

2014 Wage & Hour Update



Agenda

- Overview
- North Bay
Enforcement
Trends
- Litigation
Hotspots
- Issue Spotting



Fire Away.

Typical Day.



North Bay Enforcement Trends



Wage Order Nos. 8 and 14



OFFICIAL NOTICE

INDUSTRIAL WELFARE COMMISSION
ORDER NO. 8-2001
REGULATING

WAGES, HOURS AND WORKING CONDITIONS IN THE

INDUSTRIES HANDLING PRODUCTS AFTER HARVEST

Effective January 1, 2001 as amended

*Sections 4(A) and 10(C) amended and republished by the Department of Industrial Relations,
effective January 1, 2007, pursuant to AB 1835, Chapter 230, Statutes of 2006*

This Order Must Be Posted Where Employees Can Read It Easily

IWC FORM 1108 (Rev. 03-2013)
OSP 06 98766



OFFICIAL NOTICE

INDUSTRIAL WELFARE COMMISSION
ORDER NO. 14-2001
REGULATING

WAGES, HOURS AND WORKING CONDITIONS IN THE

AGRICULTURAL OCCUPATIONS

Effective January 1, 2001 as amended

*Sections 4(A) and 10(C) amended and republished by the Department of Industrial Relations,
effective January 1, 2007, pursuant to AB 1835, Chapter 230, Statutes of 2006*

This Order Must Be Posted Where Employees Can Read It Easily

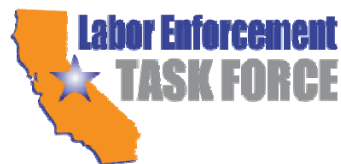
IWC FORM 1114 (Rev. 03-2013)
OSP 06 98772

Commission Agreements

- ❑ Covers all California employees paid commissions.
- ❑ Commissions:
 - ❑ Payment for sales services based proportionately on amount or value of employer property or service sold. Doesn't include temporary incentives.
- ❑ Requirements:
 - ❑ Signed written contract;
 - ❑ States method the commissions are computed and paid;
 - ❑ Employee must receive a signed copy; and
 - ❑ Employer must retain a signed receipt from employee.
- ❑ Stays in effect even after expiration until superseded or employment ends.
- ❑ PAGA penalties.
- ❑ Overtime includes commissions.

Joint Enforcement Task Force

“The Labor Employment Task Force (LETF) is a partnership of state and federal agencies, each expert in their own field, collaborating for vigorous and targeted enforcement against unscrupulous businesses participating in the "underground economy" historically abusing the workforce in the garment manufacturing, auto body, agriculture, car wash, construction, pallets and restaurant industries.”



- Department of Industrial Relations (DIR)
- Employment Development Department (EDD)
- Contractor’s State Licensing Board (CSLB)
- California Department of Insurance (CDI)
- Board of Equalization (BOE)
- Bureau of Automotive Repair (BAR)
- State Attorney General (DOJ)

New Laws of Note

- AB 10 – Minimum Wage
 - 7/1/2014 - \$9/hour
 - 1/1/2016 - \$10/hour

- SB 435 – Meal & Rest For Heat Illness Recovery

- SB 462 – Prevailing Party Wage Claims

Litigation Hotspots



- Chairs;
- Very nice mobile homes;
- Amazon.com;
- Supermarket cashiers; and....
- It all relates to wine.

Garvey v. Kmart (and others)

14. Seats.

- (A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.
- (B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.



Mendiola v. CPS Security Solutions, Inc.

- On-site security guards, 16 & 24 hour shifts.
- Mobile homes with beds, bathrooms, etc.



Mendiola v. CPS Security Solutions, Inc.

- Seven-Part Test

- (1) Whether there was an on-premises living requirement;
- (2) Whether there were excessive geographical restrictions on [the] employee's movements;
- (3) Whether the frequency of calls was unduly restrictive;
- (4) Whether a fixed time limit for response was unduly restrictive;
- (5) Whether the on-call employee could easily trade on-call responsibilities;
- (6) Whether use of a pager could ease restrictions; and
- (7) Whether the employee had actually engaged in personal activities during call-in time.

Heyen v. Safeway

- Assistant manager.
- Mixed duties.
 - Supervising, hiring, and budget work.
 - Cash register.
- Does multi-tasking count?
- Exempt or non-exempt?



Negri v. Koning & Associates

- Employee paid \$29/hour.
- Never paid less than 40 hours.
- Employer claimed “administrative exemption.”
- “A salary is generally understood to be a fixed rate of pay as distinguished from an hourly wage. Thus, use of the word “salary” implies that an exempt employee's pay must be something other than an hourly wage.”
- “Since federal law requires that, in order to meet the salary basis test for exemption the employee would have to be paid a predetermined amount that is not subject to reduction based upon the number of hours worked, state law requirements must be at least as protective.”



Gonzalez v. Downtown LA Motors



- Automotive service technicians paid on a “piece-rate” basis.
- Time also spent waiting for vehicles to repair or performing other non-repair tasks directed by the employer.
- Employer used “Flag Rate” program.
- “Averaging piece-rate wages over total hours worked results in underpayment of employee wages required “by contract” under Labor Code section 223, as well as an improper collection of wages paid to an employee under Labor Code section 221.”

Busk v. Integrity Staffing Solutions

- End of day security screenings took up to 5 minutes.
- Sued under FLSA for “off-the-clock” work.
- The court of appeals agreed that this could be compensable work time.
- But what about “walking to the lunchroom”?



QUESTIONS?



ABOUT YOUR PRESENTER

GREGORY J. WALSH is the Co-Managing Director of Dickenson, Peatman & Fogarty and the lead Director in the firm's Labor and Employment Group. Greg's practice encompasses all aspects of labor and employment law, including advising employers on how to prevent issues before they arise, and developing workable solutions to those that do. Greg is also a member of the firm's Wine Law and Litigation groups, representing clients in administrative and court proceedings.

A native Californian, Greg began his legal career practicing labor and general business law in Boston. He later returned to the Bay Area, where he continued developing his practice with one of the nation's largest labor and employment firms, representing union and non-union employers. In 2004, Greg's love of the wine country brought him north, where he now uses his range of experience to solve problems for North Bay employers, businesses and individuals. The North Bay Business Journal recently named Greg as a "Forty Under 40" award recipient.

Greg received his B.S. while double-majoring in Journalism and Sociology at the University of Oregon. He earned his law degree from the University of California, Hastings College of the Law, where he served as Senior Executive Editor of the Communications And Entertainment Law Journal. Greg is admitted to practice in California, Massachusetts, and several federal jurisdictions.

Greg is an avid fan of the Rose Bowl Champion Oregon Ducks. He and his family live in Sebastopol.

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DICKENSON PEATMAN & FOGARTY

WORLD CLASS LAW FIRM - WINE COUNTRY LOCATIONS

ABOUT THE FIRM

Dickenson, Peatman & Fogarty provides a level of representation ordinarily associated with legal practices in major metropolitan centers. Our attorneys are routinely recognized in legal rankings and surveys as some of the best in their fields, and the firm is involved regularly with matters of local and national import. For over forty years DP&F lawyers have practiced law with the “get to know you” culture that has engendered significant client loyalty.

Rooted in the wine regions of Napa and Sonoma, DP&F provides full service legal representation to all manner of businesses and individuals throughout California, the United States and abroad. The Firm’s major practice areas include alcohol beverage law, business and corporate dealings, land use matters, labor and employment, civil litigation, intellectual property, real property transactions, as well as estate planning and probate. With offices in the major wine valleys of Napa and Sonoma, the firm is intimately familiar with, and has extensive experience, in both the wine and hospitality industries.

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THANK YOU!

Women For WineSense
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