

# The Overtime Law in California

In California, the general overtime provisions are that a [nonexempt](#) employee 18 years of age or older, or any minor employee 16 or 17 years of age who is not required by law to attend school and is not otherwise prohibited by law from engaging in the subject work, shall not be employed more than eight hours in any [workday](#) or more than 40 hours in any [workweek](#) unless he or she receives one and one-half times his or her regular rate of pay for all hours worked over eight hours in any workday and over 40 hours in the workweek (or double time as specified below). Eight hours of labor constitutes a day's work, and employment beyond eight hours in any workday or more than six days in any workweek requires the employee to be compensated for the overtime at not less than:

1. One and one-half times the employee's regular rate of pay for all hours worked in excess of eight hours up to and including 12 hours in any workday, and for the first eight hours worked on the seventh consecutive day of work in a workweek; and
2. Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight on the seventh consecutive day of work in a workweek.

There are, however, a number of [exemptions](#) from the overtime law. An "exemption" means that the overtime law does not apply to a particular classification of employees. There are also a number of [exceptions](#) to the general overtime law stated above. An "exception" means that overtime is paid to a certain classification of employees on a basis that differs from that stated above. In other words, an exception is a special rule. (For special rules regarding overtime for agricultural workers, please see [Overtime for Agricultural Workers](#).)

## 1. Q. What is the "regular rate of pay," and how is it determined?

- A. Overtime is based on the regular rate of pay, which is the compensation you normally earn for the work you perform. The regular rate of pay includes a number of different kinds of remuneration, such as hourly earnings, salary, piecework earnings, and commissions. In no case may the regular rate of pay be less than the applicable [minimum wage](#).

Ordinarily, the hours to be used in computing the regular rate of pay may not exceed the legal maximum regular hours which, in most cases, is 8 hours per [workday](#), 40 hours per [workweek](#). This maximum may also be affected by the number of days one works in a workweek. It is important to determine what maximum is legal in each case. The alternate method of scheduling and computing overtime under most [Industrial Welfare Commission Wage Orders](#), based on an [alternative workweek schedule](#) of four 10-hour days or three 12-hour days does not affect the regular rate of pay, which in this case also would be computed on the basis of 40 hours per workweek.

The agreed upon regular hours must be used if they are *less than* the legal maximum regular hours. For example, if you work 32 to 38 hours each week, there is an agreed average workweek of 35 hours, and thirty-five hours is the figure used

to determine the regular rate of pay. However, in circumstances where the workweek is less than 40 hours, the law does not require payment of the overtime premium unless the employee works more than eight hours in a workday or more than 40 hours in a workweek. In other words, assuming you are employed under a policy that provides for a 35-hour workweek, the law does not require the employer to pay the overtime premium until after eight hours in a workday or 40 hours in a workweek. If you work more than 35 but fewer than 40 hours in a workweek, you will be entitled to be paid for the extra hours at your regular rate of pay unless you work over eight hours in a workday or 40 hours in a workweek.

The following are examples of how to calculate the regular rate of pay:

1. If you are paid on an **hourly basis**, that amount, including among other things, shift differentials and the per hour value of any non-hourly compensation the employee has earned, is the regular rate of pay.
2. If you are paid a **salary**, the regular rate is determined as follows:
  1. Multiply the monthly remuneration by 12 (months) to get the annual salary.
  2. Divide the annual salary by 52 (weeks) to get the weekly salary.
  3. Divide the weekly salary by the number of legal maximum regular hours (40) to get the regular hourly rate.
3. If you are paid by the **piece or commission**, either of the following methods may be used to determine the regular rate of pay for purposes of computing overtime:
  - The piece or commission rate is used as the regular rate and you are paid one and one-half this rate for production during the first four overtime hours in a workday, and double time for all hours worked beyond 12 in a workday; or
  - Divide your total earnings for the workweek, including earnings during overtime hours, by the total hours worked during the workweek, including the overtime hours. For each overtime hour worked you are entitled to an additional one-half the regular rate for hours requiring time and one-half, and to the full rate for hours requiring double time.

A **group rate for piece workers** is an acceptable method for computing the regular rate of pay. In using this method, the total number of pieces produced by the group is divided by the number of people in the group, with each person being paid accordingly. The regular rate for each worker is determined by dividing the pay received by the number of hours worked. The regular rate cannot be less than the minimum wage.

4. If you are paid **two or more rates** by the same employer during the workweek, the regular rate is the "weighted average" which is determined by dividing your total earnings for the workweek, including earnings during overtime hours, by the total hours worked during the workweek, including the

overtime hours. For example, if you work 32 hours at \$11.00 an hour and 10 hours during the same workweek at \$9.00 an hour, your weighted average (and thus the regular rate for that workweek) is \$10.52. This is calculated by adding your \$442 straight time pay for the workweek [(32hours x \$11.00/hour) + (10 hours x \$9.00/hour) = \$442] and dividing it by the 42 hours you worked.

**2. Q. If an employee works unauthorized overtime is the employer obligated to pay for it?**

- A.** Yes, California law requires that employers pay overtime, whether authorized or not, at the rate of one and one-half times the employee's regular rate of pay for all hours worked in excess of eight up to and including 12 hours in any workday, and for the first eight hours of work on the seventh consecutive day of work in a workweek, and double the employee's regular rate of pay for all hours worked in excess of 12 in any workday and for all hours worked in excess of eight on the seventh consecutive day of work in a workweek.

An employer can discipline an employee if he or she violates the employer's policy of working overtime without the required authorization. However, California's wage and hour laws require that the employee be compensated for any hours he or she is "suffered or permitted to work, whether or not required to do so." California case law holds that "suffer or permit" means work the employer knew or should have known about. Thus, an employee cannot deliberately prevent the employer from obtaining knowledge of the unauthorized overtime worked, and come back later to claim recovery but at the same time, an employer has the duty to keep accurate time records and must pay for work that the employer allows to be performed and to which the employer benefits.

**3. Q. Is a **bonus** included in the regular rate of pay for purposes of calculating overtime?**

- A.** Yes, if it is a nondiscretionary bonus. A nondiscretionary bonus is included in determining the regular rate of pay for computing overtime when the bonus is compensation for hours worked, production or proficiency, or as an incentive to remain employed by the same employer. Incentive bonuses include flat sum bonuses. To properly compute overtime on a flat sum bonus, the bonus must be divided by the maximum legal regular hours worked in the bonus-earning period, not by the total hours worked in the bonus-earning period. This calculation will produce the regular rate of pay on the flat sum bonus earnings. Overtime on a flat sum bonus must then be paid at 1.5 times or 2 times this regular rate calculation for any overtime hour worked in the bonus-earning period. Overtime on production bonuses, bonuses designed as an incentive for increased production for each hour worked are computed differently from flat sum bonuses. To compute overtime on a production bonus, the production bonus is divided by the total hours worked in the bonus earning period. This calculation will produce the regular rate of pay on the production bonus. Overtime on the production bonus is then paid at .5 times or 1 times the regular rate for all overtime hours worked in the bonus-earning period. Overtime on either type of bonus may be due on either a daily or weekly basis and

must be paid in the pay period following the end of the bonus-earning period.

Discretionary bonuses or sums paid as gifts at a holiday or other special occasion, such as a reward for good service, which are not measured by or dependent upon hours worked, production or efficiency, are not subject to be paid at overtime rates and thus are not included for purposes of determining the regular rate of pay.

**4. Q. Are any amounts excluded from the regular rate of pay?**

**A.** Yes, there are certain types of payments that are excluded from the regular rate of pay. Examples of some of the more common exclusions are sums paid as gifts for special occasions, expense reimbursements, payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, premium pay for Saturday, Sunday, or holiday work, and discretionary bonuses.

**5. Q. Are salaried employees entitled to overtime?**

**A.** It depends. A salaried employee must be paid overtime unless they meet the test for [exempt](#) status as defined by federal and state laws, or unless they are specifically [exempted](#) from overtime by the provisions of the California Labor Code or one of the [Industrial Welfare Commission Wage Orders](#) regulating wages, hours and working conditions.

**6. Q. Can an employer require an employee to work overtime?**

**A.** Yes, in general an employer may dictate the employee's work schedule and hours. Additionally, under most circumstances the employer may discipline an employee, up to and including termination, if the employee refuses to work scheduled overtime. However, an employer cannot discipline an employee for refusing to work on the 7th day in a workweek and is subject to a penalty for causing or inducing an employee to forego a day of rest. An employee who is fully apprised of the entitlement to rest may independently chooses not to take a day of rest.

**7. Q. Last week I worked Monday, Tuesday, Wednesday, Thursday and Saturday, eight hours each day. I was out ill all day Friday. For the workweek I was paid 48 hours at my regular hourly rate. Am I entitled to eight hours of overtime pay?**

**A.** No, you are not entitled to any overtime pay. Overtime is calculated based on hours actually worked, and you worked only 40 hours during the [workweek](#). Another example of where you get paid your regular wages but the time is not counted towards overtime is if you get paid for a holiday but do not work that day. In such a case, the time upon which the holiday pay is based does not count as [hours worked](#) for purposes of determining overtime because no work was performed.

**8. Q. When must I be paid for the overtime hours I work?**

- A. Overtime wages must be paid no later than the payday for the next regular payroll period after which the overtime wages were earned. ([Labor Code Section 204](#)) Only the payment of overtime wages may be delayed to the payday of the next following payroll period as the straight time wages must still be paid within the time set forth in the applicable Labor Code section in the pay period in which they were earned; or, in the case of employees who are paid on a weekly, biweekly, or semimonthly basis, not more than seven calendar days following the close of the payroll period.
9. Q. **Can an employee waive his or her right to overtime compensation?**
- A. No, California law requires that an employee be paid all overtime compensation notwithstanding any agreement to work for a lesser wage. Consequently, such an agreement or "waiver" will not prevent an employee from recovering the difference between the wages paid the employee and the overtime compensation he or she is entitled to receive. ([Labor Code Section 1194](#))
10. Q. **What can I do if my employer doesn't pay me my overtime wages?**
- A. You can either [file a wage claim](#) with the Division of Labor Standards Enforcement (the Labor Commissioner's Office), or you can file a lawsuit in court against your employer to recover the lost wages. Additionally, if you no longer work for this employer, you can make a claim for the waiting time penalty pursuant to [Labor Code Section 203](#).
11. Q. **What is the procedure that is followed after I file a wage claim?**
- A. After your claim is completed and filed with a local office of the Division of Labor Standards Enforcement (DLSE), it will be assigned to a Deputy Labor Commissioner who will determine, based upon the circumstances of the claim and information presented, how best to proceed. Initial action taken regarding the claim can be (i) referral to a conference, (ii) referral to a hearing, or (iii) dismissal of the claim.

If the decision is to hold a conference, the parties will be notified by mail of the date, time and place of the conference. The purpose of the conference is to determine the validity of the claim, and to see if the claim can be resolved without a hearing. If the claim is not resolved at the conference, the next step usually is to refer the matter to a hearing.

At the hearing the parties and witnesses testify under oath, and the proceeding is recorded. After the hearing, an Order, Decision, or Award (ODA) of the Labor Commissioner will be served on the parties.

Either party may appeal the ODA to a civil court of competent jurisdiction. The court will set the matter for trial, with each party having the opportunity to present evidence and witnesses. The evidence and testimony presented at the Labor Commissioner's hearing will not be the basis for the court's decision. In the case of an appeal by the employer, DLSE may represent an employee who is financially unable to afford counsel in the court proceeding.

See the [Policies and Procedures of Wage Claim Processing pamphlet](#) for more

details on the wage claim process procedure.

**12. Q. What can I do if I prevail at the hearing and the employer doesn't pay or appeal the Order, Decision, or Award?**

- A.** When the Order, Decision, or Award (ODA) is in the employee's favor and there is no appeal, and the employer does not pay the ODA, the Division of Labor Standards Enforcement (DLSE) will have the court enter the ODA as a judgment against the employer. This judgment has the same force and effect as any other money judgment entered by the court. Consequently, you may either try to collect the judgment yourself or you can request it to be assigned to DLSE.

**13. Q. What can I do if my employer retaliates against me because I told him/her I was going to file a wage claim for unpaid overtime?**

- A.** If your employer discriminates or retaliates against you in any manner whatsoever, for example, he discharges you because you file a wage claim or threaten to file a wage claim with the Labor Commissioner, you can [file a discrimination/retaliation complaint](#) with the Labor Commissioner's Office. In the alternative, you can file a lawsuit in court against your employer.