ORDINANCE: ALL EMPLOYEES WHO WORK IN SAN FRANCISCO ARE ENTITLED TO PAID SICK LEAVE

On November 7, 2006, San Francisco voters approved Measure F, a city ordinance that requires employers to provide paid sick leave to all employees who work in the geographic boundaries of San Francisco. The ordinance takes effect February 5, 2007.

### Who is covered?

This new ordinance applies to all employers who directly or indirectly employ or exercise control over the wages, hours, or working conditions of at least one person who is employed in the geographic boundaries of San Francisco. The ordinance covers all employees who work in the geographic boundaries of San Francisco, regardless of whether they are full-time, part-time, permanent, or temporary. It even applies to employees who work through a temporary services or staffing agency.

Employees who are working for the employer on or before February 5, 2007 must begin accruing sick leave under the ordinance on February 5, 2007. Employees hired after that date must begin accruing their sick leave within 90 days after they start working.

### How much paid sick leave must be provided?

The ordinance mandates that covered employees be provided at least one hour

of sick leave for every 30 hours worked. However, for small businesses (those with fewer than 10 employees), accrued sick leave can be capped at 40 hours (5 days). For all other employers, accrued sick leave can be capped at 72 hours (9 days).

The ordinance states that accrued sick leave carries over from year to year but is limited to the aforementioned caps. Also, paid sick leave only accrues in one-hour increments. There are no fractions of hours of accrued leave under the ordinance.

### Does the ordinance specify how employees must be allowed to use their sick leave?

Yes. Employees must be allowed to use all or any part of their sick leave for their own illnesses, injuries, medical care, treatment, or diagnosis, and also to care for any of the following people when they are ill or injured or receiving medical care, treatment, or diagnosis: a child, a parent, a legal guardian or ward, a sibling, a grandparent, a grandchild, a spouse, a

registered domestic partner, or a “designated person.” San Francisco employers should note that the provisions of this ordinance are much broader than current California state law. Current California law requires employers to allow employees to use up to one-half of their annual sick leave accrual for so-called “kin care.” Under the San Francisco



ordinance, an employee must be allowed to use all of his or her accrued sick leave to care for an ill relative or domestic partner. In addition, the San Francisco ordinance says that if an employee has no spouse or registered domestic partner, the employee may designate one person for whom the employee may use paid sick leave.

Employees must be given an opportunity to designate this person no later than the date on which they have accrued their first hour of sick leave

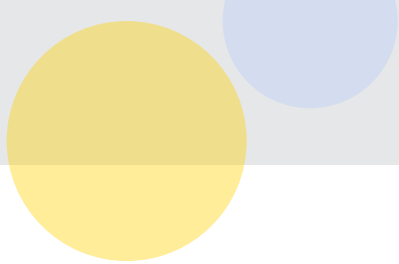
under the ordinance, and they must be given at least a 10-day window in which to make the designation. Employees also must be given an opportunity once a year (with a similar 10-day window) to change their designation.

The ordinance also says that an employer may not require, as a condition of an employee taking paid sick leave, that the employee search for or find a replacement worker to cover the hours during which the employee is on paid sick leave. However, employers may require “reasonable” notice of use of paid sick leave, and may take “reasonable measures” to verify that the use of paid sick leave is lawful. (The ordinance does not specify what would be considered “reasonable” notice or “reasonable measures.”)

### Do employers have to pay employees for their accrued sick leave when they quit or are terminated?

No. An employer is not required to provide financial or other reimbursement to an employee upon the employee’s termination, resignation, retirement, or other separation from employment for accrued paid sick leave that the employee has not used.

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## PAID SICK LEAVE IN SAN FRANCISCO, CONTINUED FROM PAGE 3

### Does the ordinance impose any other requirements?

Yes. The ordinance also prohibits employers or any other person from retaliating against any person for exercising any rights under the statute. The ordinance also makes it unlawful for an employer's absence control policy to count any paid sick leave taken under the provisions of the ordinance as an absence that may lead to or result in discipline, discharge, demo-

tion, suspension, or any other adverse action.

The ordinance directs the San Francisco Office of Labor Standards Enforcement to develop a poster informing employees of their rights under the ordinance. Employers are required to post the poster in a conspicuous place in the workplace.

Employers must also maintain records about paid sick leave for four

years. In the event of any dispute with an employee, if the employer has failed to maintain these records, he will be presumed to have violated the law.

### Are there any exceptions?

Yes. If an employer has a paid leave policy, such as a PTO policy that makes available an amount of paid leave that may be used for the same purposes as sick leave under the ordinance, the employer is not required

to provide additional paid sick leave.

Also, employees who are covered by a bona fide collective bargaining agreement can waive all or any part of the requirements of the ordinance in the collective bargaining agreement. However, any such waiver in a collective bargaining agreement must be in clear and unambiguous terms.

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