The Golden State for Silver State Employers: California Employment Law Update

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A Few Key Differences Between California and Nevada

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- Wage & Hour Law
- PAGA
- Arbitration Agreements
- A.I. Regulations
- Administrative Requirements



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Sullivan v. Oracle Corp.
California Supreme Court (2011)

- The plaintiffs were instructors living in Arizona and Colorado and working primarily in their home states but occasionally worked in California. Between 2001 and 2004, over a time span of three years, one of the employees worked in California 74 days; another worked in California 110 days; and the third worked in California only 20 days.
- **Issue**: Does the CA labor code apply to overtime work performed in CA for a CA-based employer by out-of-state employees in the circumstances of this case, such that OT pay is required for work in excess of 8 hours per day or in excess of 40 hours per week?
- **Holding**: California overtime rules (daily/weekly overtime) ***do apply*** to overtime work performed in California for a California-based employer by out-of-state employees in the circumstances of this case.

Ward v. United Airlines
California Supreme Court (2020)

- Plaintiffs were pilots and flight attendants. They resided in California but performed most of their work in airspace outside CA's jurisdiction.
- **Issue**: Does CA Labor Code section 226 apply to wage statements provided by an out-of-state employer to an employee who resides in California, receives pay in California, but who does not work principally in California or any other state?
- **Holding**: Section 226 applies to employees whose "principal place of work is in California." Employer location, employee residence, and payment of taxes are "not pertinent."
- An employee's "principal place of work" is in California if the employee works a majority of the time in California **OR** if the employee does not perform a majority of their work in any single state, if worker based of operations is in California.

Example from *Ward v. United Airlines*

- "For a business that operates, for instance, only in Stateline, Nevada, this would require the establishment of a separate records depot in California if, for reasons beyond the employer's control, one or more employees elected to reside in the immediately adjacent City of South Lake Tahoe, on the California side of the same community. If an employee principally works in and is based out of Nevada, and only incidentally works in California, Nevada law governing wage statements should apply regardless of whether the employee chooses to live across the border in California, receive pay here, and pay taxes here. On the other hand, if an employee principally works in California out of headquarters here, with some incidental work in Nevada, section 226 should apply, notwithstanding that the employee may elect to live in Nevada. We decline Ward's invitation to make employees' residence a focus of the test for determining whether an employer must furnish wage statements that comply with California law." *Ward* at page 33.

Oman v. Delta Air Lines
California Supreme Court (2020)

- Plaintiffs were flights attendants of Delta. One plaintiff lived in NY and had a NY airport as a home base; another lived in NV but had a CA airport as his home base; the other two employees lived in CA and had CA as their home bases.
- **Issue**: Does CA Labor Code sections 204 (semi-monthly payment of wages) and 226 (itemized wage statements) apply to wage payments and wage statements provided by an out-of-state employer to an employee who, in the relevant pay period, works in CA only episodically and for less than a day at a time?
- **Holding**: Labor Code sections 204 and 226 do not apply to pay periods in which an employee works episodically and for less than a day at a time in CA unless the employee works primarily in this state during the pay period, or does not work primarily in any state but has his or her base of operations in CA.

California Wage-and-Hour

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Private Attorneys General Act (PAGA)



Introduction to PAGA

- **"Aggrieved employees" are eligible to receive 35% of the penalties collected, with the remainder going to the state.**

- **PAGA provides a catch-all penalty for any violation of the labor code.**



PAGA Reform

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PAGA Penalties: The most far-reaching and impactful reforms in AB 2288 are the sections related to PAGA penalties as follows:

- **"Stacking" of Certain Violations Prohibited:** Allows courts to reduce "stacked" penalties for violations arising from the same payroll errors resulting in a failure to timely pay wages during employment, a failure to timely pay wages upon termination of employment and any derivative wage statement violations arising from these errors.
- **No PAGA "Penalty" For Weekly Payrolls:** AB 2288 reduces the penalties by 50% for employers that pay weekly.
- **Ability to Cure:** The PAGA reforms expand the list of violations that an employer can "cure," to include failure to provide meal and rest breaks, minimum wage and overtime violations, expense reimbursements, and additional wage statement violations.
- **"All Reasonable Steps" to Comply With the Law May "Cap" PAGA Penalties:** The PAGA reform recognizes that an employer can cap PAGA penalties by showing they have taken "all reasonable steps" to comply with the law.

PAGA Reform: "All Reasonable Steps"

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The reforms define "**all reasonable steps"** to include:

1. *Periodic payroll audits and post-audit corrective action*

   Spot checks of payroll records should be conducted at least once a year, and a comprehensive audit of all wage-hour practices should be conducted at least every three years. Audits should be conducted in close collaboration with counsel experienced with California wage-hour law, as the California Labor Code is nuanced and often changes. To take full advantage of the PAGA reform penalty reductions, corrections must be made before receiving a PAGA notice asserting violations. Corrections should be conducted in close collaboration with experienced counsel to ensure the changes are implemented properly.

2. *Dissemination of lawful written policies;*

   Maintain up-to-date and comprehensive written wage-hour policies, including policies covering meal and rest breaks, time keeping, overtime, and prohibitions on off-the-clock work. Policies should be reviewed and updated annually by counsel experienced in California wage-hour law to capture any changes in the law.

PAGA Reform: "All Reasonable Steps"

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The reforms define "all reasonable steps" to include **(continued):**

4. *Training supervisors on applicable Labor Code and wage order compliance;*

   Provide regular wage-hour training to HR and supervisors. Such training should be conducted at new-hire onboarding and repeated at least every two years. The training should cover key areas where lack of supervisor knowledge creates exposure, such as meal and rest breaks and off-the-clock work.

5. *And taking appropriate corrective action with regard to supervisors.*

   Take disciplinary action against HR members or supervisors who violate the wage-hour policy. This includes disciplining and terminating supervisors who fail to appropriately schedule and manage the workforce to ensure compliant meal and rest breaks.

- PAGA now expressly provides that the reasonableness of an employer's compliance steps is to be evaluated "by the totality of the circumstances," including the employer's size and the nature of the alleged violation.

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California Minimum Wage

- California statewide minimum wage: effective January 1, 2026, $16.90 per hour for employers of all sizes, ***but watch for industry rates and local ordinances***.
  - $20.00 per hour for fast-food workers at chains that operate 60 or more establishments nationwide and sell food for immediate consumption.
  - Effective July 1, 2026, $19.28 to $25.00 per hour for certain health care workers.
  - Several localities and cities also mandate a higher minimum wage:
    - San Diego (city) - $17.75 per hour
    - Los Angeles (city) - $18.42 per hour
    - Los Angeles (county, unincorporated) - $18.47
    - San Francisco (city and county) - $19.61
    - Emeryville (city) - $20.34
- As a consequence of California's minimum wages, standard executive, administrative and professional salary floors is $70,304 annually ($1,352 weekly) ***and*** subject to the quantitative duties test.



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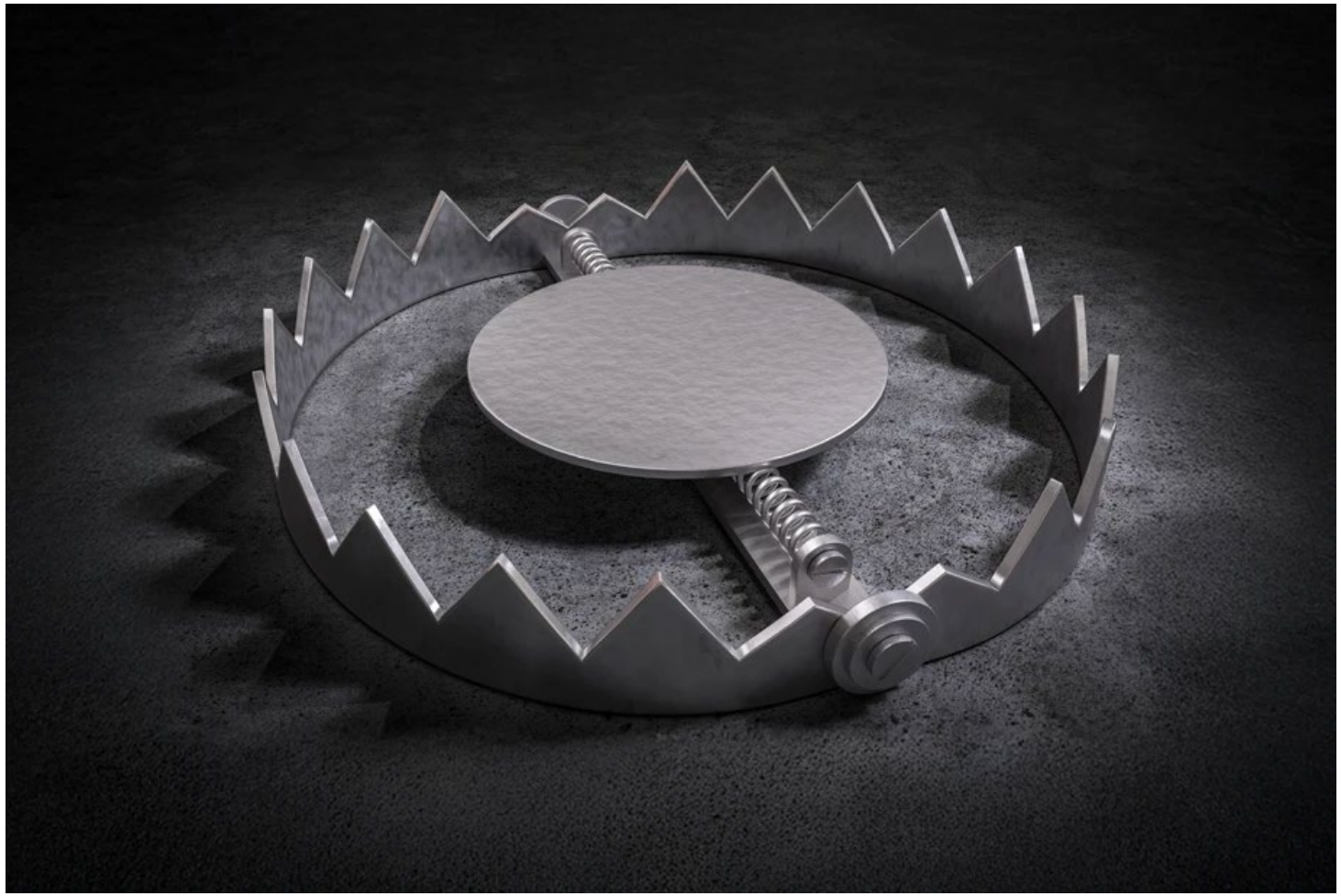
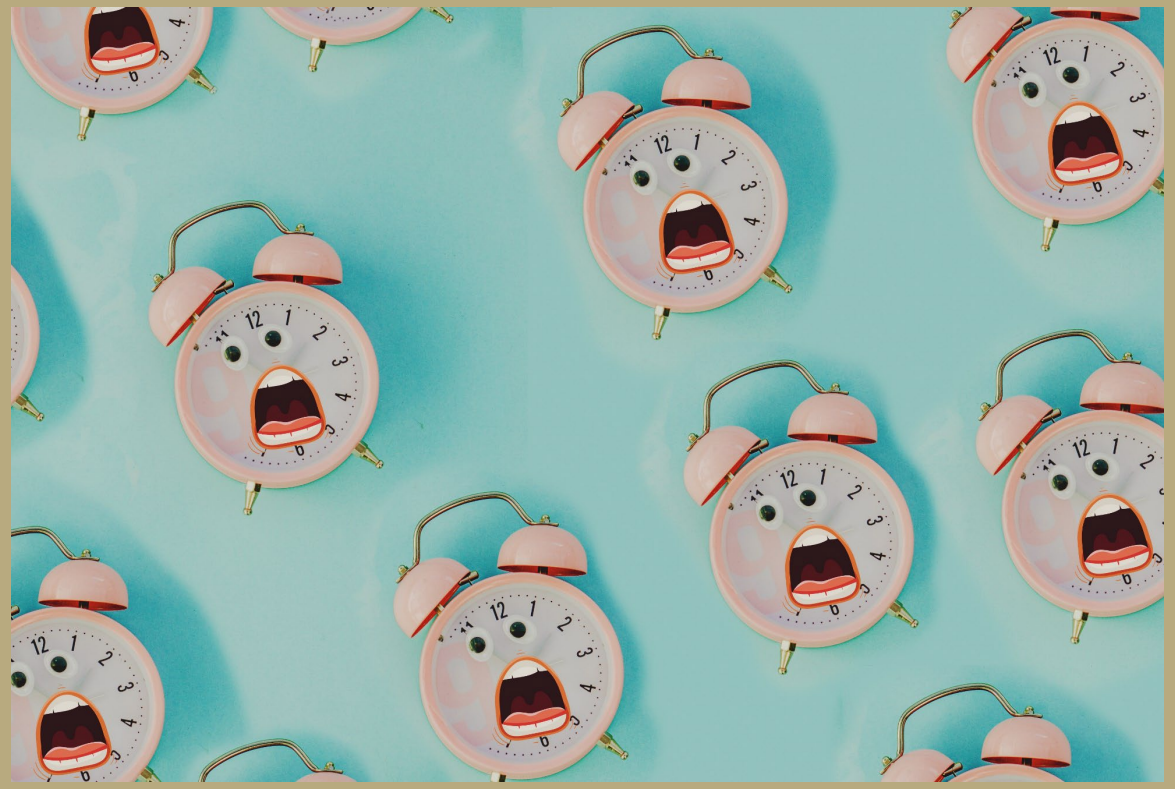
Meal and Rest Period Issues



Donohue v. AMN Services, LLC

California Supreme Court decided case in February 2021. This case:

- (1) *Prohibits* California employers from rounding time punches for *meal periods* and,
- (2) holds that time records showing non-compliant meal periods will raise *a rebuttable presumption of liability for meal period violations*.



Donohue v. AMN Services, LLC (2021) 11 Cal.5th 58 [275 Cal.Rptr.3d 422, 481 P.3d 661]

Overcoming the *Donohue* Presumption

- ***Smith v. Superior Court*** (Cal. Ct. App. April 22, 2026, unpublished).
  - Granted in part a writ of mandate ordering trial court to reconsider denial of certification of meal period subclasses, holding that employer's evidence of its efforts to comply with the law did not create individual questions that would prevent class action treatment
  - Employer's evidence included wage statements showing payment of premiums, supervisor declarations, 24 employee declarations saying they were not pressured to skip breaks, and attestation of timesheets.
- ***Lemus v. Owens-Brockway Glass Container*** (Cal. Ct. App. April 27, 2026, unpublished).
  - Employer rebutted the presumption with one HR manager declaration stating that compliant breaks were provided, premiums were paid for missed breaks, and the employer never reported missing a meal break.
  - Stressed that plaintiff had no proof of missed meals. Court stated that failure to record a meal break is not conclusive proof that none was ever taken.

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Compliance Tips

- Review and update meal and rest period policies. Prominently display policy along with all other employment-related posters on company bulletin board and/or by the time clock.
  - Annually review handbook and policies.
- Provide training and instruction to supervisors and managers.
- Put more burden on supervisors and managers and make meal and rest period compliance part of performance evaluations.
- Notice Clauses: Require all new employees to sign a document at the time of hire that advises the employee of his/her right to take meal and rest periods.
- Use drop boxes & attestation clauses.
- Ask non-exempt employees about meal and rest period during performance reviews.
- Discipline:
  - Supervisors who dissuade or instruct employees to miss meal or rest periods.
  - Employees who fail to record meal periods they miss and/or who otherwise violate the company's meal and rest period policies.

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Arbitration Agreements



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Employer/Employee Arbitration: Class Action Waivers



- Employers have used arbitration agreements to limit class and collective actions (i.e., class action waiver).

- According to the United States Supreme Court, class action waivers are valid and enforceable.

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California Class Action Waivers Impact on PAGA

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A recent California Supreme Court case held:

- While a claimant's individual PAGA claims may be compelled to arbitration via an enforceable arbitration agreement with a class action waiver, the claimant's PAGA claims on behalf of the State of California and the other alleged aggrieved employees, cannot be compelled to arbitration.
- While the representative component of a PAGA Claimant's action will typically be stayed until after the PAGA Claimant's individual claims are resolved in arbitration, the representative component will be permitted to proceed in civil court at a future date.

Cluck and *Morales* (August 2026): The Entire Employment Packet Matters

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- ***Cluck v. GEO Secure Services, LLC*, 122 Cal.App.5th 249**: related confidentiality and arbitration agreements created an unfairly one-sided dispute process.
- The employer reserved a court forum for its likely claims while directing employee claims to arbitration; an onerous opt-out process did not cure the problem.
- ***Morales v. Superior Court*, 122 Cal.App.5th 239**: a narrow clause covering disputes regarding the agreement did not reach independent statutory employment claims and other subsequent agreements could not be construed to expand the scope of arbitrable disputes.
- **Employer takeaway**: reconcile offer letters, confidentiality terms, arbitration clauses, and choice-of-forum language.

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A.I. in the Workplace



SB 947: Automated Decision Systems

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- Took effect October 1, 2025, with additional restrictions effective July 1, 2027.
- ADS is defined as computational processes (including AI and algorithms) that aid or replace employment decisions such as screening, ranking, or recommending.
- Applies to employers with five or more employees (including remote workers) as well as staffing agencies and third-party vendors.
- An employer cannot avoid FEHA responsibilities by using a vendor; a vendor can also qualify as an employer's agent.
- Preserve covered employment records and automated-decision data for four years from creation or the employment action, whichever is later; longer holds may apply.
- Effective July 1, 2027, employers are prohibited from relying solely on ADS to make disciplinary or termination decisions. Human must review and corroborate the decision.
- **Employer action:** inventory tools, review criteria and vendor terms (check for indemnification!), test relevant outcomes and provide appropriate accommodations.

Mobley v. Workday, Inc. (N.D. Cal. June 22, 2026)

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- Challenges alleged discrimination in AI-assisted applicant screening.
- A March 2026 order allowed an applicant ADEA disparate-impact theory to proceed but dismissed then-pleaded FEHA claims with leave to amend for insufficient California nexus.
- After amended allegations, the June order allowed key FEHA claims to proceed based on alleged California design/control of the screening tools; disability claims also remained.
- These are pleading-stage rulings, not findings that Workday's tools or a particular employer's hiring process discriminated.
- **Employer takeaway:** vendor selection does not end employer diligence; preserve tool versions, decision criteria, outcomes and contractual access to useful records.

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California Administrative Requirements



Sexual Harassment Training

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Requirements:

- 5+ employees (anywhere, even if they do not work in same location and even if not all of them live in CA)
- 1 hour for all nonsupervisory employees
  - Within 6 months of obtaining position
  - Then every 2 years
- 2 hours for all supervisory employees
  - Within 6 months of obtaining position
  - Then every 2 years



The California Civil Rights Department offers free online trainings:
https://calcivilrights.ca.gov/shpt/

SB 294: Annual Workplace Rights Notice

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- Effective January 1, 2026, all California employers must provide a stand-alone written notice to new employees at time of hire and current employees every year by **February 1**.
- California Department of Industrial Relations publishes a template and provides additional guidelines for distribution.
- Also imposes obligation that California employers notify an employee's designated emergency contact in the event the employee is arrested or detained either:
  - At the worksite, or
  - Offsite during working hours in the employer has actual knowledge of the arrest or detention.

Questions and Answers



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