



## Important Employment Law Changes 6/15/22

Who likes change? We certainly do not like change when it means more burdens and expense for our amazing Clients! At the risk of starting your day off a little rough, we are sending this email to ensure you are aware of 3 recent and very important changes that impact each and every employer in California.

1. **Missed Meal and Rest Period Premiums** - California has strict rules governing employee meal and rest periods, which are described in the Labor Code and each [Wage Order](#)\*\*. All non-exempt employees must be provided with timely, complete and uninterrupted meal and rest periods. The DLSE's website provides an overview of the requirements for providing [Meal Periods](#) and [Rest Periods](#). If you have questions about the requirements, please work with your employment law attorney to develop a meal and rest period policy. We have a comprehensive meal and rest period package for our Clients, which includes template waivers and acknowledgment forms.

Failure to provide compliant meal and rest periods subjects employers to Missed Meal Period Premiums ("MPP") and/or Missed Rest Period Premiums ("RPP"). MPP and RPP must be paid at the rate of 1 extra hour of pay for each workday in which the employee's meal and/or rest period was missed, taken late or was incomplete. If an employee has both a non-compliant rest period and a non-compliant meal period in the same day, the employer must pay the employee 2 extra hours of pay for that day – 1 hour for the MPP and 1 hour for the RPP.

Until the 2021 decision in *Ferra v. Loews Hollywood Hotel, LLC*, employers generally paid MPP and RPP at the relevant employee's base hourly rate. Not anymore! The California Supreme Court has ruled that **MPP and RPP must be paid at the employee's regular rate of pay** ("RRP"). Employers typically only think of the term RRP in the context of computing overtime. However, the RRP must be also used to pay employees for paid sick leave and, since July 2021, for MPP and RPP. Computing the RRP can be simple or quite complex, depending on how you pay your employees. If a non-exempt employee receives compensation in addition to a base hourly rate during any workweek in which a MPP or RPP is paid, the employee's regular rate of pay will be higher than the employee's base hourly rate, unless the additional payment is excluded. Depending on the compensation structure, computing the RRP can be as simple as just adding the various categories of compensation together and dividing by the total number of hours worked. However, there are specific formulas that must be used if the employee earns a non-discretionary flat sum bonus or production-based bonus, or if the employee is paid on a piece rate basis or is paid commissions. If your employees receive any categories of compensation required to be included in the RRP, be sure to review your RRP computation with your employment law attorney to ensure it complies with the current state of the law.

In May 2022, employers were given yet another new rule with respect to the payment of MPP or RPP when the California Supreme Court ruled in *Naranjo v. Spectrum Security Services, Inc.* that **MPP and RPP are considered wages**. As a result of this decision, MPP and RPP are ***required to be listed on employees' wage statements / paycheck stubs, as separate line items***. Additionally, the **failure to pay MPP and RPP** by the time the employee's final paycheck is issued **exposes employers to [Waiting Time Penalties](#)**.

The failure to comply with California's meal and rest period requirements, including the requirement to timely pay and properly document MPP and RPP also exposes employers to significant additional

penalties under the Labor Code and the California Private Attorneys General Act (“PAGA”), as well as the obligation to pay the attorneys’ fees of the plaintiff. Questions about your meal and rest period obligations should be directed to your employment law attorney.

2. **IRS Mileage Reimbursement Rate Increase** – Many of our employees drive their own vehicles as part of their job duties. Some employees travel to different job sites, while others run errands, make deliveries, go to the bank, etc. Under all of these circumstances, the employee who is using his/her own vehicle is entitled to be reimbursed for the expenses related to the use of his/her vehicle for the benefit of the employer. Although some employers provide gas cards or gas reimbursements to their employees, simply reimbursing an employee for the cost of gas does not satisfy the requirements of California Labor Code [Section 2802](#), which requires employers to reimburse employees for all necessary expenditures and losses incurred by the employee in the performance of his/her duties. To account for the additional costs incurred by employees in driving their own vehicles for the benefit of their employers, the reimbursement must cover the cost of fuel + wear and tear, tires, insurance, etc. Rather than having each employee track all of these expenses and the portion attributed to use of the vehicle for work, most employers satisfy the Section 2802 reimbursement obligation by requiring employees to submit mileage reimbursement requests and paying employees the IRS mileage rate. Effective [July 1, 2022](#), the IRS mileage reimbursement rate is increasing from 58.5 cents per mile to 62.5 cents per mile. You can read more about the IRS’s increase in its [Announcement 2022-13](#).
3. **Minimum Wage Increase** – As every California employer knows, [minimum wage](#) has been increasing each year and is scheduled to reach \$15.00 per hour for all employers effective January 1, 2023. Unfortunately, another negative consequence of inflation is the potential that minimum wage will actually increase even further to \$15.50 per hour effective January 1, 2023. Employers should be prepared for this increase, as it impacts not only non-exempt employees paid on an hourly basis, but also exempt employees.

As a reminder, exempt employees are those who satisfy the “duties test” set forth in Section 1 of the [Wage Order](#)\*\* governing your operation, as well as the “salary test.” The “salary test” requires exempt employees to be paid at least 2x minimum wage for full time employment (2,080 hours per year). With minimum wage at \$15.00 per hour, exempt employees must be paid a minimum salary of \$62,400 per year. If minimum wage increases to \$15.50 per hour as projected, exempt employees must be paid a minimum salary of \$64,480 per year. Employers should review all exempt employees job duties and salaries to ensure both the duty and salary tests are satisfied for each employee classified as exempt. If an employee satisfies the duties test, but not the salary test, the employee must be classified as non-exempt, and, therefore, complete timecards, paid overtime, provided with compliant meal and rest periods or be paid MPP and RPP, etc.

Additionally, employers who have employees that work in Cities and Counties outside of San Joaquin and Stanislaus County must check to see if there are any local minimum wage ordinances that require the employees to be paid a higher minimum wage than the State minimum wage.

\*\*If you are not familiar with the [Wage Order](#) governing your operation, please contact your employment law attorney. Every business must post the applicable Wage Order and comply with its provisions.

On a positive note, we are half-way through 2022 and the future is bright! Although it is inevitable that additional changes to the laws governing the employment relationship will be enacted in this legislative session and by the courts this year, we will be here to help you understand and implement the changes. Feel free to reach out anytime you have any questions!



578 N. Wilma Avenue, Suite A  
Ripon, CA 95366  
Office: (209) 599-5003  
Fax: (209) 599-5008  
Web: [www.hendersonhatfield.com](http://www.hendersonhatfield.com)

**STACY L. HENDERSON**  
Attorney at Law  
Direct: (209) 924-4894  
Cell: (209) 603-2543  
E-mail: [stacy@hendersonhatfield.com](mailto:stacy@hendersonhatfield.com)

**RAQUEL A. HATFIELD**  
Attorney at Law  
Direct: (209) 924-4796  
Cell: (209) 531-5180  
E-mail: [raquel@hendersonhatfield.com](mailto:raquel@hendersonhatfield.com)

CONFIDENTIALITY NOTICE: This message and any attachments may contain information that is confidential, proprietary, legally privileged and exempt from disclosure under applicable law. This message is intended only for the use of the individual or entity to which it is addressed. If this message has been transmitted to you in error, disclosure, copying, use or distribution of this any information contained in or attached to this message is prohibited. If you are not the intended recipient, please notify us immediately by phone at (209) 599-5003 or e-mail reply, and destroy the original message and its attachments without reading, copying or saving any portion. Thank you.