

Overtime Pay

YOUR LEGAL RIGHTS

If you work more than 40 hours a week, more than 8 hours a day, or 7 days in a row, you may be entitled to overtime pay for that additional work. Employees paid by a salary, by an hourly wage, and by piecework may all be entitled to overtime pay. This Fact Sheet describes whether you are entitled to overtime, how you should calculate your overtime pay, and how to collect that overtime if you have not been paid correctly.

1. Am I entitled to overtime pay?

Employees who can receive overtime pay.

Although most employees in California are entitled to overtime pay, there are some important exceptions. The most important exceptions are:

- **Union Members:** Your collective bargaining agreement ("union contract") may contain a provision stating that your job is not entitled to the protections of California's overtime laws. For more information on this exception, see the "Frequently Asked Questions" section of this Fact Sheet.
- **"Exempt" Employees:** An "exempt" employee is a non-union employee whose job does not qualify for overtime protections because of the kind of work the employee performs. Generally, the only types of workers who are considered exempt are those who have a lot of responsibility within the company and a lot of independence to make decisions that affect the way the company is run. Remember, however, that the actual definition of an exempt employee is much more complex than this brief description. If you think you may be an exempt employee, see our Fact Sheet titled "**Exemptions from Overtime Pay**" for further information.
- **Miscellaneous Jobs/Industries:** There are some jobs and industries that have special rules for overtime and, in some cases, complete exemptions from overtime. These include some, but not all, transportation workers, household employees and agricultural employees.

You can still collect overtime pay for work completed up to three years ago. California overtime laws allow you to collect overtime pay for work that you performed up to three years before the day on which you file a formal claim to collect your overtime pay (see the "What to Do to Collect Your Overtime Pay" section of this Fact Sheet). If you performed the work for which you are attempting to collect overtime pay more than three years ago, the **statute of limitations** (time limit) for that overtime has expired, and you normally can no longer file a claim to collect those wages. Exception: If you decide to file your case in court, you may be able to extend the time limit to **four years** if your lawyer includes claims under unfair competition laws (see number 5, below, for information about your different legal options).

2. How do I calculate my overtime pay?

A. Calculate your regular rate of pay.

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The amount you should receive for overtime worked depends upon your regular rate of pay. This applies both to hourly employees and employees who receive a salary. The information provided below should help you determine your regular rate of pay.

- If you are an hourly employee, your regular rate of pay is your regular hourly wage.
- If you are a salaried employee, you must first convert your salary to your hourly rate of pay. To calculate an hourly rate of pay, calculate your weekly salary and divide by 40.
- For example, if your monthly salary is \$1,600 per month:
 - \$1,600 per month x 12 months = \$19,200 per year
 - \$19,200 per year / 52 weeks = \$369.23 per week
 - \$369.23 per week / 40 hours per week = \$9.23 per hour

In this example, \$9.23 is the regular rate of pay.
- If you are a pieceworker (meaning that you are paid based on the number of items you make each day) your employer may calculate your regular rate of pay in one of two ways: 1) your employer may divide your regular weekly pay by 40 hours, or 2) your employer may agree to pay one-and-a-half times the piece rate for pieces made during overtime hours.

B. Calculate how much you should have received (this will depend on when you performed the work)

- How much you should be paid: You usually have the right to receive "time and a half" (1½ times your regular rate of pay) for each overtime hour you work. Sometimes, however, you have the right to receive "double time" (2 times your regular rate of pay) for overtime hours. See the chart below to determine whether or not the time you worked was overtime, and how much extra you should receive for that time worked.

If you worked...	In...	You should be paid...
More than 40 hours	One "workweek"	1 ½ times "regular rate of pay"
More than 8 hours	One "workday"	1 ½ times "regular rate of pay"
More than 12 hours	One "workday"	2 times "regular rate of pay"
Less than 8 hours on the 7 th consecutive day worked	One "workweek"	1 ½ times "regular rate of pay"
More than 8 hours on the 7 th consecutive day worked	One "workweek"	2 times "regular rate of pay"

A "workweek" is defined as seven consecutive days. Your employer usually can tell you when your workweek starts and ends. If your employer does not tell you what your workweek is, it is probably from 12:01 am on Sunday to midnight the following Saturday.

A "workday" is defined as 24 consecutive hours beginning and ending at the same time each day. Your employer usually can tell you the hours of your workday. If your employer does not tell you what your workday is, it probably begins and ends at midnight.

Be careful of the “7 consecutive days” rules. The law says that if you work 7 days in a row *and* those 7 days are in the same workweek, then you get time-and-a-half for the first 8 hours and double time if you work more than eight hours on the 7th day. This does not mean you always get overtime if you work 7 days in a row, but only applies if the 7 days are in the **same workweek** (defined above). If your work week is Sunday to Saturday, you only get overtime if you work everyday between Sunday and the following Saturday; if you work another set of 7 days in a row, for example Wednesday through Tuesday, you do not get the 7th day premium but only get overtime if one of the other overtime laws applies.

3. Examples of overtime pay calculations:

The following examples demonstrate how overtime pay would be calculated for three employees under current law.

Example 1:

A non-exempt employee works the following schedule for a week:

Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.	Sun.
7 hrs.	9 hrs.	7 hrs.	13 hrs.	3 hrs.	0 hrs.	0 hrs.

During this week, the employee worked a total of 39 hours. In that week, the employee worked one 9-hour day (Tuesday) and one 13-hour day (Thursday). On the 9-hour day, the employee must be paid at 1½ times her regular rate of pay for one hour (the ninth hour worked). On the 13-hour day, the employee must be paid at 1½ times her regular rate of pay for four hours, and at 2 times her regular rate of pay for one hour (the thirteenth hour worked). If the employee's regular rate of pay is \$10.00 per hour, she should be paid for this week as follows:

33 hours at regular rate of pay =	33 hours at \$10.00/hour	= \$330.00
5 hours at 1½ times regular rate of pay =	5 hours at \$15.00/hour	= \$75.00
1 hour at 2 times regular rate of pay =	1 hour at \$20.00/hour	= \$20.00
	Total pay for the week	= \$425.00

Example 2:

A non-exempt employee works the following schedule for a week:

Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.	Sun.
6 hrs.	6 hrs.	6 hrs.	6 hrs.	6 hrs.	6 hrs.	4 hrs.

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During this week, the employee worked a total of 40 hours. She also worked seven days in a row during one workweek. She must be paid at 1½ times her regular rate of pay for the hours she worked on Sunday, which was her seventh consecutive day worked during the workweek. If the employee's regular rate of pay is \$10.00 per hour, she should be paid for this week as follows:

36 hours at regular rate of pay =	36 hours at \$10.00/hour	=\$360.00
4 hours at 1½ times regular rate of pay=	4 hours at \$15.00/hour	<u>=\$ 60.00</u>
Total pay for the week =		\$420.00

Example 3:

A non-exempt employee, who is **paid by salary**, works the following schedule for a week:

Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.	Sun.
10 hrs.	8 hrs.	13 hrs.	6 hrs.	10 hrs.	10 hrs.	0 hrs.

During this week, the employee worked a total of 57 hours. In that week, the employee worked three 10-hour days (Monday, Friday and Saturday) and one 13-hour day (Wednesday). On the 10-hour days, the employee must be paid at 1½ times her regular rate of pay for one hour (the ninth and tenth hours worked). On the 13-hour day, the employee must be paid at 1½ times her regular rate of pay for four hours, and at 2 times her regular rate of pay for one hour (the thirteenth hour worked). There is also weekly overtime that starts after forty regular hours, which means every hour after the 2nd hour on Saturday is actually time and a half (she does not have to wait until the 9th hour because she already put in her forty regular hours).

If the employee is paid a salary of \$1600 per month (which is \$369.23 per week), her “regular rate of pay” is \$9.23 per hour (see calculation under section 2, above), she should be paid for this week as follows:

Salary for all regular hours		=\$369.23
16 hours at 1½ times regular rate of pay =	16 hours at \$13.85/hour	=\$221.60
1 hour at 2 times regular rate of pay =	1 hour at \$18.46/hour	<u>=\$18.46</u>
Total pay for the week		=\$609.29

Note: If you the time you work is more than eight hours in one day and more than forty hours in one week, you do not get “double overtime.” For example, a non-exempt employee works the following week:

Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.	Sun.
9 hrs.	9 hrs.	9 hrs.	8 hrs.	10 hrs.	0 hrs.	0 hrs.

Even though on Friday, the employee reaches 40 hours of work that week and works 2 hours over an 8-hour day, she is not paid double overtime for those last two hours.

4. Receiving “comp time” instead of overtime pay.

Your employer may, *under very specific conditions*, provide you with paid time off (“comp time”) instead of overtime pay. If your employer is trying to give you comp time instead of overtime pay, see our Fact Sheet titled “**Compensated Time Off**” for more information.

5. What do I do if I think I should get overtime pay, but don’t:

1. Ask your employer for the overtime pay you are owed.

The first step in collecting overtime pay you are owed should be to tell your employer that you believe you are entitled to overtime pay for work you have performed. When you talk to your employer, you should include the exact dates on which you worked overtime and the hours that you worked. If you have any documentation (such as a calendar or notebook) of the hours you worked, you should show it to your employer. You also have the right to **interest** on your unpaid wages and **waiting time penalties** if you no longer work for your employer. See our Fact Sheet titled “**Getting your Final Paycheck**” for information on these penalties.

2. File a claim with the Labor Commissioner.

If your employer refuses to give you overtime pay to which you are entitled, you can also file a claim for your overtime wages with the Department of Industrial Relations/Division of Labor Standards Enforcement (“Labor Commissioner”).

3. File a claim in court.

You can also decide to go to court instead of the Labor Commissioner. If your claim (including interest and penalties) is for \$7,500 or less, the proper court is small claims; if your claim is more than \$7,500, you will need to go to superior court unless you want to reduce your claim to \$7,500. You will normally need a lawyer to go to court and you will probably have to pay that lawyer. Court is sometimes a good option if your claim is complicated, involves a lot of your co-workers (for a group claim or “class action”), is worth a lot of money or if you need to extend your claim to a four year time limit under unfair competition laws. (See number 1, above for more information on the statute of limitations for overtime claims.)

4. Retaliation

Your employer may not “retaliate” (fire, demote, suspend, etc.) against you if you follow Step 1 or Step 2 above. If you believe your employer has retaliated against you, contact the Labor Commissioner. You have **six months** from the date of the violation (for example, the date you were fired) to file a claim with the Labor Commissioner. The six-month time limit may be extended for good cause.

6. Frequently asked questions about overtime pay:

Is work done on Saturdays, Sundays and holidays automatically considered overtime?

No. By law, hours worked on holidays, Saturdays and Sundays are treated like hours worked on any other day of the week, and are not automatically considered overtime. Some employers agree to pay

their employees extra for working on these days, but there is no law that says an employer must do so. If your employer has stated that overtime will be paid for time worked on weekends or holidays, that promise is enforceable and you can file a claim with the Labor Commissioner to receive the money you are owed if you were not paid correctly.

If I'm paid by salary, am I still entitled to overtime pay?

Sometimes. Even if you are paid by salary, your employer is required to pay you overtime unless you are exempt (see page one of this Fact Sheet). Salaried employees are often exempt, but not always. It is the type of work you do, not the way you are paid, that matters. If you are paid by salary, see our Fact Sheet titled “**Exemptions from Overtime Pay**” to determine whether or not you should receive overtime. See Section 2, above, for information about how to calculate your “regular rate of pay” and Section 3, Example 2, for information on how to compute your overtime if you are salaried and non-exempt.

What if my employer asks me to work overtime and I agree to be paid at my regular rate of pay?

You can't give up ("waive") your right to overtime pay. So, even if your employer asked you to work overtime at your regular pay rate and you agreed to do so, you still have to be given overtime pay for those hours worked. The only time you can give up your right to overtime is if it is based on an agreement for an alternative workweek that has been approved by all employees (see the next question for more details on the alternative workweek).

Can an employer and its workers avoid overtime by having alternative work schedules, like working four 10-hour days per week?

Yes. California's overtime laws allow an employer and its employees to agree to an "alternative workweek." If all of the very specific conditions listed below are met, employees can work days longer than 8 hours and be compensated only at their regular rate of pay. These restrictions were written into the law to make sure that an agreement to work longer hours is not forced on employees, but is actually their choice. If all of the following conditions are not met, your employer must pay overtime for hours worked over 8 in a day:

- The employer must propose the alternative workweek in writing, and it must be approved in a secret ballot election by at least two-thirds of the affected workers.
- The alternative workweek may not require more than 10 hours of work per day and no more than 40 hours of work a week.
- Any overtime between 10 and 12 hours worked above the alternative workweek established in the agreement must be paid at 1½ times the regular rate of pay.
- Any overtime beyond 12 hours worked must be paid at twice the regular rate of pay.
- Your employer cannot reduce your rate of pay as the result of establishing or rejecting an alternative workweek.

For more information, see our Fact Sheet titled “**Alternative Workweeks.**”

What if my employer has a "no overtime" policy but I work overtime hours?

Overtime pay is a right that cannot be given up by you or by your employer. If your employer says it has a no overtime policy but allows you to work overtime hours anyway, you must be paid overtime rates for those hours. If, however, you ask to work overtime, your employer tells you not to, and you do the work anyway, your employer can discipline (for example, suspend or even fire) you for doing that work. The employer must still pay you for the time worked, even though you might be disciplined.

Does my collective bargaining agreement exempt me from overtime laws?

Overtime laws do not apply to workers covered by a valid collective bargaining agreement (CBA) if all three of the following standards are met:

- The CBA expressly provides for the wages, hours of work, and working conditions of employees; and
- The CBA provides for premium overtime pay rates; and
- The regular hourly rate of pay for the employees is not less than 30% more than state minimum wage. Since January 1, 2007, when minimum wage was raised to \$7.50 per hour, this means the regular rate of pay under your CBA may not be less than \$9.75 per hour. Effective January 1, 2008, the minimum wage is \$8.00 per hour, and your regular rate of pay under your CBA may not be less than \$10.40 per hour.

I'm under 18. Do these laws apply to me?

If you are under 18, your employer generally cannot ask you to work more than 8 hours in any day, or more than 40 hours in any week. However, if you do end up working more than 8 hours in a day, or more than 40 hours in a week, you have the right to receive overtime pay.

This fact sheet is intended to provide accurate, general information regarding legal rights relating to employment in California. Yet because laws and legal procedures are subject to frequent change and differing interpretations, the Legal Aid Society - Employment Law Center cannot ensure the information in this fact sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your legal rights in your situation.

For further information about your employment rights, please call:

The Workers' Rights Clinic

415-864-8208 (SF Bay Area) or **866-864-8208** (Toll Free in CA)

The Workers' Rights Clinic is a project of The Legal Aid Society - Employment Law Center, a non-profit organization focusing on the employment-related legal rights of low-income workers and providing free legal information on a wide range of employment-related problems.