

**INDUSTRIAL WELFARE COMMISSION ORDER NO.
15-86 (Updated) REGULATING**

**WAGES, HOURS, AND WORKING
CONDITIONS IN THE
HOUSEHOLD OCCUPATIONS**

*Article 15. Household Occupations (Order No. 15-86) Sec. 11150. Order
Regulating Wages, Hours, and Working Conditions in Household Occupations.*

1. APPLICABILITY OF ORDER

This Order shall apply to all persons employed in household occupations whether paid on a time, piece rate, commission, or other basis unless such occupation is performed for an industry covered by an industry order of this Commission, except that:

(A) Provisions of Sections 3 through 12 shall not apply to persons employed in administrative, executive, or professional capacities. No person shall be considered to be employed in an administrative, executive, or professional capacity unless one of the following conditions prevails:

(1) The employee is engaged in work which is primarily intellectual, managerial, or creative, and which requires exercise of discretion and independent judgment, and for which the remuneration is not less than \$900.00 per month; or

(2) The employee is licensed or certified by the State of California and is engaged in the practice of one of the following recognized professions: law, medicine, dentistry, pharmacy, optometry, architecture, engineering, teaching, or accounting.

(B) The provisions of this Order shall not apply to personal attendants.

(C) Provisions of this Order shall not apply to any individual who is the parent, spouse, child, or legally adopted child of the employer.

2. DEFINITIONS

(A) "**Commission**" means the Industrial Welfare Commission of the State of California.

(B) "**Division**" means the Division of Labor Standards Enforcement of the State of California.

(C) "**Household Occupations**" means all services related to the care of persons or maintenance of a private household or its premises by an employee of a private householder. Said occupations shall include, but not be limited to, the following: butlers, chauffeurs, companions, cooks, day workers, gardeners, graduate nurses, grooms, housecleaners, housekeepers, maids, practical nurses, tutors, valets, and other similar occupations.

(D) "**Emergency**" means an unpredictable or unavoidable occurrence at unscheduled intervals requiring immediate action.

(E) "**Employ**" means to engage, suffer, or permit to work.

(F) "**Employee**" means any person employed by an employer.

(G) "**Employer**" means any person as defined in Section 18 of the Labor Code, who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person.

(H) "**Hours worked**" means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

(I) "**Personal attendant**" includes baby sitters and means any person employed by a private householder or by any third party employer recognized in the health care industry to work in a private household, to supervise, feed, or dress a child or person who by reason of advanced age, physical disability, or mental deficiency needs supervision. The status of "personal attendant" shall apply when no significant amount of work other than the foregoing is required.

(J) "**Minor**" means, for the purpose of this Order, any person under the age of eighteen (18) years.

(K) "**Primarily**" as used in Section 1, Applicability, means more than one-half the employee's work time.

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

(M) **"Teaching"** means, for the purpose of Section 1 of this Order, the profession of teaching under a certificate from the Commission for Teacher Preparation and Licensing.

(N) **"Wages"** (See California Labor Code, Section 200)

(O) **"Workday"** means any consecutive 24 hours beginning at the same time each calendar day.

(P) **"Workweek"** means any seven (7) consecutive days, starting with the same calendar day each week. "Workweek" is a fixed and regularly recurring period of 168 hours, seven (7) consecutive 24-hour periods.

3. HOURS AND DAYS OF WORK

(A) A LIVE-IN employee shall have at least twelve (12) consecutive hours free of duty during each workday of twenty-four (24) hours, and the total span of hours for a day of work shall be no more than twelve (12) hours, except under the following conditions:

(1) The employee shall have at least three (3) hours free of duty during the twelve (12) hour span of work. Such off-duty hours need not be consecutive, and the schedule for same shall be set by mutual agreement of employer and employee, provided that

(2) An employee who is required or permitted to work during scheduled off-duty hours or during the twelve (12) consecutive off-duty hours shall be compensated at the rate of one and one-half (1 1/2) times the employee's regular rate of pay for all such hours worked.

(B) No LIVE-IN employee shall be required to work more than five (5) days in any one workweek without a day off of not less than twenty-four (24) consecutive hours except in an emergency as defined in subsection 2(D), provided that the employee is compensated for time worked in excess of five (5) workdays in any workweek at one and one-half (1 1/2) times the employee's regular rate of pay for hours worked up to and including nine (9) hours. Time worked in excess of nine (9) hours on the sixth (6th) and seventh (7th) workdays shall be compensated for at double the employee's regular rate of pay.

(C) No NON-LIVE-IN employee shall be employed more than eight (8) hours in any one workday nor more than forty (40) hours in any one workweek nor more than six (6) days in any workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over eight (8) in any workday

or over forty (40) hours in any workweek and for the first eight (8) hours on the seventh (7th) day of work. Time worked in excess of eight (8) hours on the seventh (7th) workday shall be compensated for at double the employee's regular rate of pay.

(D) One and one-half (1 1/2) times a minor's regular rate of pay shall be paid for all work over forty (40) hours in any workweek except that minors sixteen (16) and seventeen (17) years old who are not required by law to attend school and may therefore be employed for the same hours as an adult are subject to subsections (A) and (B) or (C) above.

(VIOLATIONS OF CHILD LABOR LAWS are subject to civil penalties of from \$500 to \$10,000 as well as to criminal penalties provided herein. Employers should ask school districts about required work permits.)

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

4. MINIMUM WAGES

(A) Every employer shall pay to each employee wages not less than four dollars and seventy-five cents (\$4.75) per hour for all hours worked, effective October 1, 1996; not less than five dollars (\$5.00) per hour for all hours worked, effective March 1, 1997; not less than five dollars and fifteen cents (\$5.15) per hour for all hours worked, effective September 1, 1997; and not less than five dollars and seventy-five cents (\$5.75) per hour for all hours worked, effective March 1, 1998, except:

(1) **LEARNERS.** Employees 18 years of age or over, 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 not less than eighty-five percent (85%) of the minimum wage rounded to the nearest nickel.

(2) **MINORS** may be paid not less than eighty-five percent (85%) of the minimum wage rounded to the nearest nickel provided that the number of minors employed at said lesser rate shall not exceed twenty-five percent (25%) of the persons regularly employed in the establishment. An employer of less than ten (10) persons may employ three (3) minors at said lesser rate. The twenty-five percent (25%) limitation on the employment of minors shall not apply during school vacations.

NOTE: Under certain conditions, the full minimum wage may be required for minors. See Labor Code Section 1391.2 (b).

(B) Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.

(C) When an employee works a split shift, one hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment.

5. REPORTING TIME PAY

Each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours at the employee's regular rate of pay, which shall not be less than the minimum wage.

6. LICENSES FOR HANDICAPPED WORKERS

A license may be issued by the Division authorizing employment of a person whose earning capacity is impaired by physical disability or mental deficiency at less than the minimum wage. Such licenses shall be granted only upon joint application of employer and employee.

7. RECORDS

All records required to be maintained by an employer pursuant to Labor Code Sections 226, 226.2, and 1174 shall be in the English language, properly dated and shall be kept on file by the employer at least three years.

8. CASH SHORTAGE AND BREAKAGE

No employer shall make any deduction from the wage or require any reimbursement from an employee for any cash shortage, breakage, or loss of equipment, unless it can be shown that the shortage, breakage, or loss is caused by a dishonest or willful act, or by the gross negligence of the employee.

[The former second sentence which was part of this section, effective January 1, 1980, was removed, effective April 24, 1989, based on a judicial determination that it was inconsistent with California law and, therefore, invalid and unenforceable. *People v. Industrial Welfare Commission et al.*, Santa Cruz Superior Court No. 85071.]

9. UNIFORMS AND EQUIPMENT

(A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer. The term "uniform" includes wearing apparel and accessories of distinctive design or color.

NOTE: This section shall not apply to protective apparel regulated by the Occupational Safety and Health Standards Board.

(B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.

NOTE: This section shall not apply to protective equipment and safety devices on tools regulated by the Occupational Safety and Health Standards Board.

(C) A reasonable deposit may be required as security for the return of the items furnished by the employer under provisions of subsections (A) and (B) of this section upon issuance of a receipt to the employee for such deposit. Such deposits shall be made pursuant to Section 400 and following of the Labor Code or an employer with the prior written authorization of the employee may deduct from the employee's last check the cost of an item furnished pursuant to (A) and (B) above in the event said item is not returned. No deduction shall be made at any time for normal wear and tear. All items furnished by the employer shall be returned by the employee upon completion of the job.

10. MEALS AND LODGING

(A) "**Meal**" means an adequate, well-balanced serving of a variety of wholesome, nutritious foods.

"**Lodging**" means living accommodations available to the employee for full-time occupancy which are adequate, decent, and sanitary according to usual and customary standards. Employees shall not be required to share a bed.

(B) Meals or lodging may not be credited against the minimum wage without a voluntary written agreement between the employer and the employee. When the 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:

	Effective January 1, 1998	Effective March 1, 1998
Room occupied alone	\$24.25 per week	\$27.05 per week
Room shared	\$20.00 per week	\$22.30 per week
Apartment--two-thirds (2/3) of the ordinary rental value, and in no event more than	\$290.80 per month	\$324.70 per month
Where a couple are both employed by the employer, two-thirds (2/3) of the ordinary rental value, and in no event more than	\$430.20 per month	\$480.30 per month
Meals:		
Breakfast	\$1.80	\$2.05
Lunch	\$2.55	\$2.85
Dinner	\$3.40	\$3.80

(C) Meals evaluated as part of the minimum wage must be bona fide meals consistent with the employee's work shift. Deductions shall not be made for meals not received nor lodging not used.

(D) 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, then the employer may not charge rent in excess of the values listed herein.

11. MEAL PERIODS

No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than thirty (30) minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of employer and employee. Unless the employee is relieved of all duty during a thirty (30) minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to.

12. REST PERIODS

Every employer shall authorize and permit all employees to take rest periods,

which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.

However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

13. FILING REPORTS

(See California Labor Code, Section 1174(a))

14. INSPECTION

(See California Labor Code, Section 1174)

15. PENALTIES

(See California Labor Code, Section 1199)

16. SEPARABILITY

If the application of any provision of this Order, or any section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Order should be held invalid or unconstitutional or unauthorized or prohibited by statute, the remaining provisions thereof shall not be affected thereby, but shall continue to be given full force and effect as if the part so held invalid or unconstitutional had not been included herein.

17. POSTING OF ORDER

Every employer shall keep a copy of this Order and make it available to every employee upon request.

EXCERPTS FROM THE LABOR CODE

Section 200. As used in this article: (a) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.

Section 201. If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

Section 202. If an employee not having a written contract for a definite period quits his employment, his wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his intention to quit, in which case the employee is entitled to his wages at the time of quitting.

Section 1174. Every person employing labor in this state shall:

(a) Furnish to the commission, at its request, reports or information which the commission requires to carry out this chapter. Such reports and information shall be verified if required by the commission or any member thereof.

Section 1199. Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less than 30 days, or by both, who does any of the following:

(a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission.

(b) Pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission.

(c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission.