

LIVE-IN CAREGIVERS AND THE LABOR CODE:

NOT JUST A SLEEPOVER

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PROCEDURAL WAYS TO MAKE A CLAIM:

- ▶ A Claimant can file a complaint with the Labor Board.
- ▶ If the claim arises in Ventura County, then it's filed at:

California Department of Industrial Relations
411 East Canon Perdido, Room 3
Santa Barbara, CA 93101

- ▶ If in Los Angeles County there are numerous offices in Los Angeles. It depends on where the claim arises.

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PROCEDURAL WAYS TO MAKE A CLAIM:

- ▶ A civil action can be filed in the county where the claim arises.
- ▶ If a claim is brought to the Labor Board, there is no right to attorney's fees.
- ▶ Also, any decision by the Labor Commissioner can be appealed to the Superior Court, within ten days of the decision and award, but a posting of an undertaking or a bond has to be deposited with the clerk for the amount of the award. Labor Code §98.2
- ▶ If a civil action is filed attorney's fees can be awarded. Labor Code §§226, 203 and 2802

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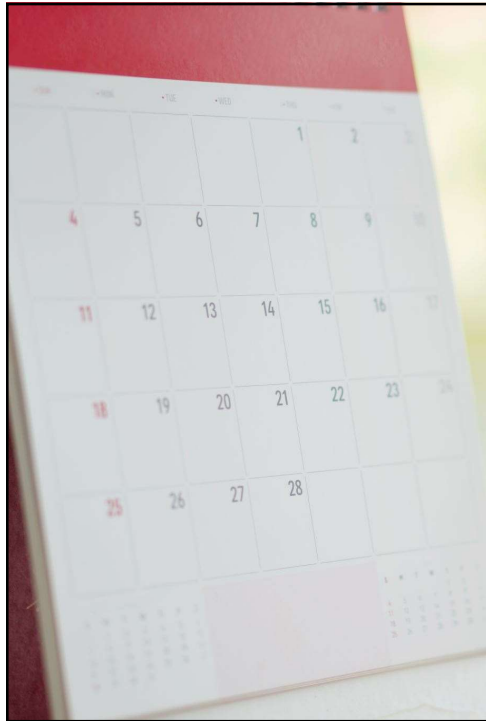
Definition of a Work Day

Labor Code §500 provides:

For purposes of this chapter, the following terms shall have the following meanings:

- (a) "Workday" and "day" mean any consecutive 24-hour period commencing at the same time each calendar day.
- (b) "Workweek" and "week" mean any seven consecutive days, starting with the same calendar day each week. "Workweek" is a fixed and regularly recurring period of 168 hours, seven consecutive 24-hour periods.
- (c) "Alternative workweek schedule" means any regularly scheduled workweek requiring an employee to work more than eight hours in a 24-hour period.

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EMPLOYERS RESPONSIBILITY TO KEEP TIME RECORDS

- ▶ The employer is required to keep records of the hours an employee works. If records are not kept, reconstruction based on testimony based on memory of the employee may be sufficient to establish time records.

- *Hernandez v. Mendoza* (1988) 199 Cal.App.3dSupp. 1.

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THE LAW WHICH PERTAINS TO DOMESTIC WORKERS

Civil Code §1812.5095

- ▶ Industrial Welfare Commission Wage Order Number 15-2001 (“Order”)
- ▶ Section 2 of the Order defines an Employee as anyone employed by the Employer. Employer is defined in section 18 of the Labor Code, who exercises control over the employee.
- ▶ Hours worked means the time that the employee is controlled by the employer. Order Section 2(H); *Mendiola v. CPS Sec. Solutions, Inc.* (2015) 60 Cal.4th 833.

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LAW AS IT PERTAINS TO LIVE-IN CAREGIVERS – ORDER SUBSECTION 3(A)



- ▶ For live-in caregivers they must have at least 12 consecutive hours free of work for each 24 period.
- ▶ However, if in the 24 hour period, and the work day, if the live-in caregiver has at least three hours of uninterrupted non-work time, then the 12 hour period can be interrupted if the live-in caregivers pays the live-in caregivers time and a half in wages and they have an agreement.
- ▶ A live-in caregiver work week is restricted to 5 days a week nine hours per day. If the live-in caregiver works more than nine hours in a given day or more than five days in a work week then the employer must pay overtime.

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RULES AS TO A CREDIT FOR LODGING

Section 45.4.5 of Division of Labor Standards Enforcement Manual

- ▶ There must be a written agreement confirming the arrangement, which contains a provision of the hours worked;
- ▶ a realistic estimate of on duty and off duty time with a deduction of 8 hours sleep without interruptions;
- ▶ and the employer must pay nightly interruptions.



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SLEEP DEDUCTION FOR CAREGIVERS

Section 45.4.5 Of Division Of Labor Standards Enforcement Manual

- ▶ There must be an agreement in writing in order for the caregiver to receive a credit for the waiver of rent.
- ▶ The care-giver must be given private quarters.
- ▶ The care giver must be given at least five hours of uninterrupted sleep.
- ▶ There must be a written agreement confirming the arrangement, which contains a provision of the hours worked; a realistic estimate of on duty and off duty time with a deduction of 8 hours sleep without interruptions; and the employer must pay nightly interruptions.

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MEAL AND REST PERIOD VIOLATIONS LABOR CODE §226.7



A rest break shall be provided every 3 hours.

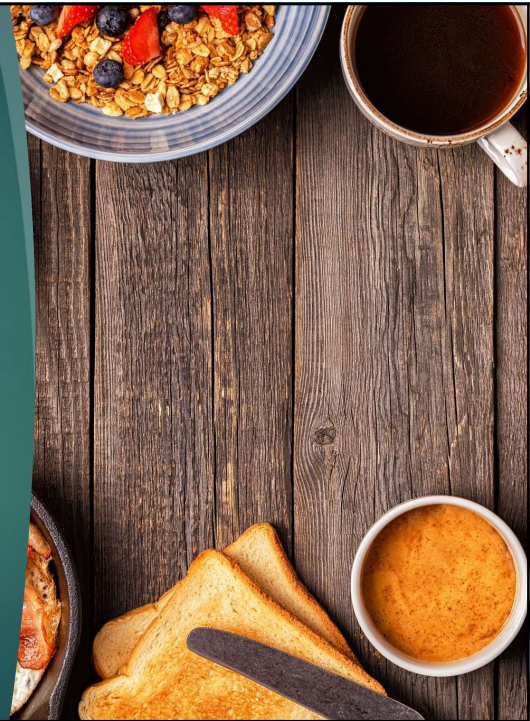


A meal break of a half an hour every 6 hours.

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BREAK AND MEAL TIME PENALTIES

- ▶ For each violation, one hour of wages is the penalty.
- ▶ No attorney fees for this claim. Labor Code §226.7.



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OVERTIME DAMAGES

ORDER SECTION 3(B)

- ▶ It is time and a half for time over 8 hours in a given day.
- ▶ It is time and a half for working on the sixth day.
- ▶ It is double time for the seventh day.



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LIQUIDATED DAMAGES

Labor Code §1194.2

It is the amount of wages not paid by the employer.



However, Liquidated damages should be denied or reduced because the employer's act or omission was in good faith and the employer had reasonable grounds for believing that the act or omission did not violate any Labor Code provision relating to minimum wage or any order of the IWC

[see Lab. Code § 1194.2(b)]

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WAITING TIME PENALTIES

LABOR CODE §203

- ▶ If an employer willful fails to pay wages to an employee who quits or is discharged within 72 hours then the employer must pay one month of the employee's wages.
- ▶ "Willful merely means the employer failed to perform an act which the law requires"
- *Davis v. Morris* (1940) 37 Cal.App.2d 269.



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QUESTIONS?

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