

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT**MINIMUM WAGE**

The California minimum wage will change to \$8.00 per hour effective January 1, 2008. (Labor Code § 1182.11 and appropriate Industrial Welfare Commission (IWC) Order) There are a few exceptions to the minimum wage requirement. Some of these exceptions include:

- Employees (learners) during their first one hundred and sixty (160) hours of employment in occupations in which they have no *previous similar or related experience*, may be paid \$6.38 per hour effective 1/1/07 or 85% of minimum wage. After that, they must be paid the minimum wage in effect (See appropriate IWC Order and Minimum Wage Order MW-2007).
- Persons who are not productive because of mental or physical handicaps may be paid less than the minimum wage, if the employer first obtains a special license from the Division of Labor Standards Enforcement. (Labor Code § 1191)
- Any individual who is a parent, spouse, child or legally adopted child of the employer is not subject to the minimum wage laws. (See appropriate IWC Order and MW-2007)
- Any outside salesperson is not subject to the minimum wage laws. (See appropriate IWC Order and MW-2007)

For additional information see the appropriate Industrial Welfare Commission Order and MW 2007 which can be found at www.dir.ca.gov/Iwc/WageOrderIndustries.htm

EMPLOYMENT OF MINORS

California has specific laws governing the employment of minors. Some of these laws regulate the conditions under which minors can be employed and the hours they can work. In some situations, state law bans the employment of minors altogether. (Labor Code § 1285, *et seq.*)

Any employer who directly or indirectly employs a minor under 18 years of age (other than a high school graduate or equivalent) must keep a "permit to employ" on file for the duration of the minor's employment. The permit must be obtained before the minor starts work. A work permit can be obtained from the minor's school. (Labor Code § 1304; see also www.dir.ca.gov/dlse/DLSE-CL.htm for further discussion of child labor laws).

TIPS

"Gratuities" include any tip, gratuity, money, or part thereof that has been paid or given to or left for an employee by a patron of a business over and above the actual amount due the business for services rendered or for goods, food, drink, or articles sold or served to the patron. Any amounts paid directly by the patron to a dancer employed by an employer subject to Industrial Welfare Commission Order No. 5 or 10 shall be deemed a gratuity. (Labor Code § 350)

Employers are prohibited from using tips as a credit against wages owed by the employer. Tips are the sole property of the employee or employees to whom they are given or for whom they are left. Since the employer does not pay tips, they are not considered part of the regular rate for overtime purposes. (Labor Code § 350, *et seq.* and *Leighton v. Old Heidelberg, Ltd.* (1990) 219 Cal.App.3d 1062)

An employer that permits patrons to pay gratuities by credit card shall pay the employee the full amount of the gratuity that the patron indicated on the credit card slip, without any deduction for any credit card payment processing fees or costs that may be charged to the employer by the credit card company. Payment of gratuities made by patrons using credit cards shall be made to the employee not later than the next regular payday following the date the patron authorized the credit card payment. (Labor Code § 351)

Employees may voluntarily agree among themselves to pool or share their tips, but only under certain circumstances may the employer require such tip sharing or pooling. (*Leighton v. Old Heidelberg, Ltd.* (1990) 213 Cal.App.3d 1062)

UNIFORMS AND TOOLS

When employers require uniforms to be worn by employees as a condition of employment, that uniform must be provided and maintained by the employer. The term "uniform" includes wearing apparel and accessories of distinctive design or color. Ordinary work clothes are not considered uniforms when the employees have free choice of what to wear. When the employer specifies the design or

color or requires that an insignia be affixed, it is considered a uniform. White nurses' uniforms and black and white uniforms for service personnel need not be supplied to employees by the employer, as these uniforms are standard in their industries and can be used from one job to the next. (See appropriate IWC Order; Labor Code § 452; and *Department of Industrial Relations v. U.I. Video* (1997) 55 Cal.App.4th 1084)

Employees may be asked to maintain employer-furnished uniforms when the uniforms require minimal time for care, e.g., uniforms made of a material requiring only washing and tumble or drip drying. Employers must maintain or provide a maintenance allowance for uniforms requiring ironing or dry cleaning, or uniforms requiring special laundering for heavy soil, or requiring patching and repairs due to the nature of the work. Where an employer does not provide a uniform allowance, an employee may be entitled to reimbursement for costs incurred for maintenance. (Labor Code § 2802; See appropriate IWC Order)

An employer who is required to furnish personal protective clothing or equipment must also pay for that equipment. (See appropriate IWC Order.)

If an employer requires an employee to have certain tools or equipment, or if such tools are required to perform the job, the employer must provide and maintain them. However, any employee who is paid at least twice the minimum wage, may be required to provide and maintain hand tools and equipment customarily required by his or her trade. Exceptions may apply to apprentices (indentured through the Division of Apprenticeship Standards), beauty salons and barbershops. (See appropriate IWC Order)

PREVAILING WAGE FOR PUBLIC WORKS PROJECTS

California law provides special wage and hour requirements for labor performed on public works projects. "Public Works" includes any construction, alteration, demolition, or repair work performed under contract and paid for, in whole or in part, out of public funds, except for certain work done directly by a public entity. Among these requirements is the obligation to pay no less than the prevailing rate of per diem wages to all employees on the public works job. Employers subject to state contracts as a result of a business-relationship with the state government should carefully review the obligations engendered by such a relationship. (Labor Code § 1720, et seq.)

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