

## Wage and Hour issues in Ag Focus for Calendar Year 2010



Labor Commissioner's Office

**ERIC ROOD**  
**ASSISTANT CHIEF**

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### Department of Industrial Relations

- Division of Labor Standards Enforcement
  - aka DLSE or Labor Commissioner's Office
- Division of Occupational Safety and Health
  - aka DOSH or Cal/OSHA
- Division of Apprenticeship Standards
- Division of Labor Statistics and Research
  - Consumer Price Index    Prevailing Wage Rates
- Division of Workers' Compensation
- State Mediation and Conciliation Service

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### Division of Labor Standards Enforcement also known as Labor Commissioner's Office

- Wage Claim Adjudication Unit
- Public Works Unit
- Retaliation Unit
- Public Works Unit
- Bureau of Field Enforcement Unit
  - Cashiering Unit    Collections Unit    Legal Unit

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## Bureau of Field Enforcement Deputy Labor Commissioners

- Introduction with business card
- Request owner, supervisor or person in charge
- Approximately 60 investigators statewide
  - Professional
  - Respectful
  - Educational

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## Website

- [www.dir.ca.gov](http://www.dir.ca.gov)
  - Click on Labor Commissioner
  - Left Hand Side
    - Enforcement and Interpretations Manual
    - Opinion Letters
    - Find a Form or Publication
    - Frequently Ask Questions
    - IWC Orders
    - Sign up for Upcoming EDD/DLSE Seminars

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## State of California DLSE Local Offices

- Bakersfield (661)395-2710 – 5555 California Ave., Suite 200, 93309
- El Centro (760)353-0607 – 1550 West Main St., 92243
- Fresno (559)244-5340 – 770 East Shaw Ave., Suite 315, 93710
- Long Beach (562)590-5048 – 300 Oesangate, Suite 302, 90802
- Los Angeles (213)620-6330 – 320 West 4<sup>th</sup> St., Suite 450, 90013
- Oakland (510)622-3273 – 1515 Clay St., Suite801, 94612
- Redding (530)225-2655 – 2115 Civic Center Drive, Room 17, 96001
- Sacramento (916)263-1811 – 2031 Howe Ave., Suite 100, 95825
- Salinas (831)443-3041 – 1870 North Main St., Suite 150, 93906
- San Diego (619)220-5451 – 7575 Metropolitan Dr., Suite 210, 92108
- San Francisco (415)703-5300 – 455 Golden Gate Ave., 8<sup>th</sup> floor, 94102
- San Jose (408)277-1266 – 100 Paseo De San Antonio, Room 120, 95113
- Santa Ana (714)558-4910 – 28 Civic Center Plaza, Room 625, 92701
- Santa Barbara (805)568-1222 – 411 East Canon Perdido St., Room 3, 93101
- Santa Rosa (707)576-2362 – 50 "D" St., Suite 360, 95404
- Stockton (209)948-7770 – 31 East Channel St., Room 317, 95202
- Van Nuys (818)901-5315 – 6150 Van Nuys Blvd., Room 206, 91401

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## State Labor Law Issues

1. Failure to Have Workers' Compensation
2. Record Keeping/Deduction Statement Issues
3. Wage issues (Overtime and Minimum Wage)
  - Piece Rate Issues
  - Wage Order Issues between Order 8/13 and Order 14
4. Child Labor Issues
  - No Work Permits or Work Permit Violations
  - Hazardous Occupations
5. Unlicensed Farm Labor Contractors
6. Other Wage and Hour Issues

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## Worker's Compensation Insurance LABOR CODE SECTION 3700

- Every employer who employs workers must secure workers' compensation insurance.
- An insurance company must be duly authorized to write workers' compensation insurance in the State of California.
- Family members are excluded only if they are part owners in the business.

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## WORKERS' COMPENSATION Civil Penalty

- \$1,000 per employee up to a maximum of \$100,000 pursuant to Labor Code Section 3722
- \$1,500 per employee up to a maximum of \$100,000 effective January 1, 2010

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## Labor Code Section 3710.1 Workers' Compensation

- Where an employer has failed to secure the payment of compensation as required by Section 3700, the director shall issue and serve on such employer a stop order prohibiting the use of employee labor by such employer until the employer's compliance with the provisions of Section 3700. Such stop order shall become effective immediately upon service. Any employee so affected by such work stoppage shall be paid by the employer for such time lost, not exceeding 10 days, pending compliance by the employer.

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## Labor Code Section 226- Deduction Statement

A deduction statement must include the following:

- Gross wages earned
- Total hours worked
- Piece rate units
- All deductions
- Net wages
- Inclusive dates
- Employee name and last 4 digits of the social security number or employee identification number
- Name & address of legal entity
- All applicable hourly rates




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**PAY STUB (HOURLY)**  
Itemized Wage Statement (pay stub) - Labor Code section 226(a)

the name and address of the legal entity that is the employer <b>SMITH AND COMPANY, INC.</b> 123 West Street Smalltown, CA 98765		last 4 digits of employee social security number or employee ID number XXX-XX-6789		All applicable hourly rates 18.00 regular 17/XX to 1/13/XX 27.00 overtime		The inclusive dates of the period for which the employee is paid	
Name of the employee <b>EMPLOYEE</b> Johnson, Bob		SOCIAL SECURITY NO.		PAY RATE		PAY PERIOD	
Final hours worked Regular 40.00 Overtime 2.00		EARNINGS Regular 720.00 Overtime 54.00		DEDUCTIONS Federal W/H 60.45 FICA 47.99 Medicare 11.22 CA State W/H 10.04 CA State DI 6.18 LOI% 77.40		All deductions	
Gross wages earned <b>GROSS EARNINGS: 774.00</b> <b>TOTAL DEDUCTIONS: 213.29</b> <b>NET EARNINGS: 560.71</b>		NET wages earned					

This pay stub is not applicable to an employee whose compensation is solely based on a salary and who is exempt from payment of overtime under Labor Code section 515(a) or any applicable IWC order.

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## Pay Days

### Employees of Farm Labor Contractors:

- Must be paid at least once per week on a business day previously designated by the farm labor contractor and payment must include all wages earned up to and including the fourth day before such weekly payday.

### Other Agricultural Employees:

Labor Code § 205- Farm Workers Boarded and Lodged  
Paydays once a month No two successive pay periods

Labor Code § 205.5 – Most Agricultural Employees:

Excluding those employees mentioned in Labor Code § 205, employees of agricultural employers are required to be paid at least twice each month within seven days of the end of the pay period. Note the statutory change in 1997 which extends the right to penalty wages for covered agricultural employees who quit. Section 205.5 defines agricultural employees by reference to the definition contained in Labor Code § 1140.4.

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## Wage Shortages Issues

### Minimum Wages

- Piece Rate
- Try Out Time, Training, Internships

### Overtime Wages

- Misclassified Workers-  
Non-Exempt Workers classified Exempt

### Other Wage Issues

- Reporting Time, Split Shift Premium, etc.

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## Minimum Wage

Every employer is required to pay at least:

**\$8.00 per hour**

whether paid by the hour or by piece rate.

- If employees are paid on a piece rate basis, the piece rate must equate to at least minimum wage for each hour worked.

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## Overtime

- Required for each hour worked in a work day in excess of the maximum allowable in the given type of employment (usually 8 hours per work day or in excess of 40 hours in a work week). Order 8 and Order 13 in Ag
- Agricultural IWC Order 14 – Required for each hour worked in excess of ten (10) hours in any one workday or more than six (6) days in any workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over ten (10) hours in any workday and for the first eight (8) hours on the seventh (7th) day of work and double the employee's regular rate of pay for all hours worked over eight (8) on the seventh (7th) day of work in the workweek

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## Overtime Continued

An employee may be employed on seven (7) workdays in one workweek with no overtime pay required when the total hours of employment during such workweek do not exceed 30 and the total hours of employment in any one workday thereof do not exceed six (6)

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## Piece Rate Overtime Calculations

1. Compute the regular rate by dividing the total earnings for the week, including earnings during overtime hours, by the total hours worked during the week, including the overtime hours. For each overtime hour worked, the employee is entitled to an additional one-half the regular rate for hours requiring time and one-half and to an additional full rate for hours requiring double time.
2. Using the piece or commission rate as the regular rate and paying one and one-half times this rate for production during overtime hours.

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## IWC Order #14- Irrigator Overtime Exemption

Irrigators performing the duties of an irrigator more than half of their time in any week are exempt from the overtime requirements found in IWC Order 14

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## Child Labor

**A minor is any person under the age of 18 who is required to attend school**

- Employers **MUST** ensure that a minor has a **valid work permit** before the minor is put to work.
- Hours of work vary depending on the age of the minor.
- Certain occupations or activities are considered hazardous, and therefore, minors **cannot** be employed in these occupations.

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## Farm Labor Contractor LABOR CODE SECTION 1682 (b)

- "Farm labor contractor":
  - any person who, for a fee, employs workers to render personal services in connection with the production of any farm products to, for, or under the direction of a third person, or
  - who recruits, solicits, supplies, or hires workers on behalf of an employer engaged in the growing or producing of farm products, and who for a fee, provided in connection therewith one or more of the following services: furnishes board, lodging, or transportation for those workers; supervises, times, checks, counts, weighs, or otherwise directs or measures their work; or disburses wage payments to these persons.

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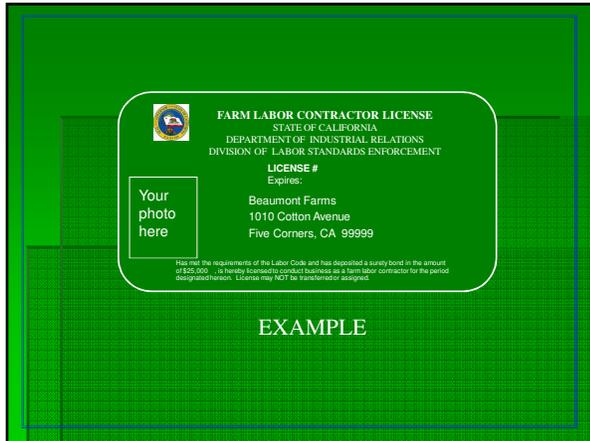
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**“Day Hauler”**

**--inclusion within “Farm Labor Contractor”**

**LABOR CODE SECTION 1682.3**

- “Farm labor contractor” includes any “day hauler”.
- “Day hauler”
  - any person who is **employed by a farm labor contractor to transport**, or who for a fee transports, by motor vehicle, workers to render personal services in connection with the production of any farm products to, for, or under the direction of a third person.

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**LABOR CODE SECTION 1695.6**

- No person shall knowingly enter into an agreement for the services of a farm labor contractor who is not licensed under this chapter.

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## Reporting Time Pay

- (A) Each workday an employee is required to report to work, does report, but is not put to work or is furnished less than half said employee's usual or schedule day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.
- (B) If an employee is required to report for work a second time in any one workday and is furnished less than two (2) hours of work on the second reporting, said employee shall be paid for two (2) hours at the employee's regular rate of pay, which shall not be less than the minimum wage.

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## Split Shift Premium

- **"Split shift"** means a work schedule which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods.

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## Questions



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