

## ON-CALL AGREEMENT

### EMPLOYER GUIDE SHEET

**The following only provides basic information concerning Federal and California Laws pertaining to On-Call or Standby arrangements. You are strongly encouraged to consult with a CEA HR Director or your attorney prior to executing this or any employee agreement.**

**Controlled Standby vs. Uncontrolled Standby.** The Division of Labor Standards Enforcement states “An employee who has the choice of being available or not available to respond to a request by the employer to return to work for an emergency may be on uncontrolled standby if the employee is completely unrestricted to use his or her time for their own purposes.” However, “If the employee’s time is so restricted that they cannot pursue personal activities and come and go as he pleases, the employer is considered to have direction and control of the employee” and such time is considered as controlled standby.

The DLSE applies the following test to determine the extent of employer control:

1. Whether there are excessive geographical restrictions on employees’ movements;
2. Whether the frequency of calls is unduly restrictive;
3. Whether a required response time is unduly restrictive;
4. Whether the on-call employee can easily trade his or her on-call responsibilities with another employee;
5. The extent of personal activities engaged in during on-call time; and
6. Whether or not the employee was ‘engaged to wait’ or ‘waited to be engaged.’

Time spent, other than actual work, on uncontrolled standby is not counted as hours worked. All time spent on controlled standby however must be considered as hours worked and wages must be paid. (Note: The simple requirement that the employee has a cell phone, standing alone, does not require to the employee be paid for all the hours the phone is on.)

**Availability Payment or Stipend.** You may elect to pay your employee a stipend for being available in an uncontrolled standby situation to return to work if called. In these situations, if the employee agrees to be available to return to work, but is otherwise free to pursue personal interests without restriction he or she is not entitled to wages; however, if you offer to pay a stipend for this uncontrolled standby time, the stipend amount must be included in calculating the employee’s regular rate of pay for overtime purposes.

**Rate of pay for Standby Time.** The hourly rate of pay for standby time can be different from the regular rate paid for working time, if set before the work is performed, and the amount does not fall below the applicable minimum wage.

**Response Time – Use this section with extreme caution.** A travel time limitation for employees on uncontrolled standby cannot be so restrictive that an employee is unable to following his or her own pursuits during such time. Although Federal cases have supported a 20-minute response time as acceptable to remain as uncontrolled, the California Wage and Hour Division has indicated that limiting an employee on standby in a rural area to a time radius of 20 minutes from the employers business may not be unduly restrictive but the same limitation imposed on an employee in a metropolitan area may be unduly restrictive. Additionally, the mode of transportation typically used by the particular employee is another factor to consider. Ultimately, whether any period of time is sufficient to provide the employee ample freedom to follow his/her own pursuits must be determined by a careful examination of the facts of each case.

## HOURLY ON-CALL (UNRESTRICTED STANDBY) AGREEMENT

Name: _____	Employee Number: _____
Position: _____	Department: _____
Hire Date (Month/Day/Year): _____	Today's Date (Month/Day/Year): _____

**Definitions.** The Company's On-Call system is an arrangement to provide appropriate service coverage across the Company. The core element of on-call is the agreement to be available outside normal working hours. An employee who is off site and agrees to be available for work outside of their normal working hours will be classed as being On-Call. On-Call time is considered as uncontrolled standby whereas you are completely unrestricted to use your time for you own purposes but agreeing to provide company services if needed. Such "free" standby time is not considered to be under the control of the employer and is not considered as hours worked.

**Availability Payment.** The Company offers an availability payment of \$\_\_\_\_\_ per (Hour/Day/Week/Month/Year). The main aim of an availability payment is that it recognizes the inconvenience that being on-call causes an employee. This stipend will be added to your wage earned for actual hours worked and will be prorated among your hours worked. This rate will be reviewed periodically by the Company and may be subject to change or elimination at any time. You will also be entitled to payment at the rate of \$\_\_\_\_\_ per hour **or** your normal rate of pay for work done when:

- You are called out and attend the workplace, or
- You are called and provide advice/assistance by telephone, or
- You are called and provide advice/assistance by remote log on the Company's IT network

**Employee Responsibilities.** While on-call you are not engaged to wait for work, required to wait to be engaged with work, and the frequency of calls will not restrict your personal pursuits. However, you are required adhere to the following:

- Refrain from alcohol or other intoxicants during periods of on-call, and
- Promptly answer all on-call communications via telephone, and
- Return missed calls within 30 minutes.
- You are allowed to trade shifts with another on-call employee with your Supervisor's approval. However it is your responsibility to procure your own replacement. \_\_\_\_\_ can provide you with a list of Company On-Call employees.
- If you are called out to perform services at a workplace for the Company and use a motor vehicle, the following procedures shall be strictly adhered to:
  - Except in the case of an emergency, you are required to use a hands-free device when using a cell phone while operating any motor vehicle or safely pull off the road to use a cell phone.
  - You are prohibited from texting at any time while operating a vehicle on Company business.
  - No passengers are allowed in a personal vehicle while on Company business without prior Management approval.
  - The Company will not pay for any fines levied for traffic violations including parking tickets resulting from the use personal vehicles.

**Time Records.** You are required to record and submit to your Supervisor the start and stop times as well as a description of work performed during your time on-call.

**Response Time.** Although there are no geographical restrictions in effect during your time on-call, if you are called out to perform services for the Company at a workplace, you are required to respond within

\_\_\_\_\_ (minutes/hours).

**Travel Time and Mileage Reimbursement.** Travel time and mileage is to be recorded and submitted when employees are contacted to perform services at a workplace for the Company while on-call. If you have a permanent work site, the time and distance spent during your normal commute will be deducted from paid travel time and mileage reimbursement. If you do not have a permanent worksite, travel time and mileage beyond the first work-site will be paid.

**Reporting Time Pay.** If you are called out to perform services at a workplace a second time in a scheduled workday, you will be paid a minimum of two hours at your regular rate of pay.

**Revocation.** This agreement shall be in full force and effect during the entire period of my employment unless revoked in writing by both parties.

I acknowledge that I have read this document, understand it, and voluntarily agree to its provisions.

\_\_\_\_\_  
Employee's Signature

\_\_\_\_\_  
Date (Month/Day/Year)

\_\_\_\_\_  
Supervisor's or Management Signature

\_\_\_\_\_  
Date (Month/Day/Year)

*Distribution: Original to Employee Personnel File, Copy to Employee*