



Overtime

Non-exempt employees must be paid one-and-one-half (1.5) times their *regular rate of pay* for all time worked in excess of eight hours, up to and including twelve hours, in any one workday, all time worked in excess of forty hours in any one workweek, and for the first eight hours worked on the seventh consecutive workday in any one workweek. Overtime rules are different for a lawfully adopted alternative workweek schedule. Refer to the [Alternative Workweeks Tool Kit](#).

Non-exempt employees must be paid two (2) times their *regular rate of pay* for all time worked in excess of 12 hours in any one workday, and for all time worked in excess of eight hours on the seventh consecutive workday in any one workweek. Hours paid, but not worked (i.e. vacation, sick leave, holiday), are not considered “hours worked” for the purposes of calculating overtime.

	1.5 X the Regular Rate	2 X the Regular Rate
Daily	More than 8 hours/workday	More than 12 hours/workday
Weekly	More than 40 hours/workweek	N/A
7th Day	For the first 8 hours on the 7 th consecutive day/workweek	After 8 hours on the 7 th consecutive day/workweek

How the Regular Rate of Pay May Affect Overtime

An employee’s “base hourly rate” is what they get paid for each hour worked (i.e., \$20/hour). The “regular rate of pay” takes into account other earnings, including non-discretionary bonuses, shift differentials, commissions, and piece-work earnings. If an employee receives any of these types of earnings, their regular rate of pay becomes *greater* than their base hourly rate.

It is important to understand how to calculate the “regular rate of pay,” as this is the figure that is multiplied by 1.5 or 2 to calculate overtime owed. For more information on calculating the regular rate of pay, refer to our [Regular Rate of Pay Fact Sheet](#).

Payment for Unauthorized Overtime

California law requires that employers pay overtime, whether authorized or not. This includes any work the employer “knew or should have known about.” Thus, a non-exempt employee cannot deliberately prevent the employer from obtaining knowledge of the unauthorized overtime worked, and come back later to claim recovery. The employer must have the opportunity to obey the law. Once you find out about unauthorized overtime, you must *always* pay the employee. However, an employer may discipline an employee if he or she violates the employer's policy of working overtime without the required authorization.

Requiring Employees to Work Overtime

An employer may dictate the employee's work schedule and hours, including overtime hours. Under most circumstances, the employer may discipline an employee, up to and including termination, if the employee refuses to work scheduled overtime.

An employer cannot discipline an employee for refusing to work on the seventh day in a workweek and is subject to a penalty for causing or inducing an employee to forego a day of rest. However, an employee fully apprised of the entitlement to rest who independently chooses not to take a day of rest may be allowed to work.

Exclusions when calculating overtime pay

Overtime is calculated based on hours actually worked. Sick Time, Vacation, PTO and Holiday Pay can be excluded when determining total hours "worked" in a week to calculate any overtime compensation.

For Example:

If an employee's workweek runs from Sunday through Saturday and they work 8 hours each day on Monday, Tuesday, Wednesday, Thursday and Saturday, and are out ill on Friday, they would be paid 48 hours at their regular hourly rate: 40 hours of regular work time and 8 hours of sick time. Even though they were paid for more than 40 hours that week, they would not be entitled to any overtime pay because only 40 hours were *actually worked*.

Payment for Overtime Hours Worked

Overtime wages must be paid no later than the payday for the next regular payroll period after which the overtime wages were earned. Only the payment of overtime wages may be delayed to the payday of the next following payroll period. Straight time wages must still be paid within the time set forth in the applicable Labor Code section in the pay period in which they were earned; or, in the case of employees who are paid on a weekly, biweekly, or semimonthly basis, not more than seven calendar days following the close of the payroll period.

Note: The DIR states that even if an employee does not turn in their timecard or record "hours worked," there is no exception in the law that allows the employer to delay payment, including for overtime hours. The employer must still timely pay all of the wages that it reasonably knows are due for the regularly scheduled work period.

Employees Cannot "Waive" Overtime Compensation

California law requires that a non-exempt employee be paid all overtime compensation notwithstanding any agreement to work for a lesser wage. An agreement or "waiver" will not prevent an employee from recovering the difference between the wages paid the employee and the overtime compensation he or she is entitled to receive.