

Know Your Law: W

By Dean Royer, Esq.

Editor's Note: Millions of workers in our community and in our country fall outside of the dubious protections of federal labor laws — farm workers, domestic and service workers as well as independent contractors — also known as “unrecognized” workers. They often have no benefits on the job and even though by law they should receive at least minimum wage, they do not. For many, the minimum wage is actually the maximum wage. However, over the last several decades, CCLP has assisted organizations of these “unrecognized” workers in their fight for meaningful legal recourse through provision of free-of-charge legal advice, legal education and even a class action suit against the State of California on behalf of the state’s thousands of migrant farm workers. In the article below attorney Dean Royer, a volunteer and member of CCLP, outlines some of the basic laws applicable to these groupings of workers.

On February 4, 2017, I gave a Know Your Law presentation about Wage and Hour laws. These are the protections (however limited they may be) that people without collective bargaining agreements have in California workplaces. This article will give a summary of these laws, and provide information about questions that came up during the session.

Before we dive into the laws, it is important to understand that they only protect people who are “employees” in the eyes of the law. Independent contractors have no protection. Also, “Non-exempt” workers (generally speaking, non-managerial employees) in the private sector have the most protection.

Hours of Work and Pay

Minimum Wage. All employers must pay their employees the applicable minimum wage. The amount depends on where the work is performed. For people who work in San Francisco, the minimum wage is set by San Francisco [City and County] law, currently \$13 per hour. For employees working in California locations that do not have local minimum wage laws, the current minimum wage is \$10.50 per hour if the employer has 26 or more employees, or \$10 per hour for employers with 25 or fewer employees. Across

the United States, if there is no state or local minimum wage, the federal minimum wage set pursuant to the Fair Labor Standards Act is currently \$7.25.

Overtime pay. Employers must pay their non-exempt employees overtime pay. In California, overtime kicks in once the worker works more than 40 hours per week OR more than eight hours in a day, as long as they are not live-in workers. Personal attendants do not get overtime until they work more than 40 hours per week (under federal law) OR more than nine hours a day. Personal attendants include any persons employed by a private householder or by any third-party employer recognized in the healthcare industry to work in a private household, to supervise, feed, or dress a child, or a person who by reason of advanced age, physical disability, or mental deficiency needs supervision.

Question: Are youth (minors) covered by minimum wage and overtime laws?

Answer: Yes, unless their employer is their parent.

Question: Are workers who get paid by the unit (“piece rate,” such as agricultural workers) entitled to be paid the equivalent of the minimum wage?

Answer: Yes. If the piece rate pay falls below the minimum wage rate for the hours worked, the employer must make up the difference.

Final pay check. Employers in the private sector must give their terminated or laid off employees their final pay check on the last day of work at the workplace. When workers resign, they also must receive their final pay check on the last day of work if they give at least 72 hours of notice; otherwise, the employer has

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Age and Hour Issues

72 hours to give the final paycheck at the workplace or by mail if requested by the worker.

Itemized pay statements (pay stubs). Employers in the private sector are required to provide a written statement when wages are paid that tells their workers information about their pay: wages earned, hours worked, deductions, pay period and the legal name and address of the employer.

Meal and rest periods. Employers in the private sector must provide their non-exempt employees with two types of breaks during the work day. For employees who work shifts of at least 3.5 hours, one 10-minute paid rest period is required. Employees who work shifts of at least five hours are also entitled to one 30-minute unpaid meal period.

Lactation accommodation. All employers are required to allow their employees a reasonable amount of break time to express breast milk for an infant child. The break time may coincide with, but is not limited to, a rest period.

Right to inspect personnel and payroll files. Employers in the private sector must allow their workers to review and obtain a copy of their personnel and payroll files upon request. Workers may request their personnel files one time per year.

Family Friendly Workplace Ordinance. Employees who have worked in San Francisco for at least six months and eight hours per week for employers with 20 or more employees (in any location) have the right to make requests regarding their work schedule: hours, location, assignment or a predictable schedule. The employer must meet with the worker regarding the request. It may deny the request, but must do so in writing.

Formula Retail Employee Rights Ordinances. Employees who work in San Francisco retail stores for employers with at least 40 stores worldwide and 20 or more employees in San Francisco (including janitorial and security contractors) are covered by several laws. If they are part-time, the employer must offer them extra work hours before hiring new employees or using contractors. The employer must provide its employees with schedules two weeks in advance. If the employer wants to change work schedules with less than a week's notice it must give the affected

workers premium pay. Workers who are "on-call" but not called in are also entitled to premium pay. Part-time employees must be treated equally as compared to full-time employees with respect to starting hourly wage, access to paid and unpaid time off and eligibility for promotions.

Question: Do the Formula Retail Ordinances cover restaurants?

Answer: Yes.

Leaves of absence

Family and medical leave. Certain employers must allow their qualified employees to take up to 12 weeks of unpaid leave for their own or a family member's serious medical condition or the birth and care of a newborn child. Covered employers are those in the private sector with 50 or more employees within a 75-mile radius, and all employers in the public sector. Qualified employees are those who worked for more than 12 months and at least 1,250 hours in the last 12 months (about 25 hours per week). Workers have the right to continue their health insurance during leave and the same or equivalent position and benefits upon return.

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Question: How is the number of employees calculated for franchises? Answer: It depends on whether the franchise is considered part of a larger single employer ("integrated enterprise"). There may be an integrated enterprise if multiple franchise locations have common management, interrelation between operations, centralized control of labor relations, and common ownership and financial control. If not, the number of employees is limited to the individual franchise location.

Pregnancy disability leave. Workers who work for employers with five or more employees have the right to take up to four months of unpaid leave for disabilities related to pregnancy. Employees have the right to continue their health insurance during leave and the same or equivalent position and benefits upon return.

Sick leave. All employees accrue paid sick leave after they work for 30 days. Workers in San Francisco immediately begin accruing sick leave. Employees accrue sick leave at the rate of one hour for every 30 hours worked. For those who work in San Francisco, workers may accrue up to five sick days if their employer has less than 10 employees, or nine sick days if their employer has 10 or more employees. Workers not covered by San Francisco's law may accrue up to six sick days.

Military leave. Workers are entitled to return to their position following military duty without loss of seniority.

Paid parental leave

Employees who work in San Francisco for certain private sector employers may take up to six weeks to bond with a new child at full pay. Workers must

apply for (1) California's Paid Family Leave program, which can provide about 60% or 70% pay; and (2) San Francisco's Paid Parental Leave, which requires the employer to supplement the California program pay so that the worker gets full pay. Currently, only employers with 50 or more employees (in any location) are covered by the San Francisco program. Starting July 1, 2017, employers with 35 or more employees will be covered; on January 1, 2018, employers with 20 or more employees will be covered.

Enforcing your rights

San Francisco Office of Labor Standards. Workers can present claims regarding the San Francisco laws concerning minimum wage, sick leave and the Formula Retail Employee Rights.

Division of Labor Standards Enforcement (Labor Commissioner). Employees can file claims regarding California laws concerning minimum wage, overtime, final pay check, itemized pay statements, meal and rest periods, and inspections of personnel and payroll files.

Department of Labor. Workers can present claims regarding military leave.

Court (or arbitration). Employees can file cases regarding minimum wage, overtime, final pay check, itemized pay statements, meal and rest periods, lactation accommodation, inspections of personnel and payroll files, family and medical leave, pregnancy disability leave, sick leave and military leave. 

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