

**OFFICIAL NOTICE
INDUSTRIAL WELFARE COMMISSION**

Summary of Amendments to Wage Order 5

To employers and representatives of persons working in industries and occupations in the State of California:

TAKE NOTICE that on October 29, 2001, the Industrial Welfare Commission (hereinafter the "IWC"), having proceeded according to its authority in the Labor Code and the Constitution of California, article 14, §1, promulgated amendments to Sections 3 (Hours and Days of Work), 11 (Meal Periods), and 12 (Rest Periods) of Wage Order 5-2001. The amendments to all three Sections affect employees with direct responsibility for children who are under 18 years of age or who are not emancipated from the foster care system and who, in either case, receive 24 hour care. The amendments regarding meal periods and rest periods also apply to employees of 24 hour residential care facilities for elderly, blind, or developmentally disabled individuals. These two types of workers are collectively referred to as group home employees in this Summary. The other Sections of Wage Order 5-2001 have not been changed.

SUMMARY

This summary must be made available to employees in accordance with the IWC's wage orders.

This is a summary. Copies of the full text of the amended Wage Orders may be obtained at www.dir.ca.gov/IWC or by mail from the IWC.

Hours and Days of Work

Pursuant to a request from the California Alliance of Child and Family Services, a full investigation, and an unanimous wage board recommendation, the IWC amended the partial exemption from overtime for workers with direct responsibility for children who are under 18 years of age or who are not emancipated from the foster care system and who, in either case, receive 24 hour care. payment of overtime. The IWC deleted the phrase from Section 3(E)(1) that made its provisions applicable to employees or who have direct responsibility for children under eighteen (18) years of age receiving 24 hour care, and added Section 3(E)(2) for such employees. Section 3(E)(2) provides that employers may compensate these employees in the following manner without violating the general overtime provisions of Section 3. Overtime must be paid for all work in excess of 40 hours in a workweek at one and one-half (1-1/2) times the employee's regular rate of pay. Overtime is paid at two (2) times the employee's regular rate of pay for all hours worked in excess of 48 hours in the workweek and 16 hours in a workday. In addition, no employee shall work more than 24 consecutive hours until said employee receives not less than eight (8) consecutive hours off-duty immediately following the 24 consecutive hours of work. Time spent sleeping shall not be included as "hours worked" as defined in Section 2 of Wage Order 5.

Meal and Rest Periods

The IWC added a Paragraph E to Section 11 and Paragraph C to Section 12. Section 11(E) provides that a group home employee may be required to work on-duty meal periods without penalty to the employer when it is necessary for regulatory or approved program standards and, either the employee eats with the residents and the employer provides the same meal as the residents receive at no charge to the employee, or the employee is the sole person in charge and, on a day shift, the employer provides the meal at no charge. In addition, an employee, except when working a night shift, may exercise the right to have an off-duty meal period upon first giving 30 days notice to the employer for each instance where an off-duty meal is desired. However, there will be no more than one off-duty meal period every two weeks. Section 12(C) provides that employers of group home employees may, without penalty, require such employees to remain on the work premises and maintain general supervision of residents during rest periods if an employee is the sole person in charge of the residents. In addition, the employer must authorize and permit another rest period when an employee is affirmatively required to interrupt his or her break to respond to the needs of a resident.

**Minimum Wage, Reporting Time Pay,
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There have been no changes to these provisions of the Wage Order 5. However, pursuant to the previously promulgated General Minimum Wage Order, MW-2001, the minimum wage will increase to \$6.75 per hour effective January 1, 2002.

These Amendments to the Wage Order 5 shall be in effect as of January 1, 2002

Questions about enforcement of this Wage Order should be directed to the [Division of Labor Standards Enforcement](#). Consult the white pages of your telephone directory under CALIFORNIA, State of, Industrial Relations for the address and telephone number of the office nearest you. The Division has offices in the following cities: Bakersfield, Eureka, Fresno, Long Beach, Los Angeles, Marysville, Oakland, Redding, Sacramento, Salinas, San Bernardino, San Diego, San Francisco, San Jose, Santa Ana, Santa Barbara, Santa Rosa, Stockton, and Van Nuys.