

# Wage and Hour: Back to Basics / 工资和工时： 从基本的说起

Squire Sanders (US) LLP  
美国翰宇国际律师事务所

Presented by Thomas T. Liu, Esq.  
刘天信律师

Email: [Thomas.Liu@squiresanders.com](mailto:Thomas.Liu@squiresanders.com)



## Exempt v. Nonexempt 豁免类v.非豁免类

## Exempt Employees/豁免类员工

- **Exempt categories/豁免类员工类别**
  - **Executive/高级管理人员**
  - **Administrative/行政人员**
  - **Professional/专业人员**
  - **Computer Professionals = \$38.39/hr for 2012/计算机专业人员**
  - **Outside Sales Employees/外勤销售人员**
- **Salary test/工资计算**
  - **≥ 2x minimum wage/2倍最低工资**
    - \$640/week
    - \$2773.33/month
    - \$33,280/year

## Exemption Test/豁免条件

- **Duties test/职责条件**

- **CA: > 50% of employee's work time must be spent performing exempt duties - strict test**
- **加州规定：员工工作时间多于50%的比例从事属于免于加班工资的职责 -- 严格条件**
  
- **Federal: Has a percentage requirement, but this is a rule of thumb, not a black line**
- **联邦规定：有一定的比例要求，但只是指导性规定，非硬性规定。**

# Exemptions: Common Mistakes/常见 错误做法

- **Treating all salaried employees as exempt**
- **将所有员工都当做豁免类员工**
- **Determining exemption based upon employee job titles**
- **根据员工岗位职称确定豁免类员工**
- **Improper deductions from employee salary**
- **不适当扣减员工工资**
  - **Examples/例如:**
    - **Sick leave/病假**
    - **Other absences/其他缺勤**
    - **Disciplinary Deductions (except for major violations of safety rules) 惩罚性扣减 (严重违法难全规定除外)**
    - **Lack of Work/没有工作任务**

## Minimum Wage/最低工资

- **California /加州= \$8.00**
- **Federal /联邦= \$7.25**
- **Cities/某些城市:**
  - **San Francisco/旧金山 = \$10.24**
  - **Other living wage ordinances (LAX)/其他最低生活工资规定**

## Hours Worked/工作时间

- **All time employee is suffered or permitted to work, whether or not required to do so, and subject to control of an employer**
- **员工被动遭受的或被允许工作的所有时间，不论是否是被明确要求的，只要雇主对此享有控制则应计算在内：**
  - **Employer knows or has reason to believe**
  - **雇主明知或有理由相信**
  - **Unauthorized OT: if you have a policy, you can discipline employee, but still have to compensate**
  - **未经授权的加班：如果雇主有关于加班授权的明确政策，雇主可以对未经授权而加班的员工进行纪律处罚，但仍必须支付加班工资。**

# Hours Worked: Travel Time/工作时间： 出差

- **Commuting/通勤时间**
- **Travel from work site to work site/从一工作地点到另一工作地点的时间**
- **One-day out-of-town travel/去另一城市一天内的出差**
  - **Travel time counted as hours worked, but need all time be counted hours worked? 出差途中时间应计为工作时间，但需要把所有时间都算作工作时间吗？**
    - » **No (e.g. usual meal time, time spent traveling from home to common carrier, may be deducted.)/否，正常的吃饭时间和从家到公共交通站的时间可以扣除。**



# Hours Worked: Travel Time (cont.)

## 工作时间：出差（续）

- **Overnight out-of-town travel/非当天往返的出差**
  - **Federal: travel time outside of normal working hours spent traveling and performing no duties need not be counted**

联邦规定：正常工作时间以外仅用于旅途而不从事任何工作任务的时间不计入工作时间。
  - **CA: all travel time counts, whether during or outside normal working hours, and whether or not performing work duties; can establish different rate of pay for travel time**

加州规定：所有的旅途时间均计入工作时间，不论是正否在正常工作时间外发生的，也不论在此期间是否从事工作任务；不过，雇主可以对纯粹的旅途时间订立不同的小时工资。

## Hours Worked: Lecture, Meetings and Training/工作时间：讲座、会议和 培训

- **Treated as hours worked unless *all* of the following are met:**
- **视为工作时间，除非满足全部以下条件：**
  - **Attendance outside regular hours/正常工作时间以外参加的；**
  - **Attendance voluntary/自愿参加的；**
  - **Program not directly related to employee's job; as distinguished from new and additional skills that can be transferred/与员工工作无直接关系，区别于可转移的新的和额外的技能; and/且**
  - **Employee must not perform any productive work during such attendance/员工在出席期间未从事任何产出性工作**

## Time Keeping/记录工作时间



- **Under federal and CA law, an employer must keep accurate records of all hours worked**
- **联邦法律和加州法律要求，雇主必须对员工的所有工作时间保存准确的记录**
  - **Exception: when all employees leave at once (e.g. dismissal bell)**
  - **例外：所有员工 全部同时离开**

## Time Keeping/记录工作时间

- **CA law: must keep hours of non-exempt employees**
- **加州法律：雇主必须对非豁免类员工的工作时间予以记录**
  - **When employee begins workday/员工开始工作的时间**
  - **When employee begins meal period/员工开始吃饭时间**
    - **Cannot have time clock automatically deduct a meal period/不得直接扣除吃饭时间**
  - **When employee ends meal period/员工吃晚饭时间**
  - **When employee ends the workday/员工下班时间**

## Pay Day Rules/工资支付规定



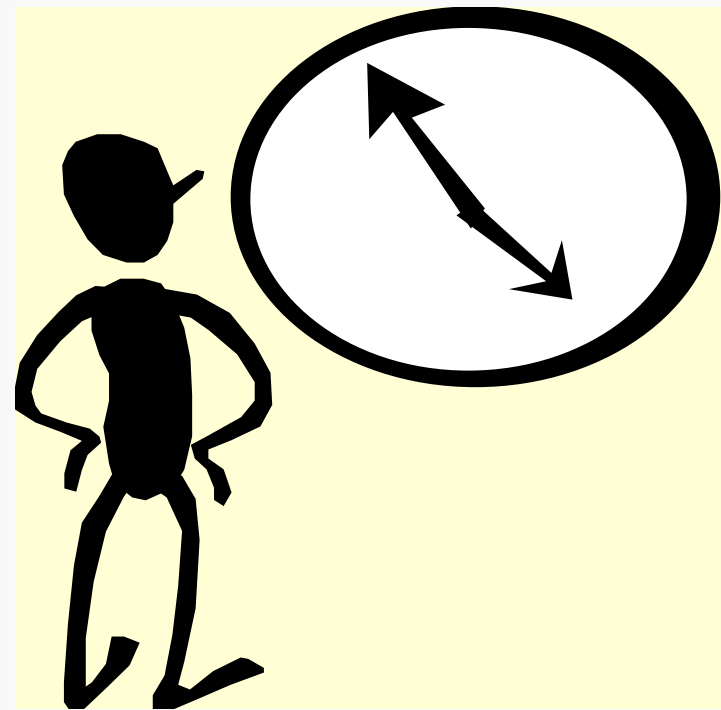
- **Current employees/现任员工**
- **Semi-monthly/半月一次**
  - **Bi-weekly /每两周支付一次**
  - **Weekly 每周支付一次**
  - **Exempt employees (once monthly, by 26th of the month if pay entire monthly salary)/免于支付加班工资员工 (一月一次，如果一次支付全月工资，不得迟于每月26号支付)**
- **Caution/注意: penalties/处罚**
  - **Assessed for violations of each payroll period**
  - **应在每个工资支付周期内支付该期间的违规处罚**
  - **Grace period for overtime/加班的通融期**

# Pay Day Rules: Separated Employees/工资支付规定：离职员工

- **Immediately upon termination/separation**  
应在解聘/歇工时立即支付
- **72 hour grace period for resignation without notice**  
员工辞职的，应在无通知辞职的72小时内支付
- **Waiting time penalties/未及时支付工资期间的处罚**
  - **Defenses?抗辩？**

## Overtime/加班

- **Calculations for purposes of OT are based on hours worked, not hours paid/加班时间的计算以工作的时间为准，而非以支付工作的时间计算**
- **Federal law: 40 hours/wk/联邦：40小时每周**
- **CA law: five zones**
- **加州法律：5个类别**



# Overtime: CA's 5 Zones

## 加班时间：加州的5大类

- **Time and one-half/1.5倍工资**
  - **Over eight hours in a single workday**  
➤ 一个工作日内超过8小时的时间
  - **Over 40 hours in a single workweek**  
➤ 一个工作周内超过40小时的时间
  - **First eight hours on seventh consecutive day in a workweek/一个工作周内第7个连续工作日内前8个小时的时间**
- **Double time/2倍工资**
  - **Over 12 hours in a single workday**  
➤ 一个工作日内超过12个小时的时间
  - **Over eight hours on the seventh consecutive day in a workweek/一个工作周内第7个连续工作日超过8小时的时间**



# Overtime: Workday & Workweek/ 加班时间：工作日和工作周定义

- **For purposes of calculating OT/为计算加班时间的目的：**
  - **Workday: any 24-hour window**
  - **工作日：任何24个小时的周期**
    - Law presumes midnight to midnight, but
    - 法律假定为午夜至午夜，但雇主可单方面确定
    - It may be unilaterally set by employer
  - **Workweek: any 164-hour window**
  - **工作周：任何164个小时的期间**
    - However, must begin at same time as the workday/必须与工作日开始时间相同
  - **Can be different for different groups of employees**
  - **视员工类别，可以设定不同起始时间**
  - **Can change if intended to be permanent and not designed to evade overtime obligations/就工作日和工作周的定义，即使雇主当初设定为固定政策，也可以更改，只要不是为了规避加班工资义务的目的。**

## Anti-Pyramiding

- **You are not required to pay for both hours over eight in a workday *and* hours over 40 in a workweek**
- **雇主不需要就每工作日超出8小时外的工作时间和每工作周超出40小时外的工作时间重复支付工资。**
- **You pay the greater of the two**
- **两者重合的部分，按工资高的那部分支付**
- **Easy Method: Keep two columns**
- **简单的方法：将员工加班工资按适用的不同规定分列计算、记录**

# OVERTIME EXAMPLES

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	Sun	M	Tu	W	Th	F	Sat
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**A.**      10    5    5    5    5

**B.**    8    8    8    8    8    3

**C.**   10   10   8    8    8    3

## Meal Periods/吃饭时间

- **Federal: No requirements/联邦无相关规定**
- **CA加州: 30 minutes duty free/30分钟吃饭时间**
  - **$\leq 5$  hours: no meal period**
  - **$> 5$  but  $\leq 6$  hours: 1 meal period (waivable)**
  - **$> 6$  but  $\leq 10$  hours: 1 meal period (not waivable)**
  - **$> 10$  hours: 2 meal periods (2<sup>nd</sup> waivable if 1<sup>st</sup> was not)**
  - **$> 12$  hours: 2 meal periods (2<sup>nd</sup> not waivable)**
  - **工作时间在5小时以内：无吃饭时间**
  - **工作时间5小时以上6小时以内：1次吃饭时间（可放弃）**
  - **工作时间6小时以上10小时以下：1次吃饭时间（不可放弃）**
  - **工作时间10小时以上：2次吃饭时间（第2次吃饭时间可放弃）**
  - **工作时间12小时以上：2次吃饭时间（第2次吃饭时间不可放弃）**

## Meal Periods (cont.)/吃饭时间 (续)

- **Additional facts/其他规定:**
  - **Employee must begin break before the five hours are exceeded**
  - **连续工作5小时后，必须让员工休息**
  - **Penalty/处罚:**
    - **One hour penalty pay per day per employee at the employee's regular rate of pay/**
    - **每发生违反休息规定一天，需支付员工以该其正常工作计算的一小时工作工资。**
  - **Current law: Employer must advise employee of meal period, but up to employee's discretion as to whether employee takes meal period.**
  - **当前法律规定：雇主必须提示员工吃饭时间；但员工可自主决定其是否休吃饭时间。**

## Rest Periods/休息时间

- **Federal: No requirements/联邦法律：没有要求**
- **CA: Non-exempt employees get 10 minutes rest for every four hours worked**
- **加州法律：非豁免类员工每连续工作四小时或，须给员工10分钟的休息时间；具体而言：**
  - **≤ 3.5 hours – not legally entitled to rest period**
  - **3.5 hours to 6 hours – one ten minute rest period**
  - **6 hours to 10 hours – two ten minute rest periods**
  - **> 10 hours – three ten minute rest periods**
  - **连续不大于3.5个小时：没有法律强制要求休息时间**
  - **连续3.5个小时以上-6小时以下：一次10分钟的休息时间**
  - **连续6小时以上-10小时以下：两次各10分钟的休息时间**
  - **连续10小时以上：三次各10分钟的休息时间**

## Rest Periods (Con't)/休息时间 (续)

- **Are rest periods on the clock?法定休息时间是  
否计入工作时间？**
  - **Yes/是**
- **Must be in middle of each shift as  
practicable/必须尽实际可能地安排在每个班次的  
中间时间段休息**
- **Cannot be aggregated with meal period/不可  
算入吃饭时间**

## Vacation Pay/假期工资

- **Not required; only regulated if the employer provides it/不是必须的；雇主提供的假期受监管**
- **CA: illegal for an employer to forfeit vested vacation pay when employee is terminated/加州法律：雇主在员工解职时扣除已累积假期的工资是违法的。**
- **加州规定：**
  - **Vesting: employee earns prorated vacation on a day-by-day basis; employer cannot override accrual**
  - **假期累积产生：员工按比例累积获得假期的以每工作一天累计计算；雇主不可以取消已累积的假期。**



## Vacation Pay/假期工资 ( 续 )

**CA/加州规定：**

- **Waiting period is OK/ 必须工作一段时间才可以开始休假的政策是允许的。**
- **Use-it-or-lose-it is illegal/ “要么休-要么就没有”是违法的**
- **Employer CAN impose a cap/雇主可以规定可积累的最长假期**
- **Employer must pay vacation at employee's termination at rate at time of employee's termination**
- **not at rate at time vacation was accrued/员工解职时，雇主必须按员工解职时的小时工资率支付员工假期工资；而非按假期累积产生时的小时工资支付。**

- **Employer must furnish and maintain the uniforms if it is required, and the apparel has a distinctive design or color**
- 雇主必须提供和维护所必需的劳动制服，且该制服应具有独特的设计或颜色
  - **Maintenance: pay to have laundered; reimburse employee for cost of laundering; pay employee for one hour to launder uniform himself/维护：支付清洗制服的费用；报销员工洗制服的费用；如果员工自行清洗制服，支付员工一小时工资。**

# Uniforms & Tools (cont.)/劳动制服 和工具 (续)

## ➤ **Exceptions/例外**

- **Hospitals: employer need not reimburse for nurses' white clothing**
- **医院：雇主不需要报销护士白色制服的费用**
- **Restaurants: employer need not reimburse for white/light blouses or dark/black pants or skirts**
- **餐馆：雇主不需要报销白色或浅色衬衣或深色/黑色裤子或裙子的费用**
- **Public entities**
- **公共机构**

## Uniforms & Tools (cont.)/劳动制服和工具 (续)

- **Employer must pay, furnish and maintain required tools/雇主必须购买、提供并维护必要的劳动工具**
  - **Ex: cell phone: pay phone and service, but not personal calls. The employer and employee can stipulate he/she already has a cell phone; then the employer only need pay for the service**
  - **例如：手机：支付手机和服务费用，但不包括个人电话。雇主和员工可约定：如果员工已有手机，雇主只需支付手机服务费。**

# Squire Sanders (US) LLP



Thomas T. Liu

T: +1.213.689.5192

E: [thomas.liu@squiresanders.com](mailto:thomas.liu@squiresanders.com)



Stacie D. Yee

T: +1.213.689.5135

E: [stacie.yee@squiresanders.com](mailto:stacie.yee@squiresanders.com)



Brian E. Schield

T: +1.213.689.5109

E: [Brian.schild@squiresanders.com](mailto:Brian.schild@squiresanders.com)

Squire Sanders (US) LLP  
555 South Flower Street, 31st Floor  
Los Angeles, California 90071  
T: +1.213.624.2500  
F: +1.213.623.4581

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