



Employer's Seven Deadly Sins Regarding California Rest Period Laws

California Labor Code §226.7 provides that no employer shall require any employee to work during any rest period mandated by the applicable Wage Order promulgated by the Industrial Welfare Commission. The Wage Orders for each industry have stringent rest period requirements for all non-exempt employees. The following are seven of the most common errors employers make regarding the rest period laws.

1. Not authorizing and permitting rest periods. Every employer shall authorize and permit employees to take rest periods of 10 minutes every four hours or major fraction thereof. Employers must give employee's sufficient time and opportunity to take the required rest periods. For employees in positions requiring an employee to relieve the employee going on break, the employer must provide the relief employee in a timely fashion.

2. Not authorizing and permitting a full 10 minute rest period. The rest period must be a "net" 10 minutes of rest. Time for clean up or finishing projects should not be counted as part of the rest period.

3. Not authorizing and permitting the rest period insofar as practicable in the middle of each four hour segment of work. The rest period should be authorized and permitted insofar as practicable in the middle of each four hour work segment. If the employee starts work at 8:00 a.m., the first rest period should take place at approximately 10:00 a.m. The employer should not allow employees to take the rest period at the end of the workday to shorten the workday. The employer should not allow employees to combine the rest periods.

4. Not paying for rest periods. The 10 minute rest periods must be compensated at the employee's regular rate of pay. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages. Rest periods do not need to be recorded (unlike meal periods which must be recorded on time records).

5. Not authorizing and permitting a third rest period if the employee works more than 10 hours. The requirement that the employer authorize and permit an employee to take a rest period of 10 minutes every four hours or major portion thereof means that if an employee works more than 10 hours, he must be authorized and permitted to take a third 10 minute rest period.

6. Not posting the applicable Wage Order. The California Wage Orders for each industry require that "Every employer shall keep a copy of this Order posted in an area frequented by employees where it may be easily read during the workday. Where the location of work or other conditions makes this impractical, every employer shall keep a copy of this Order and make it available to every employee upon request." Posting the Wage Order and advising employees of their right to take rest periods helps the employer prove that they "authorized and permitted" the required rest periods.

7. Not advising employees orally and in writing of their right to take rest periods. Employers should advise employees in handbooks and written notices that they are authorized and permitted to take the required rest periods. This assists the employer in proving that they authorized and permitted the rest periods and that if employees did not take them it was the employee's choice, not the employer's direction. In addition to this notification, employers must give employees sufficient time and opportunity to take the rest period.

The Consequences

If an employee is not authorized and permitted a rest period as required by the California Wage Orders, the employer owes the employee an additional hour of pay at the employee's regular rate of pay for each day of non-compliance. Other penalties, interest, and attorneys' fees may also be assessed.

Assistance

If you need advice and assistance in complying with wage and hour laws, please contact us at (213) 620-0460.

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