S U M M A R Y

of

Some Basic California and Federal Employment Requirements

for

GARMENT INDUSTRY EMPLOYERS

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FOREWORD

Much of the clothing we wear each day is made in factories in California employing California workers. Some of these factories are large, modern enterprises that scrupulously follow California's labor laws and maintain safe and healthy workplaces; others are fledgling enterprises, whittled out of storefronts or apartments. In the face of powerful competitive forces, some employers are tempted to cut corners on wages and health and safety laws to gain a competitive edge and amass working capital. These employers unfairly undercut law abiding employers while their employees, often California's poorest and most defenseless workers, lose wages and endure higher risks of workplace injury and illness. Most factories run 24 hours a day, causing production workers to work evenings and weekends. Many operations work on rotating schedules, which can cause sleep disorders and other stress from constant changes in work hours. Overtime is common for these workers during periods of peak production. Working conditions vary greatly. Production workers, including frontline managers and supervisors, spend most of their shifts on or near the production floor. Some factories are noisy and can have airborne fibers and odors. When appropriate, the use of protective shoes, clothing, facemasks, and earplugs is required. Still, many workers in textile production occupations must stand for long periods while bending over machinery, and noise and dust still are a problem in some plants. Apparel manufacturing operators often sit for long periods and lean over machines. Another concern for workers is injury caused by repetitive motions. Workers sometimes are exposed to hazardous situations that could produce cuts or minor burns if proper safety practices are not observed.

In 1980, the California Legislature, in an effort to protect the wages and the health and safety standards enjoyed by all California industries, passed the Garment Manufacturing Act, which required industry employers to register with the Labor Commissioner and demonstrate adequate character, competency, and responsibility. In California, it is unlawful for any person to hire others to manufacture garments unless registered with the Labor Commissioner. The Labor Commissioner enforces the Garment Manufacturing Act and California's wage laws. The task of bringing an entire industry into compliance with basic labor and health and safety laws is daunting and on-going. Part of that compliance effort includes educating employers in basic labor and health and safety standards. The registration process requires that applicants take an examination that demonstrates his or her command of California's basic labor and health and safety laws. This *Summary* is part of a continuing effort to help all garment industry employers understand and meet the requirements of California's labor and health and safety laws.

As reported by the Federal Bureau of Labor Statistics, as of 2008, the latest year for which statistics are available, “there were 497,100 wage and salary workers in the textile, textile product, and apparel manufacturing industries [nationwide]. The apparel manufacturing segment, particularly cut and sew apparel manufacturing, was the largest of the three employing 198,400 workers. Most of the wage and salary workers employed in the textile mills, textile product, and apparel manufacturing industries in 2008 were found in California and in the southeastern States. California, Georgia, and North Carolina, together accounted for about 44 percent of all workers. While most apparel and textile establishments are small, employment is concentrated in mills employing 50 or more persons.” To enhance stability in this industry the Legislature directed resources to the Labor Commissioner to create a level playing field for all industry employers and to ensure that each California garment factory worker who sews our clothing can do so without fear of job-created injury and illness and with the expectation that they can take home to their families the full wage promised for their labor.

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I. INTRODUCTION

This booklet is intended to provide some basic California employment information for garment industry employers, who are required by law to register with the Division of Labor Standards Enforcement (DLSE) (popularly known as the Labor Commissioner) before they can begin operating. For information about registering as a garment industry employer:

- refer to DLSE's website at http://www.dir.ca.gov/dlse/New_Garment_Manufacturers_and_Contractors.htm or

- contact DLSE
  Licensing and Registration Unit
  1515 Clay Street, Suite 1902
  Oakland, CA 94612, or

- telephone the Garment Hotline at (510) 285-3399 or

- send an e-mail to DLSE.licensing@dir.ca.gov.

This booklet is not intended to answer all employment-related questions, but rather to serve as a guide and reference as questions arise. Issues, such as employment discrimination and taxation, are not addressed in this booklet. While every effort has been made to ensure that the information contained in this digest is accurate, laws, as well as policies and procedures, are subject to change. Therefore, it is important that you keep up to date on developments. You should also consider contacting employer groups, trade associations, unions and other employee advocacy groups for assistance with employment-related questions. You may also wish to consult legal counsel when complicated questions arise.

Copies of the additional reference materials listed at the end of each topic can be obtained in most cases on the websites of the appropriate agency or by writing to the agency. Material on Cal/OSHA requirements is posted on the DLSE website and is included in abbreviated form in a registration packet sent to each garment registration applicant.

Required workplace postings are available online at http://www.dir.ca.gov/wpnodb.html. Upon written request, individual posters will be sent at no charge. Requests for multiple copies will require a charge for duplication and mailings.

Sections of the California Labor Code and Code of Regulations that specifically govern garment manufacturing are included in a registration packet sent to each applicant or you can obtain copies of the California Labor Code and Code of Regulations at
http://www.dir.ca.gov/dlse/Garment-Rules_and_Regulations.pdf

II. BEFORE THE FIRST EMPLOYEE STARTS WORK

All California garment industry employers must meet the following requirements before an employee begins work:

A. EMPLOYER IDENTIFICATION NUMBERS

An employer who becomes subject to the employment tax laws must register with the Employment Development Department (EDD) and obtain a state employer identification number (SEIN). This number can be obtained by filing a DE-1, Registration Form with EDD. When EDD assigns an identification number to the employer, information is also included concerning state employment taxes and reporting requirements.

Every employer must also obtain a separate federal employer identification number (FEIN) from the United States Internal Revenue Service (IRS).

Additional information including a downloadable DE-1 Registration form is available on the EDD website at http://www.edd.ca.gov/Payroll_Taxes/Am_I_Required_to_Register_as_an_Employer.htm. For further assistance you can contact EDD at the toll-free number (888) 745-3886 or visit your local Employment Tax Office. To find the EDD office closest to you http://www.edd.ca.gov/Office_Locator/. The Local Employment Tax District Office is listed in the State Government section of the white pages of the telephone directory under Employment Development Department. Correspondence regarding general employer tax assistance can be directed to: Employment Development Department, Taxpayer Assistance Center P.O. Box 826880, Rancho Cordova, CA 94280-0001

You can apply online for your Federal employer tax identification number at http://www.irs.gov/businesses/small/article/0,,id=102767,00.html. The Internal Revenue Service is listed in front of the local telephone directory under United States Government Offices. In addition, find your local tax assistance office at http://www.irs.gov/localcontacts/index.html

B. REGISTRATION AS CALIFORNIA GARMENT INDUSTRY EMPLOYER

Every business that engages in garment manufacturing - including employee leasing companies that provide employees to garment industry employers - must register with the California Division of Labor Standards Enforcement (DLSE) before it can begin operating. DLSE is required to investigate the applicant's character, competency, and responsibility. DLSE acquires the necessary information through an application, which, among other things, inquires about investors in the applicant business and about business associates. The applicant must also pass an examination which tests the applicant's knowledge of basic labor and health and safety laws. Upon the applicant's request the examination may be given in English, Spanish, Chinese, Vietnamese, Korean, or Thai.

All documentation required to be submitted to apply for your Registration is available online at http://www.dir.ca.gov/dlse/New_Garment_Manufacturers_and_Contractors.htm . Applications and additional information can also be obtained by writing to DLSE, Licensing and Registration Unit, 1515 Clay Street, Suite 401, Oakland, CA 94612 or by e-mailing DLSE.licensing@dir.ca.gov.

C. LOCAL LICENSES AND PERMITS

In addition to the garment industry registration with DLSE, many cities and counties require employers to obtain special local licenses and permits, including a business tax license, before they begin operating. Contact the administrative and/or finance/taxation offices of the city and county in which the business will operate for information about these permits.

D. EMPLOYEE ELIGIBILITY VERIFICATION (FORM I-9)

Employers in the United States may only hire U.S. citizens and aliens who are authorized to work in the United States. The U.S. Department of Homeland Security, Citizenship and Immigration Services (USCIS) requires that all U.S. employers must complete and retain a Form I-9 for each individual they hire for employment in the United States. This includes citizens and non-citizens.

The employer must:

- Have employees completed their part of the federal Form I-9 when they start work;
- Examine the employment eligibility and identity document(s) an employee presents to determine whether the document(s) reasonably appear to be genuine and relate to the individual and record the document information on the Form I-9. The list of acceptable documents can be found on the last page of the form.
- Properly complete Form I-9;
- Retain Form I-9 for at least three years or one year after the person leaves employment;
- If requested, present Form I-9 for inspection by USCIS or the U.S. Department of Labor.

Depending on the employee's immigration status, other documents may be required, and the employer should consult the USCIS directly.

A downloadable I-9 form with instructions is available at the USCIS website at http://www.uscis.gov/files/form/i-9.pdf . General information on immigration laws, regulations or procedures can be obtained by calling the National Customer Service center at 1-800-375-5283 or visiting the USCIS website at www.uscis.gov.

E. WORKERS' COMPENSATION INSURANCE COVERAGE

All employers are required to have workers' compensation insurance or receive state approval to self-insure the required benefits. Self insurance requires state approval, a net worth of at least $5 million, net income of $500,000 per year and posting of a security deposit. While historically only very large companies could self-insure because of legal requirements, in recent years group self insurance, in which several small employers in the same homogenous industry pool their workers' compensation liabilities, has increased in popularity as an alternative to traditional coverage. Contact your broker or the state's Office of Self Insurance Plans (www.dir.ca.gov/sip) for information on how to self insure. A self insured employer has the option of administering its own workers' compensation claims or contracting with a third party administrator (TPA) to provide these services.

If you are an out-of-state employer, you may need workers' compensation coverage if you have any employees regularly working in California, or if you enter into a contract of employment here.

Workers' compensation provides six basic benefits:

- Medical care: Paid for by the employer to help the employee recover from an injury or illness caused by work.
- Temporary disability benefits: Payment made to the employee if wages are lost because the injury prevents the employee from doing his/her usual job while recovering.
- Permanent disability benefits: Payments to the employee if he/she does not recover completely.
- Supplemental job displacement benefits: Vouchers to help pay for retraining or skill enhancement if the employee doesn't recover completely and doesn't return to work.
- Vocational rehabilitation: Job placement counseling and possibly retraining if the employee is unable to return to his/her old job and the employer doesn't offer other work.
- Death benefits: Payments to spouse, children or other dependents if the employee dies from a job injury or illness.

Before an injury or illness occurs, you must:

- Obtain workers' compensation insurance or qualify to be self-insured.
- When hiring a new employee, provide a workers' compensation pamphlet explaining the employee's rights and responsibilities (available at the Division of Workers Compensation (DWC) website at http://www.dir.ca.gov/dwc/DWCPamphlets/TimeOfHirePamphlet.pdf)
- Post the workers compensation poster in a place where all employees can see it (also found on the DWC website – Notice to Employees (DWC 7) http://www.dir.ca.gov/dwc/NoticePoster.pdf)

After an injury or illness occurs, you must:

- Provide a workers' compensation claim form (DWC 1) to the employee within 24 hours a work-related injury or illness is reported (the form can be downloaded from the DWC website at http://www.dir.ca.gov/dwc/DWCForm1.pdf) (The employee will fill out his/her portion of the form and return it to you. You must then fill out your part of the form and
- Return a completed copy of the claim form to the employee within 24 hours of receipt
- Forward the claim form, along with your report of occupational injury or illness (DLSR Form 5020 - http://www.dir.ca.gov/DOSH/DoshReg/Form5020.pdf) to your insurance claims administrator and the Division of Labor Statistics & Research (DLSR) within 24 hours of receipt and not more than 5 days of the injury or illness
    - A death or serious injury or illness (requiring hospitalization for more than 24 hours other than for purposes of observation) must be reported to the Division of Occupational Safety and Health by telephone within 24 hours after the employer knows or should have known of the death or illness.
- Within one day of receiving the claim, authorize up to $10,000 in appropriate medical treatment
- Provide transitional work (light duty) whenever appropriate

In addition Cal/OSHA has recordkeeping requirements that mimic those required by Federal OSHA. The employer must also maintain, in each establishment, a log of all recordable occupational injuries and illnesses for that establishment. The log is called a Form 300 (formerly Form 200). At the end of the year, the employer must post a Summary prepared from the Form 300 log. In addition to the log, within 7 days after you receive information that a recordable work-related injury or illness has

occurred, you must fill out an Injury and Illness Incident Report (OSHA Form 301). The log, summary and Incident Reports are not required to be submitted but must be maintained on file for five years. The log, instructions, accompanying documents, contact information for Regional Offices and comparison of Cal/OSHA and Federal recordkeeping requirments may be obtained at the Cal/OSHA website at http://www.dir.ca.gov/dosh/PubOrder.asp

There are significant criminal and civil penalties for employers that do not have Workers' Compensation Insurance or that are not authorized by the State to be self-insured. A large number of insurance companies offer plans for these benefits. In addition, the State Compensation Insurance Fund makes insurance available to all employers. Specific details concerning workers' compensation insurance requirements can be obtained from a workers' compensation insurance carrier or from the local office of the Division of Workers' Compensation.

For additional information contact your Workers' Compensation Insurance carrier and/or visit the website for the Division of Workers Compensation (DWC) for information on employer responsibilities and employees rights at http://www.dir.ca.gov/dwc . For information on Self-Insured Plans visit the website of the Department of Industrial Relations, Office of Self Insurance Plans (OSIP) at http://www.dir.ca.gov/sip/sip.html or Office of Self Insurance Plans, 2265 Watt Avenue, Suite 1, Sacramento, CA 95825 (916) 574-0300; fax (916) 483-1535. Email inquiries can be directed to: sip@dir.ca.gov For information regarding Cal/OSHA requirements visit its website at www.dir.ca.gov/dosh. For further information on Federal OSHA requirements visit www.osha.gov

F. SAFETY AND HEALTH

An applicant for garment industry registration must, in addition to passing an exam on safety and health, sign a statement that he or she agrees to implement a *written* Injury and Illness Prevention Program, an Emergency Action Plan, and an Employee Training Program, which provides for the placement, use, maintenance, and testing of portable fire extinguishers. DLSE includes basic information about these required programs on its website and in an application packet given to every applicant when they first apply for registration.

The Division of Occupational Safety and Health (Cal/OSHA) also provides information and assistance on these safety and health requirements through its Consultation Service at no cost to the employer. The Consultation Service can be of particular service to small businesses that do not have the resources to keep pace with the safety and health standards administered by Cal/OSHA. At the employer's request a Cal/OSHA consultant will help the employer identify existing violations, give advice on how to correct the conditions, and develop a reasonable plan to accomplish the corrections. The Consultation Service is entirely separate from Cal/OSHA's Compliance Unit and does not issue citations for violations. However, if the employer refuses to correct an imminent hazard or serious violation, the Cal/OSHA Compliance Unit would be notified, and the employer could incur fines as a result. The service is free of charge.

As part of its Consultation Service, Cal/OSHA has recognized that providing effective education and training is one of the most important aspects of creating a safe and healthful work environment. To assist employers and employees, Cal/OSHA Consultation Service recognizes the value of providing information through the Internet and other formats. To meet that need Cal/OSHA has developed eTools with Action Kits (consisting of various practical multi-media products such as videos, CDs, publications, or power point presentations). Please review its website at http://www.dir.ca.gov/dosh/etools/etools.htm for resources valuable to your training programs.

For additional information about Cal/OSHA's Consultation Service and free materials about safety and health program, visit its website at http://www.dir.ca.gov/dosh/consultation.html or write to Cal/OSHA Consultation Service, 455 Golden Gate Ave, 10th Floor, San Francisco, Ca 94142, call toll free at 1-800-963-9424 or email infocons@dir.ca.gov.

G. CALIFORNIA WAGE AND HOUR REQUIREMENTS AND YOUR PAYROLL SYSTEM

Every employer's payroll system must conform with the requirements contained in the Industrial Welfare Commissioner (IWC) Orders. The IWC Orders detail California's timekeeping, minimum wage, overtime, and other pay and working condition requirements.

IWC Orders can vary according to industry and occupation. Businesses principally engaged in actually making the garments themselves are covered by IWC Order No. 1-2001, which covers the Manufacturing Industry. Businesses which contract to have garments manufactured, such as wholesalers, are covered by IWC Order No. 7-2001, which covers the Mercantile Industry.

The applicable IWC Order must be posted where employees can easily read it during the workday. Garment industry employers also have special recordkeeping requirements that do not appear on the IWC Order, but must be followed as a condition of registration. Recordkeeping and wage payment requirements are discussed in greater detail in Chapter III of this digest.

Copies of the applicable IWC Order can be downloaded from http://www.dir.ca.gov/iwc/wageorderindustries.htm, can be obtained from any DLSE District Office. If you need more than five copies of any posting, please fax your order to (510) 285-2118. Please specify the IWC Order you are requesting.

H. REQUIRED POSTERS AND NOTICES

A complete list of all posters required to be posted by the Department of Industrial Relations, as well as posters required by other State agencies and Federal posters, are available for downloading and printing at http://www.dir.ca.gov/wpnodb.html. Below is a partial list of those posters that would pertain to the garment industry.

Posting	Additional information and quantity needed	Who must post
Industrial Welfare Commission (IWC) http://www.dir.ca.gov/iwc/wageorderindustries.htm	IWC wage orders regulate wages, hours and working conditions and are numbered by industry or occupation group. Not sure which order you need? Use the alphabetical index of businesses and occupations (http://www.dir.ca.gov/IndexOfBusinessAndOccupations.pdf) to make that determination. Labor Code section 1183(d)	All employers
Minimum wage (state) http://www.dir.ca.gov/iwc/wageorderindustries.htm	Sets forth California's minimum wage and can be downloaded in English and Spanish.	All employers
Notice to Employee (Labor Code	(Effective 1/1/12) Must provide all new employees,	All employers

section 2810.5)	at the time of hiring, in the language the employer normally uses to communicate employment-related information to the employee, a notice that specifies the rate and the basis, whether hourly, salary, commission or otherwise, of the employee's wages and to notify each employee in writing of any changes to the information within 7 days of the changes.	
Payday notice http://www.dir.ca.gov/dlse/PaydayNotice.pdf	Must specify the regular paydays and the time and place of payment. An employer-developed notice is permitted. Labor Code section 207	All employers
Safety and health protection on the job http://www.dir.ca.gov/dosh/dosh_publications/shpstreng012000.pdf	Contains pertinent information regarding safety rules and regulations. Available in English and Spanish Labor Code section 6328; poster print date: January 2011	All employers
Emergency phone numbers http://www.dir.ca.gov/dosh/dosh_publications/s500pstr.pdf	Lists emergency responders' phone numbers. Title 8, California Code of Regulations, Construction Safety Orders section 1512 (e)	All employers
Access to medical and exposure records http://www.dir.ca.gov/dosh/dosh_publications/Access_En.pdf	Provides information about rights of employees working with hazardous/toxic substances. Available in English and Spanish Title 8, California Code of Regulations, General Industry Safety Order section 3204	All employers using hazardous or toxic substances
Operating Rules for Industrial Trucks http://www.dir.ca.gov/dosh/dosh_publications/IndTrucks_Eng.pdf	Employers using industrial trucks shall post and enforce a set of operating rules. Available in English and Spanish Poster print date: April 2007	Employers operating forklifts and other types of industrial trucks or tow tractors
Notice to employees -- injuries caused by work http://www.dir.ca.gov/dwc/NoticePoster.pdf	Advises employees of workers' compensation benefits. Claims administrators and employers need to revise the notice they are currently using and send it to the DWC administrative director for review and approval or they may download and use this version. NOTE: Employers may obtain professionally printed copies of the poster and workers' comp claim form from their claims administrator. Title 8, California Code of Regulations, Division of Workers' Compensation section 9881	All employers
Notice of workers' compensation carrier and coverage	States the name of the employer's current compensation insurance carrier, or the fact that the employer is self-insured. Obtained from the employer's workers' compensation insurance carrier. Labor Code section 3550	All employers
Whistleblower protections http://www.dir.ca.gov/dlse/WhistleblowersNotice.pdf	Must be prominently displayed in lettering larger than size 14 type and include a list of employee rights and responsibilities under the whistleblower laws, including the telephone number of the whistleblower hotline maintained by the office of the California Attorney General.	All employers

	The Division of Labor Standards Enforcement has prepared a sample posting that it believes meets the requirements of Labor Code Section 1102.8(a), except for being larger than size 14 type. To view this sample, http://www.dir.ca.gov/dlse/WhistleblowersNotice.doc . This sample is not the only option though, as employers are free to develop their own posting. Labor Code section 1102.8	
No smoking signage	Signage must be posted designating where smoking is prohibited/permitted in a place of employment. This law is enforced by local law enforcement agencies. Labor Code section 6404.5(c)(1)	All employers
Log and summary of occupational injuries and illnesses	Form 300 is for logging recordable injuries, form 301 is for collecting details and form 300A is the annual summary form. All three forms are available in various downloadable formats with instructions on the Cal/OSHA publications page http://www.dir.ca.gov/dosh/PubOrder.asp . Title 8, California Code of Regulations, Division of Labor Statistics and Research sections 14300 et seq.	Employers with 11 or more employees in the previous year

In addition to postings required by the Department of Industrial Relations, other state and federal agencies have posting obligations. See http://www.dir.ca.gov/wpnodb.html for additional requirements**.**

III. PAYROLL AND TIMEKEEPING

A. MINIMUM WAGE

The California minimum wage of $10.00 per hour applies to almost all employees, including those who work on a piece rate. There are a few exceptions to the minimum wage requirement which are permitted by IWC Orders. Some of these exceptions include:

- Learners may be paid 85 percent of the minimum wage for the first 160 hours of work, when the work being performed requires new skill for the employee. After that, they must be paid the minimum wage.
- Persons who are not normally productive because of mental or physical handicaps may be paid less than the minimum wage, if the employer first obtains a special license from DLSE.
- Any individual who is a parent, spouse, child or legally adopted child of the employer is not subject to the minimum wage laws.
- An outside salesperson is not subject to the minimum wage laws.

NOTE: Although the California minimum wage is more than the Federal minimum wage and the California wage must be paid, the federal Fair Labor Standards Act (FLSA) has different requirements for exceptions to the minimum wage that often conflict with California standards. Contact the U.S. Department of Labor, Wage and Hour Division (www.dol.gov/whd) for further information.

Food and Lodging Credited Against Minimum Wage

The value of meals or lodging provided by an employer may not be credited against the minimum wage without a voluntary written agreement between the employer and the employee. When credit for meals or lodging is used to meet part of the employer's minimum wage obligation, the amounts so credited may not be more than the following:

Lodging:	
o Room occupied alone	$47.03/week
o Room shared	$38.82/week
o Apartment 2/3 of the ordinary rental value, and in no event more than	$ 564.81/month
o Where a couple are both employed by the employer, 2/3 of the ordinary rental value, and in no event more than	$ 835.49/month
Meals:	
o Breakfast	$3.62
o Lunch	$4.97
o Dinner	$6.68

Deductions for meals not received or lodging not used may not be made. If, as a condition of employment, the employee must live at the place of employment or occupy quarters owned or under the control of the employer, the employer may not charge rent in excess of the value listed above. See also Section K of this Summary: "Payroll Deductions and Offsets Against Wages."

For additional information see the California Minimum Wage Poster and the IWC Order applicable to your business at http://www.dir.ca.gov/iwc/wageorderindustries.htm

B. RECORDKEEPING

Employee Records

Labor Code section 2673 and California Code of Regulations, Title 8, Chapter 6, Subchapter 8, section 13631 require garment industry employers to maintain employee records at a central location in California. All documents must be properly dated and kept on file for at least four years. Special penalties apply if the employer fails to keep the following records:

- The names and addresses of all garment workers directly employed by the garment industry employer.
- The hours worked daily by employees, including the times the employees begin and end each work period.
- The daily production sheets, including piece rates.
- The wage and wage rates paid each payroll period.

- The contract worksheets indicating the price per unit agreed to between the contractor and the manufacturer.
- The ages of all minor employees. (See also "Employment of Minors" in Chapter IV.)
- Any other conditions of employment.

The employer must also record the employee's occupation and social security number, and keep it at a central location in the state or at the establishment at which the employees work.

Work hours for all employees, including employees who work on a piece rate, must be recorded in English and in indelible ink and must indicate (1) the beginning and end of each shift; (2) the beginning and end of each meal period; (3) any split-shift interval; (4) the total hours worked each day. Rest periods must be granted, but do not need to be recorded. See "Rest Periods" and "Meal Periods" below.

Employees of the DLSE must be allowed free access to the place of business or employment in order to obtain information or make an investigation. Individuals from the Division of Labor Standards Enforcement will show identification before starting any onsite investigation.

Information To Be Contained in Contracts Between Manufacturers and Contractors, and on Itemized Wage Statements Provided to Employees.

California Code of Regulations, Title 8, Chapter 6, Subchapter 8, section 13659 requires:

> (a) Every applicant for registration shall certify, in writing and under oath, that the applicant will maintain for inspection and copying, and will make available upon request to the Labor Commissioner or any agent thereof, for a period of no less than four years from the date of execution, a written contract with each party with whom it contracts for the manufacture, sewing, cutting, making, processing, repairing, finishing, assembling, or otherwise preparing any garment or any article of wearing apparel or accessories. Each such contract shall contain the following:
>
> (1) The garment manufacturer's correct legal entity, any fictitious business names, and if a corporation or limited liability company, the name and address of the designated agent for service of process;
>
> (2) The garment manufacturer's business address, telephone and facsimile numbers;
>
> (3) The garment manufacturer's garment registration certificate number, and its date of expiration;
>
> (4) The garment manufacturer's workers' compensation carrier, policy number, and its date of expiration;
>
> (5) The contractor's correct legal entity, any fictitious business names, and if a corporation or limited liability company, the name and address of the designated agent for service of process;
>
> (6) The contractor's business address, telephone and facsimile numbers;
>
> (7) The contractor's garment registration certificate number, and its date of expiration;

(8) The contractor's workers' compensation carrier, policy number, and its date of expiration;

(9) The date the contract was entered into;

(10) The date the contracted garments or articles of wearing apparel are due for completion;

(11) The unit price, number of garments or articles of wearing apparel covered by the contract, and a description of the garment or apparel type, style, and color;

(12) The style numbers, cut or lot numbers;

(13) The total price of the contract; and,

(14) The date that payment is due from the manufacturer.

(15) Any changes from the original contract, including but not limited to changes in completion dates, unit price, number of units, and total price.

(b) Every contract between persons engaged in garment manufacturing for the manufacture, sewing, cutting, making, processing, repairing, finishing, assembling, or preparation of any garment or article of wearing apparel or accessories for sale or resale shall be in writing, shall be maintained for no less than four years from the date of its execution, shall be made available upon request to the Labor Commissioner or any agent thereof for inspection and copying, and shall contain the information set out in subsection (a)(1)-(15), above. The failure to maintain such written contracts, or to make them available to the Labor Commissioner for inspection and copying, shall constitute grounds for revocation of registration or denial of an application for registration.

(c) Every garment contractor shall include, in the written itemized wage earnings and deduction statements it is required, pursuant to Labor Code Section 226, to provide to its employees whenever wages are paid, the name(s) of any manufacturer(s) for whom the contractor performed any garment manufacturing operations at the location at which such employees were employed during the pay period covered by the itemized wage statements. The failure to include this information on employees' itemized wage statements shall constitute grounds for revocation of registration or denial of an application for registration.

Statement of Wages

At the time that employees are paid, the employer must provide each employee with an itemized statement of wages recorded in English and in ink or other indelible form, even if the employee is paid in cash. The itemized statement must be a detachable part of an employee's check. The deductions cannot merely show on the front of the check. If an employee is paid in cash, a statement containing this information must be provided at the time of payment. The employer must also retain a copy of the statement of wages. The statement of wages must contain:

- Gross wages earned;
- Total hours worked (whether the employee's compensation is based on an hourly wage or based on a piece rate);
- The number of piece rate units

- All deductions (deductions that are authorized by the employee may be aggregated and shown as one item);
- Net wages earned:
- The inclusive dates of the pay period;
- Name of the employee and the last four digits of his/her social security number or employee identification number; and
- Name and address of the employer (legal entity).
- All applicable hourly rates
- The name(s) of any manufacturer(s) for whom the contractor performed any garment manufacturing operations at the location at which such employees were employed during the pay period covered by the itemized wage statements (CCR, Title 8, Chapter 6, Subchapter 8, section 13631

Additional Requirements

The California Fair Employment and Housing Act (Government Code Section 12946) requires employers to maintain all applications, personnel or employment referral records for a period of at least two (2) years after the files are initially created or received. Employers must retain the personnel files of terminated employees for two (2) years after termination and the files of rejected applicants for two (2) years after the rejection.

The federal I-9 form must be kept at least three years or for one year after employment is terminated. See Chapter II for a discussion of the I-9.

C. WORKDAY AND WORKWEEK

A workday is any consecutive 24-hour period beginning at the same hour on each calendar day. The 24-hour period may begin at any hour of the day, but thereafter must be consistent and unchanged.

A workweek means any seven consecutive days starting with the same calendar day each week. A workweek is a fixed and regularly recurring period of 168 hours or seven consecutive 24-hour periods. A non-exempt employee is entitled to overtime for hours actually worked in excess of eight (8) hours in a day or forty (40) hours in a workweek. (Labor Code section 500)

An employer may change the workday and/or the workweek as long as the change is intended to be permanent. It is also not necessary for all employees to have the same workday or workweek.

Hours taken off for vacation, holidays or sick time need not be counted as "hours worked" when determining any overtime obligations.

D. PAY DAYS

Wages must be paid at least semi monthly on a regular payday established by the employer. Generally, the employee's straight time wages earned must be paid within seven (7) days of the end of the

pay period in which they were earned. If on a semi monthly pay period, the wages must be paid by the 26th of the month or by the 10th day of the following month. An employee's overtime wages may be delayed until the next payday.

Executive, Administrative and Professional employees who meet the criteria for exemption from overtime (see “Overtime Exemptions”, below) may be paid on a monthly basis, *provided all of the following conditions are met:* (1) Employees are not covered by a collective bargaining agreement containing language regarding paydays to be applied; (2) Employees are not subject to the Fair Labor Standards Act; (3) Employees' monthly remuneration does not include overtime pay; and (4) Employees must be paid within seven (7) days of the close of their monthly payroll period.

For additional information see Labor Code Section 204 through 205.5.

E. OVERTIME

Generally, the payment of overtime is required for all work over eight (8) hours in any one workday or more than forty (40) hours in a workweek and the first eight hours worked on the seventh day of work in any one workweek. Overtime is usually defined as one and one-half (1 1/2) times the employee's regular rate of pay. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. (Labor Code section 510). (See also "Regular Rate", below)

Unless there is a contractual obligation (or policy) to do so, it is not a legal requirement to pay overtime or a premium for work performed on holidays, Saturdays or Sundays, unless such work exceeds the forty (40) hour weekly limit described above. If an employer chooses to provide employees with time off with pay for certain holidays, vacation or sick leave, the employer need not count the holiday time, paid vacation time or paid sick time as "hours worked" for overtime purposes. Overtime is based on hours *worked*, not hours *paid*. (See also "Regular Rate", below)

F. "REGULAR RATE" DETERMINATION

The overtime pay required by state law is computed on the basis of an employee's "regular rate" of pay. While the employer is permitted to pay employees on an hourly, salaried, commission, piecework or any other basis, the regular rate is always computed as an hourly rate. Ordinarily, the hours used in computing the regular rate may not exceed the legal maximum, which in most cases is forty (40) hours per week. If the agreed upon regular work week is less than the legal maximum, that figure must be used. For example, if an employee normally works 24 to 30 hours per week and there is an agreed upon work week of 25 hours, the 25 hour figure is used to determine the regular rate of pay. Overtime would still be paid after forty hours in a week.

To determine the regular rate for salaried employees, the weekly remuneration is first determined by taking the monthly remuneration and multiplying it by twelve (12) months and then dividing it by fifty-two (52) weeks. The weekly remuneration is then divided by the number of legal maximum regular hours worked to determine the regular hourly rate.

The regular rate can never be less than the minimum wage. It is important to remember that the regular rate is simply a rate on which the overtime premium is based. If there is no overtime obligation, then it is not necessary to determine an employee's regular rate.

G. OVERTIME EXEMPTIONS

The state wage and hour laws contain complete and partial overtime pay exemptions for certain employees. Employees falling within any of the following classifications are completely exempt from the overtime pay requirements as set forth in Section 1 of the applicable IWC Order:

- Executive, Administrative or Professional employees;
- Outside salespeople; and
- Employees who are the parents, spouses or children of the employer.

Additional exemptions for certain classifications of employees appear in each of the IWC Orders. Such exemptions reflect the economic and practical realities of the industries and occupations the IWC Orders regulate. An employee who is incorrectly classified as "exempt" from overtime and subsequently works hours that should be paid at an overtime rate, subjects the employer to potentially significant overtime liability.

For additional information see Section 3 of the applicable IWC Order.

H. REST PERIODS

Employers are required to give each employee at least a ten (10) minute paid break for each four hours worked (or major fraction of four hours). If an employee works three and one-half (3 1/2) hours or less, it is not required that a break is given to that employee. Breaks should be given to employees as near to the middle of the four hour segment of time as is practicable. If an employer fails to provide a rest period, the employer must pay the employee one (1) additional hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided. This additional hour is not counted for purposes of overtime calculations.

For additional information, see Section 12 of the applicable IWC Order.

I. MEAL PERIODS

Employees are entitled to a minimum of a thirty (30) minute duty-free meal period for every five (5) hours worked. A second meal period is required if an employee works more than ten (10) hours per day unless the work period is less than twelve (12) hours, then the second meal period may be waived by mutual consent. Meal periods are not required to be paid, providing that the meal period is “duty-free”. For a meal period to be “duty-free” the employer cannot require that an employee perform any duties while on a meal break. An "on duty" meal period is only permitted when the nature of the work prevents an employee from being relieved of all duties and when, by written agreement between the parties, an on-the-job paid meal period is agreed to. If an employer requires an employee to remain at the worksite or facility during the meal period, the meal period must be compensated. If an employer fails to provide a legally required meal period, the employer must pay the employee one (1) additional hour of pay at the

employee's regular rate of pay per day. This additional hour is not counted for purposes of overtime calculations.

For additional information see Section 11 of the applicable IWC Order.

J. REPORTING TO WORK PAY

When an employee reports to work at his or her regularly scheduled time, but the employer finds it necessary to send the employee home because there is no work, the employee must be paid for at least half of the hours scheduled to work, but in no case, less than two (2) hours nor more than four (4) hours. If the employee reports a second time during the same day, he or she must receive at least two hours additional work or pay for the second appearance.

These provisions do not apply when: (1) the work is interrupted by an act of God or other causes not within the employer's control; (2) operations cannot begin due to threats to the employee or property or when recommended by civil authority; (3) public utilities fail to supply water, gas, electricity or sewer; or (4) the employee is on paid standby status and is called to work at times other than his or her usual shift.

For additional information see Section 5 of the applicable IWC Order.

K. PAYROLL DEDUCTIONS AND OFFSETS AGAINST WAGES

An employer can lawfully withhold amounts from an employee's wages only when: (1) required or empowered to do so by state or federal law; (2) when a deduction is <u>expressly authorized in writing</u> by the employee to cover insurance premiums, benefit plan contributions or other deductions not amounting to a rebate on the employee's wage; or (3) when a deduction to cover health, welfare or pension contributions is expressly authorized by a wage or collective bargaining agreement.

The ability of employers to deduct amounts from a non-exempt employee's wages due to cash shortage, breakage, or losses of equipment is specifically regulated by the IWC Orders. In addition, there have been several court decisions that significantly limit the employer's ability to offset various employee debts, overpayment of wages, etc. against the employee's wages. Having written authorization to accelerate repayment of an employee debt does not necessarily make such a deduction legal. Balloon payments on separation from employment are not valid even if the employee agrees to such a repayment schedule in advance. It would be prudent to talk to legal counsel before taking an unauthorized or accelerated payroll deduction.

For additional information see Labor Code Sections 221, 222, 224 and 300.

L. GARNISHMENTS

Employers occasionally receive court orders garnishing an employee's wages. The employer should notify the employee that a court order has been received and that a deduction in wages will be made. "Garnishment" means any judicial procedure through which the wages of an employee are required to be withheld for the payment of any debt. No employer may discharge any employee by reason of the

fact that the garnishment of his wages has been threatened. No employer may discharge any employee by reason of the fact that his wages have been subjected to garnishment for the payment of one judgment. A provision of a contract of employment that provides an employee with less protection than is provided by Labor Code section 2929 is against public policy and void.

For additional information see Labor Code Section 2929.

M. FINAL PAY

Employees who are discharged must be paid all wages due at the time of termination. "All wages" include any earned, but unused, vacation pay. Commission payments that cannot be calculated on the date of termination must be paid no later than the next regular commission payment due date. An employer must pay a discharged employee at the place of discharge.

An employee, who does not have a written agreement for a definite period of employment and who quits without giving prior notice, must be paid his or her wages, including unused vacation pay, within 72 hours. If the employee gives at least 72 hours notice of his or her intention to quit, those wages, including unused vacation pay, must be paid at the time of quitting. An employee who quits without 72 hours notice may request that his or her final wage payment be mailed to a designated address. The date of mailing will be considered the date of payment. The place of final wage payment for employees who quit without giving 72 hours prior notice and who do not request that their final wages be mailed to them at a designated address, is at the office of the employer within the county in which the work was performed.

An employer who willfully fails to pay any wages due a terminated employee in the prescribed time frames may be assessed a waiting time penalty. The waiting time penalty is an amount equal to the employee's daily rate of pay for each day the wages remain unpaid, up to a maximum of thirty (30) days. An employee will not be awarded waiting time penalties if he or she avoids or refuses to receive payment of the wages due. If a good faith dispute exists concerning the amount of the wages due, no waiting time penalties would be imposed. A "good faith dispute" that any wages are due occurs when an employer presents a defense, based in law or fact which, if successful, would preclude any recovery on the part of the employee. The fact that a defense is ultimately unsuccessful will not preclude a finding that a good faith dispute did exist. However, a defense that is unsupported by any evidence, is unreasonable, or is presented in bad faith, will preclude a finding of a "good faith dispute."

Even if there is a dispute, the employer must pay, without requiring a release, whatever wages are due and not in dispute. If the employer fails to pay what is undisputed, the "good faith" defense will be defeated whatever the outcome of the disputed wages.

For additional information see Labor Code Sections 201, 201.5, 201.7, 202 and 203 at http://leginfo.ca.gov/cgi-bin/calawquery?codesection=lab&codebody=&hits=20

N. COMMISSIONS

State law allows employers to compensate employees, in whole or in part, on a commission basis. Two requirements must be met before a compensation plan is considered to be "commission wages." First, the employees must be involved principally in selling a product or service, not making the product

or rendering the service. Secondly, the amount of their compensation must be a percent of the price of the product or service which they are selling.

If commissions are paid, they are considered remuneration, which must be included in determining a non-exempt employees' regular rate of pay for overtime purposes. The employee's regular rate is computed by dividing the total commissions and all other wages paid for the workweek, by the total number of hours that the employee worked in the workweek. The employee must be paid the applicable premium rate for each overtime hour worked. (See also "Regular Rate," above) Outside salespeople are exempt from state overtime requirements as specified in Section 1 of the applicable IWC Order.

For additional information see the applicable IWC Order and Labor Code Section 204.1.

IV. OTHER EMPLOYMENT CONSIDERATIONS

A. SPECIAL RESPONSIBILITIES FOR GARMENT INDUSTRY EMPLOYERS

Joint Liability for Violations

A garment industry employer - *even if he or she is registered with DLSE* - who contracts with another garment industry employer who is not registered with DLSE is jointly liable for the labor law violations of the unregistered employer, which can include payment of back wages owed and civil penalties. Liability can be substantial and often is.

To avoid this liability, a garment industry employer should contact DLSE *before* contracting with another business to ensure that the business is properly registered. A garment industry employer may now access DLSE's database file through the Internet at http://www.dir.ca.gov/databases/dlselr/garmreg.html The database is updated weekly. Questions regarding information found in the database may be e-mailed to DLSE.licensing@dir.ca.gov.

Garment Confiscations

Garments produced by or on behalf of an unregistered garment industry employer may be confiscated by DLSE. The confiscation is permanent. The garments cannot be returned to the employer even after he or she registers, nor may the confiscated garments ever enter the stream of commerce in any manner. Confiscated garments are given to charity, public agencies which conduct power sewing machine classes, or are destroyed. (Labor Code section 2680)

If the person from whom garments are confiscated was providing the confiscated garments as a contractor and has previously, within the immediately proceeding five-year period, had garments confiscated, the Labor Commissioner may, in addition to confiscating the garments, confiscate the means of production, including all manufacturing equipment and the property where the current unregistered garment manufacturing operations have taken place. Confiscated manufacturing equipment or property (other than garments or wearing apparel) may be disposed of by destruction, donation to a non-profit

charitable organization or educational institution, or by sale to any purchaser. The proceeds from the sale of any equipment or property shall be deposited into the General Fund. (Labor Code section 2680)

Garments may also be confiscated from a registered garment industry employer who commits a third or subsequent violation within a two-year period of laws governing minimum wages, overtime, or child labor. In these circumstances, DLSE notifies the person for whom the product is being manufactured and returns the confiscated product after the liability for the violation is satisfied.

Bonds

DLSE may require a garment industry employer to post a bond of $5,000 to $10,000 if the employer has been cited and penalized within the prior three years for failure to comply within 15 days of any judgment due for violation of any labor laws, for failure to comply with registration requirements or for failure to maintain records or supply information required in the application process. (Labor Code sections 2673, 2675, 2678).

The amount of the registration bond to be deposited with the Labor Commissioner under the provisions of Labor Code Sections 2675(a)(3), 2679(a) and 2679(b) shall be sufficient to insure payment of wages and benefits to all employees up to a maximum of four calendar weeks. In no event shall the number of employees used for such computations be less than the highest number of employees employed during any one pay period during the preceding 12-month period. The registration bond shall be issued by a surety licensed to do business in the State of California.

An undertaking in the form of a cashier's check or money order made payable to the Labor Commissioner may be provided to the Labor Commissioner in lieu of depositing a surety bond as a condition for continued registration under Labor Code Sections 2675(a)(3), 2679(a) and 2679(b). The Labor Commissioner shall deposit the undertaking in a bank account in which the Labor Commissioner is named as a trustee. Any earned interest, along with the principal, shall be used to satisfy claims against the undertaking. Upon return of the undertaking, any remaining amount, including interest, shall be transmitted to the employer. (CCR, Title 8, Chapter 6, Subchapter 8, Section 13641).

If an employer that has posted a bond or undertaking pursuant to section 13641 of this subchapter does not commit additional violations as set forth in Labor Code Sections 2673, 2675 and 2678 within any three-year period, the bond or undertaking shall be returned to the employer. (CCR, Title 8, Chapter 6, Subchapter 8, Section 13642).

Liability of Successor

Pursuant to Labor Code section 2684, a successor to any employer that is primarily engaged in sewing or assembly of garments for other persons engaged in the business of garment manufacturing that owes wages to the predecessor’s former employee or employees is liable for those wages if the successor meets any of the following criteria:

- Uses substantially the same facilities or work force to produce substantially the same products for substantially the same type of customers as the predecessor employer
- Shares in the ownership, management, control of labor relations, or interrelations of business operations with the predecessor employer

- Has in its employ in a managerial capacity any person who directly or indirectly controlled the wages, hours, or working conditions of the affected employees of the predecessor employer
- Is an immediate family member of any owner, partner, officer, or director of the predecessor employer or of any person who had a financial interest in the predecessor employer.

Change of Address

You must notify the Labor Commissioner in writing at least two weeks prior to any change(s) of address. Such notification is required as to each location not already listed on the Registration Certificate where employees will be engaged in garment manufacturing. Following receipt of written notice of change of address, the Labor Commissioner shall, without additional cost, issue an amended certificate listing the new address(es), unless the business of garment manufacturing cannot legally or safely be carried on at the proposed address(es). (CCR, Title 8, Chapter 6, Subchapter 8, Section 13637).

B. EMPLOYMENT OF MINORS

California has specific laws dealing with the employment of minors. Every minor (under the age of 18 who is still required to attend school) must have a permit to work issued by the minor's school. To obtain a Permit to Work and Employ, the minor's employer completes an “Intent to Employ” which the minor obtains from the school. The school then issues the Permit to Work and Employ, which the employer must keep on file and available for inspection. The permit will state the hours that the minor may work as well as any additional restrictions. An employer who employs a minor without a permit, can be fined $500 to $1,000 on the first violation.

A minor under the age of 16 may not work in a manufacturing establishment under any circumstances, including any non-manufacturing employment. Minors are also prohibited from working on materials that enter into the products of a manufacturing establishment. An employer who employs a minor under 16 in manufacturing can be fined $5,000 to $10,000 on the first violation.

A detailed outline of the state and federal child labor law requirements can be found in the DLSE booklet entitled "California Child Labor Laws 2000." A copy of the booklet can be obtained from our website at http://www.dir.ca.gov/dlse/DLSE-Publications.htm.

C. INDUSTRIAL HOMEWORK

Pursuant to Labor Code section 2651, it is strictly illegal for an employer to hire an employee to make, prepare, alter, repair, or finish any articles of wearing apparel - in whole or in part - in the home. The prohibition includes every process, either hand or machine, involved in the manufacture of any or all garments whether applied to fabric, textile, fur, leather, or leather substitute, or any other similar material. It is also illegal for a garment industry employer to distribute articles for use in industrial homework.

Every person, which includes manufacturers, contractors, jobbers and wholesalers, who employs an industrial homeworker, or who permits articles or materials owned by him, or under his custody or control to be taken to a home for manufacture by industrial homeworkers or who pays a person for the manufacture in a home of articles and materials by industrial homework is subject to fine of not less than $1000 and up to $30,000 or imprisonment. Upon a third conviction, the registration of the manufacturer

or owner of the goods will be suspended for a period not to exceed three years. Any goods, assembled or partially assembled, found in a homeworker's home, in transit to the home, or in the manufacturer's or contractor's possession, shall be confiscated and subject to forfeiture.

For additional information on industrial homework, see Labor Code Section 2650 - 2667 and Subchapter 7 of Title 8 of the California Code of Regulations commencing at Section 13600.

D. EMPLOYEE ACCESS TO PERSONNEL RECORDS

All employees have the right to have access to their own personnel record held by the employer. This includes those who are currently employed, those laid off with re-employment rights and those employees on a leave of absence. Terminated employees also have a right to inspect their own personnel record until the statute of limitations upon any claim they may have expires. The access to personnel records does not extend to applicants, union officials, designated agents, family members or any other person.

Employees may not see records of criminal investigations or letters of reference. The employee is permitted to see records that are used or have been used to determine the employee's qualifications for employment, promotion and salary increases, as well as those that may have been used to discipline or terminate the employee. All documents maintained in the employee's personnel file, with the exception of those documents listed above, are subject to inspection by the employee. The employer is only required to furnish copies of the documents that the employee has signed.

The employee may review the personnel file at a reasonable time that is mutually agreed upon by the employee and employer. The file must be made available during business hours and in the office where the personnel records are usually maintained. The employer may require the employee to inspect his or her file during the employee's free time and by appointment. The employer may monitor the inspection of the personnel file.

Cal/OSHA regulations require all employers to give employees access to their employee medical records. These records must be made available to the employee or representative designated by the employee. A certified collective bargaining agent is automatically treated as a designated employee representative without written authorization from the employee. These regulations apply to all employee exposure and medical records, and analysis pertaining to employees exposed to toxic substances or harmful agents.

For additional information on personnel records, see Labor Code Sections 432 and 1198.5. For medical records, there are very specific confidentiality provisions. Additional information can be found in Title 8 Code of Federal Regulation Section 3204 and the California Health and Safety Code Sections 25251-25253.

E. TOOLS AND UNIFORMS

The employer must provide and maintain, *without cost to the employee*, all of the tools necessary to perform the job, including, for example, needles, scissors, bobbins, sewing machines, etc. Only an 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.

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.

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.

An employer who is required to furnish personal protective clothing or equipment must also pay for that equipment.

For additional information see Section 9 of the applicable IWC Order.

F. INDEPENDENT CONTRACTORS

Individuals who are "independent contractors" are not considered employees for wage and hour purposes. The state agencies most involved with the determination of independent contractor status are the Employment Development Department, which is concerned with the employment-related taxes, and the Division of Labor Standards Enforcement, which is concerned with whether or not the wage, hour and workers' compensation insurance laws apply. There are other agencies, such as the Franchise Tax Board and the Employment Development Department, which also have regulations or requirements concerning independent contractors. Since different laws are involved, it is possible that the same individual will be considered an employee for purposes of one law and an independent contractor under another law. Because the potential penalties and liabilities are significant, if an individual is treated as an independent contractor and later found to be an employee, it is advisable that each such relationship be thoroughly researched before it is implemented.

For additional information see Labor Code Section 2750.5. Additional information concerning an individual's proper employment status can also be obtained by contacting the Employment Development Department's Employment Tax District Office.

V. OTHER EMPLOYEE BENEFITS

All California employers are required to provide certain mandated benefits to their employees. Employers may provide additional benefits, but these additional benefits may also be subject to certain requirements.

A. UNEMPLOYMENT INSURANCE

California participates in a joint federal/state unemployment insurance program, which is designed to reduce the impact of economic fluctuations and assist those persons who become unemployed through no fault of their own.

With few exceptions, all California employers are covered under the unemployment insurance law and must pay the appropriate unemployment insurance tax. A former employee will be ineligible for benefits if he or she is out of work for one of the following reasons:

- Voluntary quit without good cause;
- Discharge for willful misconduct; or
- Refusal of suitable work.

Employers are given the opportunity to respond to a claim for unemployment insurance by a former employee. Employers that disagree with the final determination on benefit payment have the right to appeal the determination.

For additional information contact the nearest Employment Development Department Office.

B. STATE DISABILITY BENEFITS/SICK LEAVE BENEFITS

Most California employees participate in the State Disability Insurance Plan (SDI), which they pay for through payroll deduction. Employers are required to give newly hired employees a copy of the SDI brochure, as well as provide claim forms when an employee is eligible to apply for benefits. Copies of the brochure and claim forms can be obtained from the Employment Development Department (EDD).

An employee who, on or after July 1, 2015, works in California for 30 or more days within a year from the beginning of employment, is entitled to paid sick leave. Employees, including part-time and temporary employees, will earn at least one hour of paid leave for every 30 hours worked. Accrual begins on the first day of employment or July 1, 2015, whichever is later (See Healthy Workplace Healthy Family Act of 2014 (AB1522) at http://www.dir.ca.gov/dlse/ab1522.html).

Order forms online from EDD at http://edd.ca.gov/Forms/default.asp, download and print forms from http://edd.ca.gov/Disability/DI_Forms_and_Publications.htm, order by calling toll free number or visiting local EDD offices listed at

http://edd.ca.gov/Disability/Contact_SDI.htm#byphone

C. HOLIDAYS

There is no legal requirement to provide employees with paid holidays. However, if you grant paid "personal" or "floating" holidays, they are treated in the same manner as vacation pay. Other paid holiday requirements are dependent on the employer's own policy.

Unless there is a contractual obligation or company policy to do so, it is not a legal requirement to pay overtime or premium pay for hours worked on a holiday.

D. VACATION

Paid vacations are not required by California law, but when it is provided, it is considered the same as wages and, therefore, once it is earned it cannot be forfeited. If an employer furnishes vacation

benefits, the employee earns and vests in the vacation benefit on a daily basis. The employer's policy, however, can determine the amount of vacation earned and when the vacation time may be taken. If an employee terminates his or her employment, all vacation pay earned, but not yet taken, must be paid to the employee at the time of the termination. "Use it or lose it" or forfeiture vacation pay requirements are not legal. For example, an employer's policy can provide that employees earn one week of vacation the first year of employment, but that vacation time cannot be taken until after the employee has completed one year of service. However, if the employee terminates his or her employment prior to that first anniversary date, the employer must pay the accrued vacation earned prior to termination. The employer cannot require that vacation pay be forfeited if the employee terminates. However, the employer can establish when employees take vacation while they are employed.

E. MEDICAL AND/OR LIFE INSURANCE

There is no requirement under California law to provide medical and/or life insurance benefits. However, if medical benefits are provided, the employer must give a 15-day notice if the benefits are to be discontinued. Medical and life insurance benefits are governed by federal law.

For additional information see Labor Code Section 2806 and contact the U.S. Department of Labor.

F. DISABILITY LEAVES OF ABSENCE

Work-Incurred Injuries

Under most circumstances, the injured employee must be provided a leave of absence as long as is required to get the employee back to work. It is not a requirement to pay the employee who is out due to a work-incurred injury or illness absence unless you provide those benefits to employees who are out on other medical disability leaves. Employees who are on work-incurred disability leaves will also receive whatever compensation is owed them through the workers' compensation insurance plan.

Additional information can be obtained by contacting your Workers' Compensation Insurance Carrier.

Pregnancy Disabilities

For employers with five (5) or more employees, all female employees who are unable to work due to pregnancy-related disabilities are entitled to up to four (4) months of pregnancy disability leave of absence. If you provide more than four months leave for other nonwork-incurred medical disabilities, the pregnancy disability leave must be no less than the amount allowed for those other medical disabilities.

A pregnancy disability leave of absence is only required when an employee is disabled because of a pregnancy-related condition. Leaves of absence for the birth or adoption of a child are available under the Family Rights Act. A pregnancy disability does not have to be compensated unless other non-work-incurred medical disability leaves of absence are compensated. While on pregnancy disability leave, an employee may use her earned, but unused, vacation and/or sick pay benefits, but she cannot be compelled to use those benefits if she does not wish to.

Effective January 1, 2012, it is illegal for an employer to refuse to maintain and pay for coverage for an eligible female employee who takes a pregnancy disability leave for the duration of the leave, not to exceed four months over the course of a 12-month period, at the level and under the conditions that coverage would have been provided if the employee had continued in employment continuously for the duration of the leave. An employer may pay for coverage under a group health plan beyond four months. An employer may recover from the employee the premium that the employer paid for maintaining coverage for the employee under the group health plan if both of the following conditions occur:

- The employee fails to return from leave after the period of leave to which the employee is entitled has expired.
- The employee's failure to return from leave is for a reason other than the continuation, recurrence, or onset of a health condition that entitles the employee to leave beyond the control of the employee.

An employee returning from a pregnancy disability leave of absence within the four (4) months allowed, must be returned to the same position she had prior to her leave of absence. (Also see "Family Leave.")

Additional information can on the website for the Department of Fair Employment and Housing (DFEH) at www.dfeh.ca.gov . Contact information for the DFEH including office locations is found at http://dfeh.ca.gov/Contact.htm . Information sheets and brochures on pregnancy disability leave, discrimination and the California Family Rights Act leave entitlement (see below) can be downloaded from http://www.dfeh.ca.gov/res/docs/Publications .

G. PERSONAL LEAVES OF ABSENCE

Personal leaves of absence are legally required in the following situations:

Family Leave

Under the California Family Rights Act (CFRA), employers with fifty (50) or more employees in any state of the United States must provide unpaid time off to take a CFRA leave for their own serious health condition, to care for a parent, spouse or child with a serious health condition, for the birth of a child for purposes of bonding, or for placement of a child in the employee's family for adoption or foster care; employees are entitled to twelve (12) work weeks during a 12-month period. This leave does not have to be compensated and does not have to be taken in consecutive days or weeks. If both parents are eligible for CFRA leave but are employed by the same employer, that employer may limit leave for the birth, adoption, or foster care placement of their child to twelve (12) work weeks in a 12-month period between the two parents.

Family care leave for the birth of a child may be taken in addition to the pregnancy disability leave. Employees who have taken the maximum four (4) months of pregnancy disability leave required by law are entitled to up to twelve (12) work weeks of family leave.

Jury Duty

All employers must provide leaves of absence for employees who serve on inquest or trial juries or who appear in court as a witness as required by law. The employee must give reasonable notice to the

employer. It is not a requirement to compensate employees for time off to serve on juries or to appear as a witness.

For additional information see Labor Code Section 230.

Victims of Domestic Violence or Sexual Assault

An employer with 25 or more employees may not discharge or in any manner discriminate or retaliate against an employee who is a victim of domestic violence or a victim of sexual assault for taking time off from work to attend to:

- Seeking medical attention for injuries
- To obtain services from a domestic violence shelter, program, or rape crisis center
- To obtain psychological counseling or
- To participate in safety planning and take other actions to increase safety from future domestic violence or sexual assault, including temporary or permanent relocation

For additional information see Labor Code section 230.1

Victims of Crimes

An employer must allow an employee who is a victim of a crime, an immediate family member of a victim, a registered domestic partner of a victim, or the child of a registered domestic partner of a crime to be absent from work in order to attend judicial proceedings related to that crime. The employee must give the employer a copy of the notice of each scheduled proceeding that is provided to the victim by the agency responsible, unless advance notice is not feasible. When advance notice is not feasible, the employer cannot take any action against the employee if the employee, within a reasonable time after the absence, provides the employer with documentation evidencing the judicial proceedings.

For additional information see Labor Code section 230.2.

Emergency Duty as a Volunteer Firefighter

All employers must provide leaves of absence for employees who are required to perform emergency duty as a volunteer firefighter. It is not a requirement that the employee be compensated during time off to perform emergency volunteer fire fighting duties.

For additional information see Labor Code Section 230.3.

Time Off to Appear at School When Required by the School

All employers must allow a parent or guardian of a pupil to appear at the school when the school has given advance notice. It is not a requirement that the employee be compensated for the time. The employee is required to give reasonable notice to the employer.

For additional information see Labor Code Section 230.7.

Time Off to Visit the School or Licensed Child Day Care Facility of a Child

Employers with twenty-five (25) or more employees working at the same location, must allow a parent or guardian to take up to forty (40) hours off per year to participate in activities at his or her child's school or licensed child day care facility, but no more than eight (8) hours in a calendar month. The employee must give reasonable notice to the employer. Employees must first utilize existing vacation, personal leave or compensatory time off for this purpose. The time off to visit school or licensed child day care facility is not required to be compensated, and the employer may require documentation from the school as proof that the employee participated in the planned activity.

For additional information see Labor Code Section 230.8

Sick Leave to Attend Family

Any employer who provides sick leave for employees must permit the employee to use in any calendar year the employee's accrued and available sick leave entitlement, in an amount not less than the sick leave that would be accrued during six months at the employee's then current rate of entitlement, to attend to an illness of a child, parent, spouse, or domestic partner of the employee. All conditions and restrictions place by the employer upon the use by an employee of sick leave also shall apply to the use by an employee of sick leave to attend to an illness of a family member. These conditions do not extend the maximum period of leave to which an employee is entitled under the federal Family and Medical Leave Act or the California Family Leave Act.

For additional information see Labor code section 233.

Time Off to Vote

If a voter does not have sufficient time to vote outside of working hours, he or she may take off time to vote at the beginning or the end of the shift, whichever provides the most free time to vote. The employee may take off no more than two hours without loss of pay, providing he or she has given at least two working days' notice that time off is desired.

For additional information see Election Code Section 14350.

Drug and/or Alcohol Rehabilitation

Employers with twenty-five (25) or more employees must reasonably accommodate an employee's voluntary participation in an alcohol and/or drug rehabilitation program, provided that this reasonable accommodation does not impose an undue hardship on the employer. "Reasonable accommodation" is interpreted to mean time off work, but such time does not require compensation. An employer must also make reasonable efforts to safeguard an employee's privacy with regard to his or her enrollment in a rehabilitation program. An employer may refuse to hire or may discharge an employee because of the employee's current use of alcohol and/or drugs, or because the employee is unable to perform his or her duties, or cannot perform the duties in a manner which would not endanger his or her health and safety, or the health and safety of others.

For additional information see Labor Code Section 1025 through 1028.

Literacy Assistance

Employers with twenty-five (25) or more employees must reasonably accommodate and assist any employee who reveals a literacy problem and requests employer assistance either in enrolling in a literacy assistance program or in arranging visits of an instructor to the jobsite, provided such accommodation does not pose an undue hardship on the employer. "Reasonable accommodation" is interpreted to mean time off work, but such time does not require compensation. In addition, the employer must make reasonable efforts to safeguard the employee's privacy with regard to a literacy problem. An employee who satisfactorily performs his or her duties may not be discharged for disclosing a literacy problem.

For additional information see Labor Code Sections 1041 through 1044.

H. TEMPORARY MILITARY LEAVE AND/OR RESERVE DUTY

Any employee who is a member of the Reserve Corps of the Armed Forces of the United States, the National Guard or the National Militia is entitled to a temporary leave while engaged in military duty ordered for purposes of military training, drills, encampment, naval cruises, special duty or like activity. Such temporary leave does not have to exceed seventeen (17) calendar days, including travel time, and does not have to be compensated.

For additional information see Military and Veterans Code Sections 394 and 394.5. Also see the federal laws pertaining to military leave and reinstatement.

I. SEVERANCE PAY

There is no requirement under California law to provide severance pay. If an employer does provide severance pay benefits, they are governed by federal law.

For additional information contact the U.S. Department of Labor.

J. PENSION PLANS

There is no requirement under California law to provide pension benefits. If pension benefits are provided by employers, they are governed by federal law.

For further information contact the U.S. Department of Labor.