

# HEADS UP



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*HR News You Need To Know*

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# REDUCING YOUR EXPOSURE TO WAGE AND HOUR LITIGATION

Wage and Hour litigations are on the rise, especially in this remote and hybrid work environment. Remote and/or hybrid work environments, for some, have changed the 9-5 workday cycle to a 24/7 work cycle. The boundaries between work life and personal life are being blurred or erased completely.

While we are not knocking remote or hybrid work environments, we'd like to bring to your attention some challenges concerning wage and hour laws that these work types bring to employers who are not properly set-up to function under these conditions.

## Here are some of the top wage and hour compliance issues facing employers today:

- Rest Periods
- Meal Periods
- Expense Reimbursement
- Overtime Compensation
- Off-the-Clock Work



Do you use a payroll system or application that automatically flags missed or late meal and rest breaks? Do you regularly check rest and meal break punch times? Do you do a monthly audit of your employees' timesheets? Are managers checking for rest and meal break entries/punches during their approval process?

If you answered **NO** to one or all of these questions, it's time to seriously look at your timekeeping system, processes and policies. Even if your non-exempt employees are on the honor system using a computerized payroll system and entering in the notes section missed break and/or meal periods, you are still in jeopardy of violating wage and hour laws.

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- Ensure that your employees' timesheets clearly show beginning and ending times for each work period as well as meal periods, split shifts intervals and total hours worked. This is required per California's Division of Labor wage orders.
- Regular audits of timesheets should be performed, even if you are using a system that catches missed rest and meal breaks. Additionally, ensure that the premium pay due for missed rest and meal break violations is calculated correctly and paid in a timely fashion and identify patterns of employees habitually missing or cutting short their rest and meal breaks.
- The ramifications for missed rest and meal breaks is not just disciplinary actions for the employee; there are monetary penalties attributed to the employer as well; and they can add up quickly if you are not on top of things.
- Rest break premium is equivalent to 1 hour of pay at the employee's regular rate.
- Meal break premium is equivalent to 1 hour of pay at the employee's regular rate.
- If you don't pay the non-compliant rest and/or meal break premiums in a timely fashion (within the same pay period as the missed breaks or the next pay period) you may be subject to paying waiting time penalties. Waiting time penalties are paid at the employee's daily rate for up to 30 days. These penalties for non-compliant rest and meal breaks extend to (involuntarily or voluntarily) terminated employees if their non-compliant rest and/or meal break premiums were not paid previously or in a timely manner.
- Employees' wage statements must show premiums paid for missed rest and/or meal breaks. Failure to do so can also result in penalties such as:
  - \$50 for the initial pay period in which the employer intentionally fails to provide accurate premium pay data on the wage statement(s)
  - \$100 for each subsequent pay period the employer fails to provide this data on the wage statements

• Penalties could reach a maximum of \$4,000







# EEOC RELEASES NEW COVID-19 TESTING GUIDELINES

As we continue to operate in this COVID-19 environment, changes will continue to arise related to how we work, interact and go about our work routines. This month the Equal Employment Opportunity Commission (EEOC) announced on July 12th that:

- **Mandatory COVID-19 testing must now be justified based on job relevance and be consistent with business necessity**

- **Employers will need to assess the pandemic and their workplace circumstances in order to justify mandatory COVID-19 testing.**

- **Prior to July 12th testing was permitted without justification or assessment.**

The EEOC provided the following factors to consider in determining whether your business necessitates mandatory testing:

- Level of community transmission
- Vaccination status of your employees
- Accuracy and speed of processing different types of COVID-19 viral tests
- Degree to which breakthrough infections are possible for employees who are “up to date” on their vaccinations
- Ease of transmissibility of the current COVID-19 variant(s)
- Possible severity of illness from the current COVID-19 variant(s)
- Types of contacts employees may have with others in the workplace or elsewhere that they are required to work (i.e., working with medically vulnerable individuals)
- Potential impact on operations if an employee enters the workplace with COVID-19

Review your existing testing policies to ensure compliance with the new EEOC guidance. This is also a good time to check your social distancing, masking and remote/hybrid work policies as well. COVID-19 is on the rise, and we may see some restrictions that were removed over the last few months return.

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**Don't forget this happened this month:**

**On July 1st**

- Mileage rate increased to 62.5 cents per mile for the rest of 2022
- Minimum Wage in these localities increased as noted:



City	Minimum Wage	Notes
Alameda	\$15.75/hour	
Berkeley	\$16.99/hour	
Emeryville	\$17.68/hour	
Foster City	\$15.75/hour	
Fremont	\$16/hour	
Los Angeles City	\$16.04/hour	
Los Angeles County	\$15.96/hour	unincorporated areas
Malibu	\$15.96/hour	
Milpitas	\$16.04/hour	
Pasadena	\$16.11/hour	
San Francisco	\$16.99/hour	
Santa Monica	\$15.96/hour	
West Hollywood	\$16/hour	for 49 or fewer employees
West Hollywood	\$16.50/hour	for 50 or more employees

