

GUIDE

Top 10 Wage and Hour Risks in California and How to Avoid Them

Protect your organization against the most common wage and hour claims brought in lawsuits against employers.

The Biggest Legal Threat to Your Business

Wage and hour lawsuits are the biggest legal threat to businesses in California.

- Thousands of wage and hour lawsuits have been filed against businesses of all sizes and from all industries over the last 10 years and the numbers are increasing each year.
- Wage and hour lawsuits are being used as a tool to extort millions of dollars from businesses each year.
- Businesses have been forced to pay out millions of dollars in settlements and attorneys' fees, and often get sued more than once—sometimes for the same violation.
- The California Legislature and courts have offered little relief.
- In *Donohue v. AMN Services* in 2021, the California Supreme Court shifted the burden of proof in wage and hour lawsuits from the employee to the employer, making employers guilty until proven innocent and requiring them to treat wage and hour compliance like a health and safety issue.
- This is a significant burden. California employers must protect themselves.

There is a good chance your business has already faced a wage and hour allegation or lawsuit. If not, the question is not if, but when, those allegations will arise.

WHAT ARE MOST BUSINESSES DOING TO PROTECT AGAINST THEIR BIGGEST LEGAL THREAT?

The answer for most businesses is **virtually nothing**.



Common Misconceptions

Q. Isn't it enough to treat employees well and avoid violating the law intentionally?

No. Employers are no longer innocent until proven guilty. Good intentions and a positive workplace culture will not save you from an enforcement environment that punishes non-compliance. In *Donohue v. AMN Services* in 2021, there were two important findings from the California Supreme Court— (1) wage and hour compliance should be treated like a health and safety issue, and (2) any wage and hour violations will be presumed to be the fault of the employer. The problem? The court did not provide any answers as to *how* employers should handle wage and hour compliance and refute the *Donohue* presumption. We believe our [wage and hour training, testing, and certification](#) is the answer.



Q. We have a handbook that was recently updated, so we should be fine, right?

Wrong. While a handbook refresh can help avoid many traditional HR/legal risks, it does very little to combat a wage and hour lawsuit. In fact, most businesses who are sued in a wage and hour lawsuit these days have an updated handbook and it's not helping them stop or prevent lawsuits. A handbook is like a seatbelt. It's necessary protection, but it won't prevent an accident. All California businesses are on dangerous roads when it comes to wage and hour laws. Your business needs more protection.

Q. We have a third-party payroll provider we use, so we should be okay, right?

Nope. Most payroll providers process payroll and maybe help you set up your timekeeping system. Many businesses who get sued have a third-party payroll provider (often the big and most recognized providers), but this doesn't help them in these lawsuits. Check your contract with your payroll provider. Almost all of them say the payroll provider is not responsible for legal compliance or lawsuits (even though they advertise compliance). Courts so far in California have let payroll providers off the hook at every turn and put the ultimate burden of compliance on the employer. Even in situations where the payroll provider has been involved in the violation at issue, they rarely take or have responsibility. Simply put, you can't rely on a payroll provider for wage and hour compliance.



Q. We have an HR service company or law firm that advises us on these things, so that should do the trick, right?

While it is good to have a knowledgeable HR department, professional, or service helping your business, this is often ineffective protection against wage and hour lawsuits. Even the biggest companies with well-staffed HR departments find themselves getting sued repeatedly in wage and hour actions. We're not trying to give HR a hard time. It is a very hard job. But managing a complex legal landscape where there are hundreds of different ways to violate the Labor Code and trigger millions in penalties is not what most HR professionals are trained or tasked to do. Nor is this anywhere close

to the top priority of their job, which includes keeping the business thriving through recruiting, onboarding, retention, and terminating bad employees, which is plenty to focus on. The reality is that most HR professionals and departments aren't equipped with the tools or given the responsibility needed to manage the type, complexity, and magnitude of risks presented by California's wage and hour laws. Trusting HR to manage multi-million-dollar complex legal risk is like trusting your billing department with making sure you are following all the tax laws and aren't going to get in trouble with the IRS. You need a CPA for that.

Q. We have a general employment firm or HR service that we use to keep us updated and in compliance; surely that must be enough, right?

Unfortunately, this often doesn't solve the problem either. Law firms and other HR services typically provide information to you about what the law is and then leave it up to the business to figure out how to comply with the law. Information is not protection. Unless your business is building compliance tools based on the information you are receiving and then regularly updating those tools, your HR knowledge is not being effectively transformed into protection. It's like having someone in your local community who tells everyone what all the traffic laws are but not having any police on the streets to enforce the laws. Knowing the law is important but will not magically lead to compliance. Someone must be tasked with enforcing and carrying out the law.



Q. We have EPLI or another form of insurance that should cover us if we make a mistake on the wage and hour laws, and this is the protection we need, right?

The fact that a company has insurance is almost always not a big help, if any, in these cases. Most business insurance policies, including EPLI policies, don't cover wage and hour at all and such actions are explicitly excluded from the policies. The liability exposure in wage and hour cases is so high given California's oppressive laws and penalty structures that most insurance companies want nothing to do with these claims. Unfortunately, many insurance companies won't really explain or highlight this exclusion when you are buying the insurance, and the coverage you think you are getting is not the coverage you need in a wage and hour case. A very small minority of insurance companies sometimes offer coverage for the defense costs only in a wage and hour case (often after a very large deductible is met). Beware of such policies as they don't cover any of your actual liability and they often only pay for insurance lawyers that don't specialize in wage and hour cases. As a result, these policies are often not worth the paper they are written on and lead to insurance coverage that is essentially worthless and, in some cases, ends up costing you more overall than the insurance is worth.

Employers need better solutions that can be easily implemented to protect their businesses.

Top 10 Wage and Hour Risks

What are the biggest wage and hour risks for your business?

Cal Comply was designed to target the most common wage and hour risks and provide protection from those risks. We have identified the most common wage and hour claims in lawsuits brought by non-exempt employees, as well as the related Top Ten Wage and Hour Risks for California Businesses.

The top 10 risks cover four key areas:

Pay • Breaks • Wage Statements • Expenses

PAY	1	"Off-the-clock work" and the resulting unpaid time worked (regular and overtime)
	2	Miscalculating pay or overtime (not paying daily or weekly overtime, split shift premiums, reporting time, etc.)
	3	Not paying all wages owed, including vacation wages, at the time of termination
BREAKS	4	Not providing 30-minute meal periods
	5	Not providing meal and rest periods at the proper time
	6	Not providing a second meal period on days over 10 hours
	7	Not providing rest breaks for every 4 hours worked or major fraction thereof
	8	Not recording a meal period or not recording them accurately
WAGE STATEMENTS	9	Not providing accurate itemized paystubs
EXPENSES	10	Not reimbursing for all necessary business expenses

Best Practices to Avoid Wage and Hour Risks

What gives businesses the best chance to avoid the most common wage and hour lawsuits?

Cal Comply provides you with the best practices identified by lawyers and business owners who fight wage and hour lawsuits and advise companies on those lawsuits.

These best practices are not legal advice. Instead, they are sound business solutions designed to protect your business.

While most of these best practices are built into Cal Comply, some you will have to implement on your own, which this guide will help you do.

Most businesses address one or two of these areas but fail to address the others. Having policies and a reliable timekeeping system is a good start, but it will not prevent lawsuits without training employees and managers on the policies and monitoring compliance.

Wage and Hour Best Practices

Businesses must address four critical areas related to compliance:

Policies • Training • Timekeeping • Monitoring

Cal Comply's wage and hour training covers all these critical areas and more:

- Documented Training on Company Wage and Hour Policies and CA Law with Exams for All Employees and Managers
- Management Training and Tips to Monitor and Identify Wage and Hour Issues and Resolve Them Promptly
- Certifications for All Employees & Managers, Documentation You Need to Protect Yourself from a Lawsuit



Cal Comply training covers all wage and hour policies and the following:

- Explain the policies in easy-to-understand language for employees and managers.
- Test employees and managers on these policies to ensure they understand them.
- Certify employees and managers on these policies to provide the highest level of protection against lawsuits.

POLICY BEST PRACTICES
<p>Over nearly 20 years of years of training, teaching, advising, and coaching businesses on compliance, we have identified 10 policy best practices* that if implemented substantially lower a company's risk of being sued in a wage and hour action. All these policies are built into Cal Comply for employees and managers.</p>
<ol style="list-style-type: none">1. Encourage accurate recording of all work time.2. Prohibit off-the-clock work.3. Require preapproval of overtime.4. Pay daily and weekly overtime as required by law.5. Provide timely 30-minute meal periods (within the first five hours.)6. Provide second 30-minute lunch periods on days over 10 hours or obtain a valid waiver of the 2nd lunch (on days over 10 hours but no more than 12 hours.)7. Provide timely 10-min or more rest periods every 4 hours worked or major fraction thereof.8. Provide accurate wage statements (all info required by LLC 226.)9. Ensure reimbursement for all necessary business expenses.10. Require preapproval of all or certain business expenses.

TRAINING BEST PRACTICES
<p>The number one reason most businesses make themselves an easy target for lawsuits is because they do not effectively train their employees on their policies. Below are 10 training best practices* businesses should implement to lower their lawsuit risk. The Cal Comply Training Booklets were designed to give businesses an easy way of implementing all these best practices within a streamlined training program.</p>
<ol style="list-style-type: none">1. Do not rely on only your handbook.2. Provide wage and hour timecard orientation for employees.3. Stress importance of wage and hour compliance.4. Make wage and hour compliance everyone's responsibility.5. Train managers, supervisors, and HR on work hours and breaks.6. Teach managers and supervisors how to manage wage and hour issues.7. Use tests and exercises when training employees.8. Document training with tests and certification.9. Implement routine procedures to make sure all employees regularly receive training.10. Follow-up training – one-time training isn't enough.

*In addition to these best practices it is also recommended that businesses have up-to-date legal postings in break rooms. Most businesses have break room postings. There is no shortage of providers. If you do not have postings, please contact us and we will refer you to a source that can provide you with current postings.

The Cal Comply Solution

The industry's first fully integrated wage and hour training and certification solution for California employers.

Cal Comply's wage and hour training was created by wage and hour attorneys to give businesses a simple and affordable way to help prevent lawsuits through **Training**, **Documentation**, and **Certification**. Educate your team, improve compliance, and protect your organization in the event of a lawsuit.



**Typical Cost of Defending
and Settling a Small Wage
and Hour Lawsuit**

\$100,000

or greater

vs.



**Cost of Cal Comply's
Wage and Hour Training**

\$24/user*

*Price listed is standard pricing for an annual license. Total cost depends on the number of employees to be trained, possible customization needs, and other factors. Please call for a quote for your organization.

If you have questions or concerns about how the law applies to your business or industry, please consult with an attorney.

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925 Highland Pointe Dr., Suite 300
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