

# Now It's Personal: Individual Liability for Wage & Hour Violations

Session 5

2016 Employment Law Conference ~ *Strength in Balance*

**Prepared by:**  
Jonathan Judge, Esq. &  
Amber S. Healy, Esq.

**aalrr**  
Atkinson, Andelson  
Loya, Ruud & Romo  
A Professional Law Corporation

# Agenda

- California's Wage Theft Laws
- Fair Day's Pay Act
- Common Wage & Hour Claims
- Complicated Wage Calculations
- Best Practices

The logo for aalrr, featuring the letters 'aa' in dark blue, a green vertical bar, and 'rr' in dark blue.

# Compliance With CA Wage & Hour Law is *Not Easy*

Meal & Rest Periods	Vacation
Employment Classification	Pay at Termination
California Overtime	Itemized Wage Statements
“Off-the-Clock” Work	Wage Theft Notice
Travel Time	Time Rounding
Expense Reimbursement	Recovery Periods
Suitable Seating	Independent Contractors
Reporting Time Pay	Bonuses

# California's Wage Theft Laws



- What is Wage Theft?
  - Employer's illegal withholding of wages
  - No requirement that it be intentional
- Wage Theft Prevention Act
  - Effective 2012
  - Requires key information to employees
  - Increased penalties | attorneys' fees
- Fair Day's Pay Act of 2015
  - Expanded personal liability

# Fair Day's Pay Act

**Labor  
Commissioner's  
right to place lien  
on employer  
property or levy  
bank accounts**

**Successor  
companies will be  
held liable for  
prior employer's  
unpaid wage  
judgments**

- **Bonds**
- **Increased civil penalties**
- **Attorneys' fees**

**Owners, directors, officers, and other employees who determine company policy who violate or cause to be violated, certain wage & hour violations can be held personally liable.**

# Managing Agent?

Who is a Managing Agent?

1. Supervisor;
2. Human Resources Director;
3. Payroll Manager.



# Personal Liability

Personal liability can attach to the following wage & hour claims:

1. Wage Order provisions governing minimum wages, hours, and days of work, and alternative workweek schedules;
2. Payment of wages due and owing at the time of termination (Labor Code §203);
3. Wage statement requirements (Labor Code §226);
4. Payment of the minimum wage for all hours worked (Labor Code §1194);
5. Attorneys' fees for lawsuits to recover unpaid minimum wages or unpaid overtime wages (Labor Code §1193.6);
6. Reimbursement of work related expenses (Labor Code §2802.)

# Increased Enforcement Measures

- Labor Commissioner given same authority as creditor when enforcing a Labor Commissioner judgment
- Successful employee can now:
  1. Place a lien on the employer's property;
  2. Levy the employer's assets

**Individual liability now possible, Labor Commissioner can also seize property and assets of individuals held liable.**



# Successor Entities

Any new business that is “*similar in operation and ownership*” to the employer may be liable for the unpaid wage.

1. Same work, working conditions and supervisors, or
2. Substantially the same production process or operation, produces same product or services, and same customers.

# Increased Penalties

- Bond requirement
  - \$50,000-\$150,000
- Penalties
  - \$2,500 for first violation and \$100 for each calendar day of violation
  - \$100,000 maximum



# Common Wage & Hour Claims

- 1 Overtime Wage Claims
- 2 Off-the-Clock Wage Claims
- 3 Expense Reimbursement
- 4 Wage Statement Claims

# Overtime Wage Claims



- Non-exempt employee is entitled to overtime for all hours over eight (8) in a workday or forty (40) in a workweek.
  - Some exceptions.
- The overtime rate of pay is 1.5 times the employee's regular rate of pay. The "regular rate of pay" is the employee's cumulative, averaged hourly pay.
  - *Caution*: An employee's hourly rate may not be the same as the employee's regular rate for purposes of overtime.
- Non-discretionary bonuses

# Off-the-Clock Wage Claims



- Hours worked that employee not compensated for
- *Examples*
  - Time spent working before clocking in/out
  - Working during meal/rest breaks
  - Mandatory meeting
  - Checking emails/voicemails, etc.
- **Failure to pay minimum wages**

# Expense Reimbursement



- Employer shall indemnify employees for all necessary expenditures or losses incurred as a direct consequence of the discharge of duties
  - Provide employees with all consumables, such as gloves or other items that sustain wear & tear
  - Reimburse employees for required tools, uniform purchases, etc.

# Wage Statement Claims

Pay -

1  
Employer Name  
Address 1  
Address 2  
City, Province  
Postal Code

2  
Dept No: 0000

3  
Current Period: 10/02/2011

4  
YTD Period: 9/10/11

5  
Statutory Deductions

6  
Net Pay: 1,433.33

ITEM	RATE	CURRENT PERIOD	YTD PERIOD	YTD AMOUNT	STATUTORY DEDUCTIONS	CURRENT PERIOD	YTD AMOUNT
REGULAR PAY	25.00	80	320	8,000.00	CGIPP	95.62	515.34
BONUS	0.00	0	0	0.00	EI	36.69	194.42
VAC PAY	0.00	0	0	2,000.00	TAXES	350.90	2,148.36
<b>GROSS EARNINGS/HOURS</b>		<b>80</b>	<b>320</b>	<b>10,000.00</b>	<b>TOTAL STATUTORY DEDUCTIONS</b>	<b>483.21</b>	<b>2,858.12</b>
<b>TAXABLE BENEFITS</b>					<b>OTHER DEDUCTIONS</b>		
BASIC LIFE	9.47	37.88			EITD	22.25	89.40
ER RRSP	60.92	243.68			EE RRSP	60.92	243.68
<b>TOTAL TAXABLE BENEFITS</b>		<b>78.76</b>	<b>281.56</b>		<b>OTHER DEDUCTIONS TOTAL</b>	<b>83.17</b>	<b>333.08</b>
<b>TOTAL TAXABLE EARNINGS</b>		<b>2,070.39</b>	<b>10,960.56</b>		<b>TOTAL DEDUCTIONS</b>	<b>566.38</b>	<b>3,191.20</b>
					<b>NET PAY</b>	<b>1,433.33</b>	

CHEQUE / DEPOSIT NUMBER: 00002000  
PAY DATE: 10/02/2011

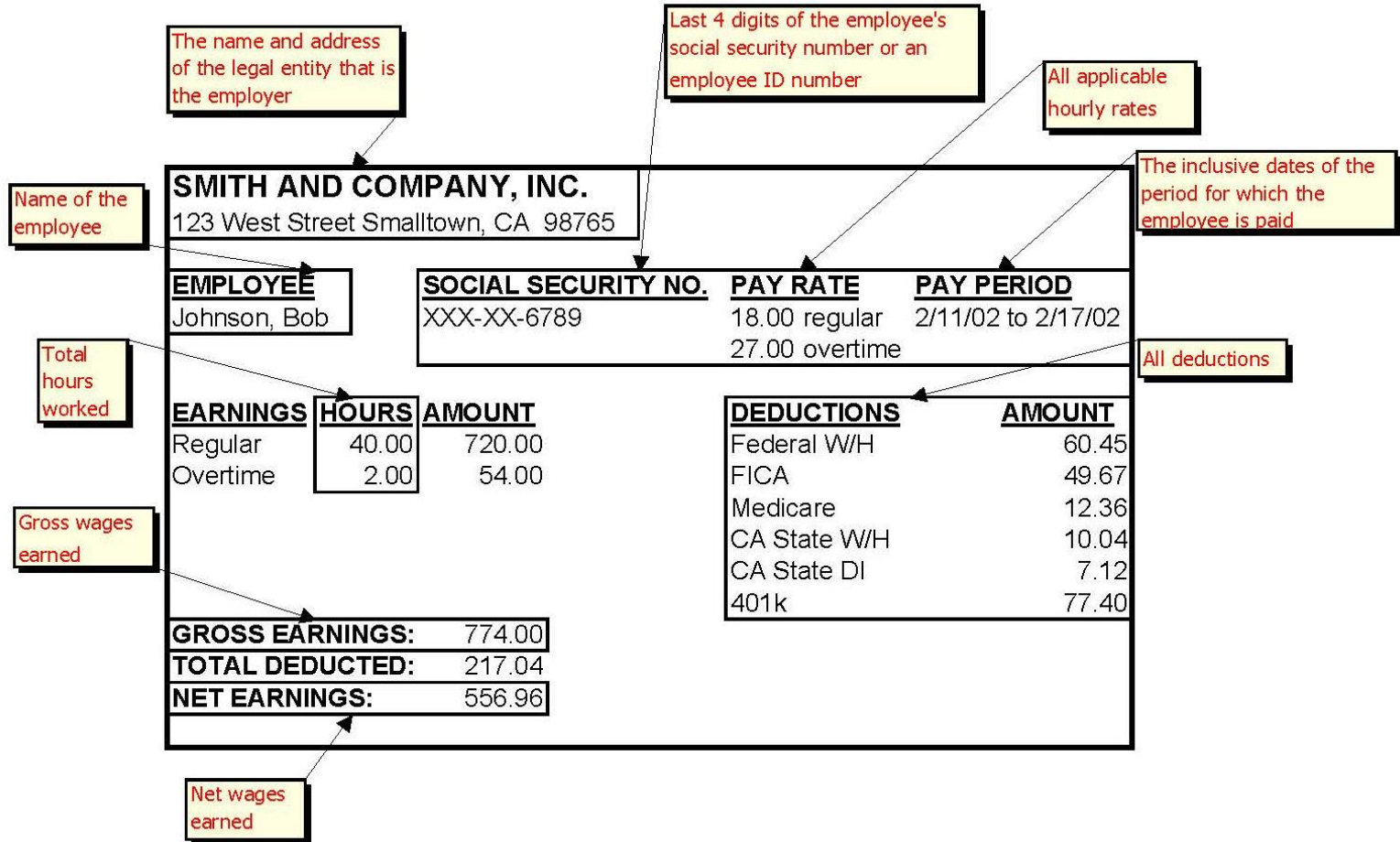
DEPOSITED TO THE ACCOUNT OF  
-FIRST NAME- -SURNAME-  
**THIS IS NOT A CHEQUE**

BANK DEPOSIT  
**NON-NET**

- “Derivative” claims dependent on underlying substantive violations
- Required wage statement information for non-exempt employees (Labor Code §226)
- Special Requirements
  - Temporary service employees
  - Piece-rate
  - CA Healthy Workplaces, Healthy Families Act

# Accurate Wage Statement

Pay stub for an employee paid an hourly wage





## Inaccurate Wage Statement

ACME Co.

Check No. 988

3/18/2016

John Smith

SSN 123-45-678

	Hours	Rates	Amount
Labor – Job 22-A	10	18.50	180.50

# Calculation Examples ~ Shift Premium Pay

Employees paid **shift premium pay**.

- Jane is paid \$11 per hour. When Jane works a night shift (such as 11 p.m. to 7 a.m.) she is paid \$13 per hour.
- For the week in question she worked three day shifts and three night shifts in which each shift was 8 hours.
- Jane therefore worked 48 hours in the workweek and is owed eight hours of overtime.

# What is Jane's Overtime Rate?

$$\text{Regular Rate} = \frac{\text{Total Compensation}}{\text{Total Hours Worked}}$$

$$\frac{\text{Total Compensation} = (\$11/\text{hour} * 24 \text{ hours}) + (\$13/\text{hour} * 24 \text{ hours}) = \$576}{\text{Total Hours Worked} = 48 \text{ hours}}$$

•

$$\begin{aligned} \text{Regular Rate} &= \$576 / 48 \text{ hours} = \$12 \text{ per hour} \\ \text{Overtime Rate} &= 1.5 * \$12 \text{ per hour} = \$18 \text{ per hour} \\ \text{Total Overtime Wages} &= \$18 \text{ per hour} * 8 = \$144 \end{aligned}$$

- If Jane's employer calculated her overtime rate based on her \$11-per-hour rate, they would have paid her \$16.50 per hour for eight hours of overtime for a total of \$132.
- This would result in an underpayment of \$12 and would be in violation of California law, exposing the company, its owners, and agents to potential personal liability for this underpayment, interest, civil and statutory penalties, attorneys' fees, and possible criminal exposure.
- Further, Jane may bring a lawsuit for this underpayment on behalf of herself and all other employees of the company, increasing the potential liability exponentially.

# Overtime Calculation ~ Piece Rate

Two approved methods to calculate overtime for piece rate employees.

	M	T	W	TH	F	Total
Total daily hours worked	10	9	7	6	10	42
Total piecework earning for the 42 hours						\$420
Regular rate = \$420 divided by 42						\$10
Hour for which time-and-one-half is due = 5						
Premium for overtime hours = \$10.00 divided by 2 = \$5.00 x 5						\$25
<b>Total Earnings Due:</b>						
Straight time						\$420
Overtime						\$25
Total						\$445

# Best Practices

- ✓ Conduct a Wage & Hour Audit
- ✓ Implement Compliant Policies and Practices
- ✓ Review Your Wage Statements
- ✓ Training
- ✓ Arbitration Agreements

# Thank You

aa*l*rr

Atkinson, Andelson  
Loya, Ruud & Romo

A Professional Law Corporation