CHAPTER 4

CALIFORNIA LABOR LAWS

THE CALIFORNIA LABOR CODE

The California Labor Code exists for the purpose of protecting all employees within the state from unfair treatment in the workplace. The Department of Industrial Relations governs the Division of Labor Standards Enforcement, which is responsible for enforcing the provisions of the California Labor Code.

The Division of Labor Standards Enforcement is headed by the Labor Commissioner. The Labor Commissioner and his agents have the right of free access to all places of employment within the State of California. Refusing to allow entry to the Labor Commissioner or one of his agents is a misdemeanor.

When an employee feels he/she has been discriminated against or received any form of unfair treatment in their place of employment, they may file a complaint with the Labor Commissioner. The Labor Commissioner will take assignments regarding the following employee complaints:

1. Claims regarding wages, expense accounts and advances.
3. Claims regarding damages because of misrepresentation of conditions of employment.
4. Claims to enforce penalties for non-payment of due wages.
5. Claims regarding bond money not returned to employees.
6. Claims regarding the return of employees' tools in the possession of another.
7. Claims regarding vacation pay, severance pay, or other compensation due as stated in the wage agreement.
8. Claims regarding the loss of wages as a result of discharge because of wage garnishment.
9. Claims regarding "stop orders" for bonds or wages.
10. Claims regarding awards for Workers' Compensation benefits.

DISCRIMINATION

California law protects the civil right of all persons within the state to seek and obtain employment. Employers are not permitted to discriminate against anyone on the basis of their race, religious belief, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, or age.

Employers are prohibited from using discrimination, as defined above, as a reason for hiring or dismissing an applicant or employee. In addition, employers are prohibited from using discrimination as a reason for inconsistent work standards, pay scales, privileges, or selection for training programs. (NOTE: Employers may refuse to hire or discharge an applicant or employee on the basis of physical handicap or medical condition, if the applicant or employee is unable to perform the required work because of such condition.)

UNLAWFUL EMPLOYMENT PRACTICES

The following have been determined to be unlawful, and employers are prohibited
from engaging in such employment practices:

1. Coercing a person to agree, whether verbally or written, to not join or organize a labor organization as a condition of employment.
2. Requiring an applicant or employee to take a polygraph test. (This does not apply to local or state government agencies.)
3. Discharging or discriminating against any employee who has made or testified to a complaint regarding the health, safety, or discrimination of themself or another employee.
4. Withholding money from any employee or requiring any applicant to pay for a physical examination as a condition of employment.
5. Discharging or discriminating against an employee who has suffered an injury on the job.
6. Requiring that an employee not disclose their amount of wages, as a condition of employment.
7. Demand or accept a cash bond from an employee or applicant. This does not apply if the employee is entrusted with property of an equal value, or the employer provides the employee with merchandise or goods to be sold or delivered by the employee.
8. Requiring an employee to agree, whether verbally or written, to any illegal term as a condition of employment.
9. Coercing an employee, by false representation, to relocate in or outside of the state.
10. Including false representation in employment advertising.
11. Attempting to prevent a former employee from obtaining new employment by misrepresenting the employee to those inquiring about his/her previous employment.
12. Coercing an employee to refrain from any political actions or activities as a condition of employment.
13. An employer may not require an employee to patronize the business for which he/she is employed.

WORKING HOURS

A standard work week, as defined by the Labor Code, consists of five 8 hour days unless both the employee and employer have agreed otherwise. An employer and employee may agree to a daily work schedule that does not meet the standards as defined by the Labor Code. However, a standard work week is not to exceed 40 hours at any time.

In addition, employers may not require that any employee work more than six consecutive days. All employees within the state must be provided with one day's rest for each seven days. In emergency situations, an employee may agree to work more than six consecutive days, provided that he/she receives additional compensation.

All employees who work four hours or more on any given work day, must be provided with a "break or rest period." Employers are required to provide a separate rest area for their employees and breaks are to be provided as follows:

1. All employees must be permitted a 10 minute rest period for every four hours worked.
2. All employees who work five hours or more must be permitted to take a 30 meal break. It is not required that employees be paid for this time.
   However, the employee must be paid if he/she is to remain on duty for the
duration of the meal period.

Federal laws and regulations require that any employee who works above and beyond the standard work day or week, is to receive additional compensation. This additional compensation, or \textbf{overtime pay}, is to be equal to one and one-half times the amount of the employee's standard hourly or daily wage. However, this requirement to pay additional compensation does not extend to any employee who works less than 30 hours a week or 6 hours a day.

\textbf{PAYMENT OF WAGES}

Every employer must post a notice which specifies the time, date, and location where payment of wages may be received. This notice is to be posted at the location where employees report to work, or the nearest office where payment is made.

All employees wages are due and payable twice each month. Payments may be made on the 1st and 15th of each month or biweekly. However, an employer may pay his/her employees more often if he/she chooses to do so. Wages may be paid in cash or some form of payment which is negotiable for cash, such as a check or money order. Wage payments made in the form of coupons, gift certificates, or other notes redeemable for merchandise, are prohibited.

Employers are required to deduct federal and state taxes from employee earnings. When the employee has given express written permission, the employer may also deduct amounts from the employee's wages for programs such as retirement plans and health insurance. \textbf{(NOTE:} If an employee does not arrive to work at the scheduled start time, the employer may deduct the amount of wages which would have been earned during the time the employee was tardy. However, if the employee was less than thirty minutes late, the employer may deduct a full thirty minutes of pay.)

Upon payment of wages, the employer must provide the employee with an itemized statement which includes the following information:

1. The total amount of gross and net wages earned.
2. The total hours worked.
3. All deductions including those made with the permission of the employee and state and federal taxes.
4. The dates of the pay period.
5. The name and address of the employer.

An employee may choose to assign a specific amount of his/her wages to another person. The employee (and their spouse, if applicable) must sign a written notice, stating the amount and to whom the wages are to be assigned. The amount of wages to be assigned may not exceed 50% of the wages earned during any given pay period.

If employment has been terminated by either the employer or the employee, payment of wages must occur during specific time periods as defined by the Labor Code. These time periods are as follows:

1. If the employee has been terminated due to unacceptable job performance, all unpaid wages are due and payable immediately.
2. If the employee quits his/her employment, all unpaid wages are due and payable within 72 hours from the time the employer was notified of the employee's termination of employment. However, if the employee gives the
employer 72 hours notification of his/her intention to quit, all wages are due and payable upon the termination of employment.

An employer's failure to abide by the above described time periods will result in the following penalties:

1. The employee's wages will continue at the same rate of pay for up to 30 days or until payment is made. In this case, the employer must pay the due wages and the additional wages to the employee.
2. For a first offense, the employer will be subject to a $50 fine. If it is a subsequent offense, the employer will be subject to a fine of $100 and 25% of the wages overdue.

Employers in the building and construction industry are subject to further penalties in the event that an employee’s paycheck has been refused due to lack of sufficient funds or there is no such account. In this case, the employer must show that the error was unintentional, or be subject to payment of up to 30 days additional wages to the employee.

LABOR ORGANIZATIONS

Labor organizations or "labor unions" exist for the purpose of preventing and resolving disputes between employees and their employers. This includes disputes regarding wages, working hours and working conditions. Employers within the State of California may not restrict their employees from joining or organizing a labor union. However, employees may be required to join a labor union as a condition of employment.

When an employer and a labor union have come to an agreement regarding labor issues, this agreement is known as a **collective bargaining agreement**. This agreement is enforceable by law, and therefore, breach of the agreement by either party may result in legal action.

A collective bargaining agreement may contain a **successor clause**. This means that if the business is sold, the successor employer must abide by the terms of the existing agreement. Such a clause is only valid for the time period stated in the agreement contract. However, a successor clause may not be legally valid for more than three years from the date of the collective bargaining agreement.

Whenever a labor dispute arises, and a collective bargaining agreement cannot be reached, a strike or lockout may occur. A **strike** is defined as a situation in which 50% or more of the employees refuse to perform their job due to the fact that a collective bargaining agreement has not been reached. A **lockout** is defined as a situation in which the employer refuses to allow the employees entrance to the workplace until a collective bargaining agreement has been reached.

In the event of one of the above described situations, the employer may hire workers to replace those who are on strike or have been locked out. However, employers are required to state in all employment advertising that positions are available due to a strike or lockout situation.

A **professional strikebreaker** is defined as a person who has within the past five years, become a replacement employee for two or more businesses in the time of a strike or lockout. It is unlawful for an employer to knowingly and willingly use the
services of a professional strikebreaker, and doing so is punishable by a fine of up to $1,000, 90 days in the county jail, or both.

WORKERS' COMPENSATION INSURANCE

California Workers' Compensation law requires that every employer in the state carry some form of workers' compensation insurance. This insurance is required to ensure that any employee who has been injured will receive proper and immediate medical treatment, and to limit the employer's liability in an effort to avoid lawsuits. The insurance is to cover all employees including relatives and part-time employees.

Before a contractor's license will be issued, renewed, or reinstated, one of the following must be obtained:

1. Proof of workers' compensation insurance issued by an admitted insurance carrier.
2. A certificate of consent to self-insure.
3. A certificate of exemption from workers' compensation insurance. This certificate may be obtained by any contractor who does not have any employees. However, if a contractor chooses to hire employees, he must first obtain workers' compensation insurance and provide proof of insurance to the Registrar within 10 days from the date the insurance was issued.

Once an employer has obtained workers' compensation insurance or has become self-insured, notification of such insurance must be posted at a location which is frequented by employees. This notice must state the name of the workers' compensation insurance carrier, or the establishment which handles claims for the self-insured employer.

In addition, each new employee must be provided with the name of the insurance carrier, and informed of their right to receive workers' compensation benefits in the event of a work-related injury. These benefits include:

1. **Medical benefits.** Employees receiving medical benefits are entitled to full coverage for medical, hospital and surgical treatment.

2. **Vocational Rehabilitation benefits.** Employees who cannot return to their usual occupation may receive services such as job counseling, job training and placement assistance.

3. **Temporary Disability benefits.** Employees receiving temporary disability benefits are entitled to weekly payments until they have recovered from a temporary injury or illness. Payment amounts are based on the employee’s usual weekly earnings, and are to be no less than $168 and no more than $336.

4. **Permanent Disability benefits.** Employees who have become permanently disabled or may never return to the same occupation as a result of a work-related injury or illness, are entitled to benefits based on the degree of the disability and their earning capacity.

5. **Death benefits** are payable to the dependents of any employee who has died as a result of a work-related injury or illness. Death benefits may be paid to two or more dependents in the maximum amount of $115,000,
with an additional $5,000 for funeral expenses.

If an employee has been injured on the job, he/she must submit written notification to the employer within 30 days from the date the injury occurred. The employer must then provide the employee with a workers' compensation claim form and information regarding the possible benefits for which the employee may be eligible. The employer then has five days in which to notify his insurance carrier of the injury. If the employee fails to submit written notification within the 30 day time period, he/she will no longer be eligible for workers' compensation benefits.

If an employer questions the validity of an employee's workers' compensation claim, he may request a hearing by the Workers' Compensation Appeals Board. An employer may try to prove, before the board, that an employee should not be eligible for workers' compensation benefits. This may be proven if the employer can show that the employee's injury was due to his intoxication or misconduct, or the claimant is not an employee, but rather an independent contractor.

An employee who has received workers' compensation benefits may not pursue a lawsuit against the employer. However, legal action may be taken if one of the following conditions exists:

1. The injury or death is a result of willful physical assault by the employer.
2. The injury is aggravated by the employer's attempt to conceal the existence of the injury.
3. The injury or death is a result of a defective product that was distributed to the employee by the employer or a third party.

In the construction industry, it is required that each prime contractor be shown proof of workers' compensation insurance carried by the subcontractors with whom they contract. If a subcontractor is not insured and one of his employees has been injured, the employee may file a lawsuit against the prime contractor for compensation.

If an employer has failed to obtain workers' compensation insurance, he may be subject to the following penalties:

1. If an employee claims to have been injured, but is not eligible for compensation, the employer will be required to pay a fine of $2,000 for each employee that was employed on the date of the alleged injury.
2. If an employee is injured and is eligible for compensation, the employer will be required to pay a fine of $10,000 for each employee that was employed on the date of the injury. (This penalty is not to exceed $100,000.)
3. The employer may be issued an order prohibiting the use of employee labor until workers' compensation insurance has been obtained.
4. Disciplinary action by the Registrar.

FEDERAL TAXES AND FILING REQUIREMENTS

As an employer, you will be responsible for the withholding and payment of federal taxes. When hiring employees, there are three steps that must be taken so that the proper tax withholdings, payments and filing requirements may be met. These are as follows:

1. **Obtain an employer identification number** from the Internal Revenue Service. This number identifies the employer on federal tax returns.
2. **Obtain a copy of each employee's social security card.** Employers should not accept memorized social security numbers.

3. **Require each employee to complete a W-4 Form** (Employee’s Withholding Allowance Certificate.) This form will provide the employer with the information necessary, so that proper federal tax deductions may be made.

The **Federal Insurance Contributions Act (FICA)** provides income to persons in their old age and during times of disability. Any employer who has one or more employees is liable for complying with the payment and filing requirement of this tax (also known as Social Security.) A percentage is to be withheld from each employee's paycheck, and that amount must be matched by the employer. If the amount of payments has reached a certain limit, (as defined by the Federal Insurance Contributions Act) there is no longer a payment requirement.

**Federal Income Taxes** are to be withheld from all taxable wages (including salaries, bonuses, commissions, and vacation allowances) due to the employee at the time of wage payment. The amount deducted is based on the employee's gross wages and the number of exemptions claimed by the employee on the W-4 Form.

Both Social Security (FICA) and federal income taxes are to be reported together and filed quarterly with the Internal Revenue Service. Annual reports of all tax withholdings are also to be furnished to the employee and the Social Security Administration. Deposits of both taxes are due on a quarterly basis, however, if these funds exceed a certain amount they are to be deposited more frequently. Withheld Social Security and Federal Income Tax payments are to be deposited in a Federal Reserve Bank or authorized financial institution.

**Federal Unemployment Tax (FUTA)** provides compensation to persons who are unemployed. This tax is to be paid by the employer only, and the amount paid is based on the total amount of taxable wages paid by the employer (not including sick pay and retirement benefits.) Employers who meet the following qualifications are required to report and pay Federal Unemployment Tax:

1. Employee wages totaled $1,500 or more during any calendar quarter.
2. During any 20 calendar weeks during the year, one or more persons were employed for at least part of a day.

FUTA tax returns are to be filed separately from the Social Security and Federal Income Tax return. FUTA tax returns must be filed annually with the Internal Revenue Service, with deposits made on a quarterly basis. However, if deposit amounts exceed a certain limit, more frequent deposits will be required. Deposits are to be made in a Federal Reserve Bank or authorized financial institution.

Independent contractors and other self-employed persons must also comply with the federal tax laws. **Self-employed persons** are required to pay a higher percentage of Social Security tax, as there is no employer to match their contribution. Employers who have paid over $600 in compensation to a self-employed person are required to submit Form 1099-MISC to the non-employee by January 31st of the following year. A copy of this form must also be submitted to the Internal Revenue Service by the end of February of the following year.

**STATE TAXES AND FILING REQUIREMENTS**
In addition to the federal tax payment and filing requirements, employers must also comply with the tax payment and filing requirements of the State of California.

When an employer has paid $100 in total taxable wages, he is required to register with the Employment Development Department (EDD) within 15 days. The EDD will assign an employer identification number to be included on all tax returns.

**Personal Income Tax** is to be withheld from employee wages at the time of wage payment. The "California Personal Income Tax Withholding Guide" provides information regarding withholding requirements and methods.

**State Disability Insurance (SDI)** provides income to persons who are unable to work due to nonoccupational injuries or illnesses. This tax is to be withheld from employee wages at the time of wage payment. As with Social Security tax, there is a limit to the contributions required of each employee. Once this limit has been reached, SDI tax is no longer to be deducted from the employee's wages.

The **Unemployment Insurance Fund** provides compensation for unemployed persons in the State of California. A "reserve account" will be assigned to every employer that has registered with the EDD. Contributions made by the employer to the Unemployment Insurance Fund will be recorded in this account. Every employee claim for unemployment payments will be balanced against the contributions made by the employer. If the employer has a negative balance, unemployment insurance payments may be increased. If the employer has a positive balance, unemployment insurance payments will be decreased. Therefore, an employer's payments will be determined by his past employee record. Employees do not contribute to the Unemployment Insurance Fund.

Personal Income, State Disability Insurance and Unemployment Insurance taxes are to be filed quarterly with the Employment Development Department. Deposits are also due at this time and should be sent to the EDD. Employers may be required to make more frequent deposits if the amounts payable exceed certain limits.

The **California Sales and Use Tax Law** is enforced by the California State Board of Equalization. This tax must be charged on all tangible property (such as fixtures and appliances) that may be supplied or installed by a contractor. Sales and Use Tax returns must be filed quarterly with the Board of Equalization.

**EMPLOYER RECORDKEEPING REQUIREMENTS**

Employers are required to keep complete tax and employment records for at least four years. The following must be included in these records:

1. The federal employer identification number, the state employer account number, and the sales and use tax account numbers.
2. The names, addresses, job titles and Social Security numbers of all employees.
3. The hiring, termination, and return to work dates of all employees.
4. The amounts and dates of all wages, annuity and pension payments.
5. The value of wages paid in the form of gifts, prizes and bonuses.
6. The time periods and amount of compensation paid, by the employer or a third party, to employees on sick or injury leave.
7. Copies of employee's (W-4 Form) income tax withholding allowance
8. All tax returns reporting FUTA, Social Security, state and federal income tax withholding, and the amount of wage payments which are subject to these taxes.
employment within the State of California.
B. The Labor Commissioner heads the Department of Industrial Relations.
C. The Labor Commissioner will take assignments of complaints regarding discrimination against an employee.
D. The Labor Commissioner will take assignments of complaints regarding vacation pay due to an employee.

2. It is unlawful for a private employer to _____.
   A. require an applicant to pay for a physical examination as a condition of employment
   B. require an employee to take a polygraph test
   C. prohibit an employee from joining a labor union
   D. all of the above

3. An employer may not require an employee to work more than _____.
   A. five consecutive days
   B. six consecutive days
   C. seven consecutive days
   D. ten consecutive days

4. If an employee is terminated due to unacceptable job performance, his/her wages are due and payable _____.
   A. within 72 hours
   B. within 48 hours
   C. within 24 hours
   D. immediately

5. If a collective bargaining agreement contains a successor clause, this clause may not remain legally valid for more than _____ following the date the agreement was reached.
   A. 3 years
   B. 4 years
   C. 5 years
   D. 7 years

6. If an employee has been injured on the job, he/she must submit written notification of the injury to the employer within _____ in order to be eligible for workers’ compensation benefits.
   A. 5 days
   B. 10 days
   C. 20 days
   D. 30 days

7. When an employer has received written notification of a job-related injury, he then has _____ in which to notify his workers’ compensation insurance carrier.
8. Employers in the State of California are required to _____.
   A. obtain an employer identification number from the Employment Development Department (EDD)
   B. obtain an employer identification number from the Internal Revenue Service (IRS)
   C. obtain workers’ compensation insurance
   D. all of the above

9. Employees are not required to contribute to which of the following taxes?
   A. Federal Unemployment Tax (FUTA)
   B. Federal Insurance Contributions Act (FICA or Social Security)
   C. State Disability Insurance (SDI)
   D. all of the above

10. Employers are required to keep complete tax and employment records for a period of _____.
    A. five years
    B. four years
    C. three years
    D. two years