

## ***First Wednesday — A Monthly Discussion of Employment Law Issues and Other Hot Topics for Management***

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***By Jeffrey A. Snyder - Issue No. 13: August 6, 2003***

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### **Common Problems In Wage And Hour Law**

Wage and hour law has many subtleties and trappings. Test your knowledge with the following quiz. The answers appear below.

1. Does a California company that complies with California wage law need also comply with Federal labor law?
2. Must an employee be paid for time spent on call wearing a beeper?
3. Is a manager entitled to receive overtime pay for working over 40 hours per week?
4. Is a manager who earns a salary of over \$100,000 per year, plus stock options, entitled to receive overtime pay for working over 40 hours per week?
5. A company's policy states that employees become eligible for one week of vacation on the first anniversary of employment. If an employee quits after working six months, is he entitled to receive any vacation pay?

6. Is an employee who has not taken any sick time off entitled to be paid for the unused sick days upon termination?

7. If the company uses a paid-time-off (“PTO”) policy for all vacation, holidays and sick days combined, must the employee’s accrued and unused PTO be compensated upon termination?

8. If a partnership splits into separate entities (e.g., as part of an agreed restructuring among partners), can the partnership employees’ vacation balances be transferred to the new companies?

9. If an employee quits, after giving two weeks notice, can the company withhold his final paycheck until he returns the company’s cell phone?

10. Can a company employ unpaid volunteers?

11. Bonus Question: What types of breaks are required in the employee’s day?

**Answers:**

1. Yes. With few exceptions, California companies must comply with both California and Federal wage and hour laws.

2. Probably not. The answer turns on whether the time can be used by the employee for his own purposes. The distinction is whether the employee is engaged to wait or waiting to be engaged. In the case of being engaged to wait, where the company controls the employee’s time waiting, he must be compensated. In the case where the employee is waiting to be engaged, however, the employee need not be paid for idle time.

3. It depends on her job duties and the specific industry. Simply titling an employee a “manager” does not mean she is exempt from overtime pay requirements. To

be exempt from overtime, the “manager” must still satisfy a duties test, to determine whether she exerts independent judgment and spends enough time performing management (as opposed to clerical) tasks.

4. It still depends on the outcome of a duties analysis as in No. 3 above. The title of manager and salary level do not automatically exempt the employee from overtime pay.

5. Probably yes. Accrued vacation must be paid out at the end of the employment relationship, even if the employee is not yet eligible to take a vacation. Vacation days are treated as wages earned. Depending on how the policy reads, this employee is likely entitled to receive 20 hours of vacation pay on termination.

6. No. Unlike vacation days, sick days are conditioned on actual illness. They are not considered earned or vested, and need not be compensated on termination.

7. Yes. Since a PTO policy is considered a replacement for a vacation policy, the vacation rules apply. Any accrued but unused time must be compensated on termination, subject to the company’s reasonable carryover and loss policy, if any.

8. No. All wages, including accrued vacation time, must be paid when the ownership change becomes effective. Failure to do so may subject the employer(s) to waiting time penalties, calculated by continuing the employees’ wages on a *per diem* basis until the final paycheck is delivered, up to a maximum of 30 days’ pay.

9. No. If the employee quits after giving at least 72 hours notice, he must be paid all wages immediately upon termination. If he gives less than 72 hours notice, he must be paid within 72 hours of giving notice. Very few circumstances will allow the

company to legally deduct from wages. Moreover, failure to meet a final paycheck deadline subjects the company to waiting time penalties.

10. Probably not. This will likely violate minimum wage law.

11. Bonus: The California wage orders require that an employee be allowed a 10-minute break for each four hours, or fraction thereof, worked, during which time the employer may require that employees remain on the premises. In addition, a 30-minute meal period must be allowed for any work period exceeding five hours. The employee may voluntarily waive her meal period as long as she works less than six hours in the day. Further, the employee and employer may agree in writing to waive the meal period but only if the nature of the work prevents the employee from leaving her duties. In that case, the employee can have an on-the-job paid meal period. Lastly, the health care industry has special meal period rules. (Wage Orders 4 and 5.)

\* End of Quiz \*

These hypotheticals were simplified and the answers overly general. Results and outcomes in real scenarios always depend on the specific facts and circumstances of the case presented.

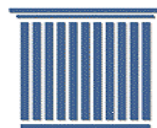
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