

THE CALIFORNIA EMPLOYMENT LAW CORNER

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Documenting breaks for hourly employees poses significant administrative hazards for employers who are unfamiliar with the law and who do not adhere to best practices in this area. Let the Employer beware, as penalties can mount quickly each day. Do a self audit to ensure you are in full compliance or call the California Employment Law Training Center, a Martinez Chamber member, for questions and assistance. 925-827-4198.

Break period after 4 hours of working

Remember in California, hourly employees must be afforded a 10 minute break after

every 4 hours of working. Currently the burden is on the employer to “prove” each employee took his/her breaks on time every 4 hours, each day of work. This means it is prudent for employers to keep daily logs in the employee’s own handwriting of time clocked out and in for breaks for every 4 hours, as well as for the 30 minute meal period every 5 hours.

Documented Logs are Critical

If employees work more than an 8 hour day, remember the rule is the same: every 4 hours is a break, every 5 hours is a 30 minute meal period. Documentation is essential. Logs are easy to create or can be added on to your existing time keeping methods. Talk to your legal counsel for specific questions or issues.

Failure to provide the required breaks

Any employer who fails to adhere to the above must pay that employee one additional hour of pay at the employee’s regular rate of pay for each work day that the break is not provided. The additional hour is not counted as overtime. This penalty applies whether the employee missed his/her break or meal or both in the same day. However, if the employee

leaves or is severed from employment before this amount is paid, the employee may also receive additional penalties per day as determined by the California Labor Commissioner or by a court.

Employers who have questions such as “what do I do if I allow the employee to take a break, but he/she refuses to take one”, or “what do I do if the employee forgets to clock out for the break, how do I remedy?” or other legal questions regarding wage and hour rules and regulations may contact the California Labor Commission at www.DIR.ca.gov or retain the legal consulting services of the California Employment Law Training Center at 925-827-4198 or www.CAELTC.com, a Martinez Chamber of Commerce Member.

This is a regular column for the Martinez Chamber of Commerce Newsletter. However this is an informational column only and nothing written may be construed as legal advice. All readers should consult with a legal professional.

