



**2026 ANNUAL  
CONFERENCE & EXPO**  
Celebrating 60 Years  
Then. Now. Next.

**Wage & Hour For All**  
*Prevent & Defend PAGA Claims*

Robert E. King, Esq., Legally Nanny®

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**Ground Rules**

- Let me sound like a lawyer . . .
- Disclaimer – Information not legal advice

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**California Private Attorneys General Act – PAGA**

- CA Private Attorneys General Act: Allows employees to sue for Labor Code violations, similar to class action
- Big penalties and attorney’s fees

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**You've Got Mail!**

- Records request letter
  - Legally authorized fishing expedition
  - Firms send out thousands of these letters
  - Don't contact plaintiff's counsel and try to talk your way out of it



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**You've Got Mail!**

- Records request letter
  - Don't ignore it!
  - Must produce personnel file, all documents employee signed, and time and payroll records
  - Plaintiff's counsel must receive records within 21 days of the date of the letter



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**You've Got Mail!**

- Request only applies to employees, not vendors, clients or independent contractors
- Don't have to produce anything other than four categories, even if requested



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**You've Got Mail**

- Don't do anything more after production – no follow ups
- If plaintiff's counsel contacts you, don't talk with them!
- Instead, refer them to your attorney



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**PAGA Letters**

- Sent to LWDA with copy to you
- Arrive by certified mail
- Typically they are just form letters not unique to your company or even our industry
- Prelude to a lawsuit



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**PAGA Letters**

- Contact insurance company
  - EPLI coverage with wage and hour rider?
- Arbitration agreement



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**PAGA Letters**

- Consider filing PAGA Cure Notice – 33-day deadline – if you can cure
- After 65 days, plaintiff can file PAGA claim in court
- May sue before and amend, or may wait and file entire complaint



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**PAGA Letters**

- If you're sued, move to compel arbitration if you have a valid arbitration agreement
- Expensive to defend cases even if have no liability
- Plaintiffs get attorneys' fees if they recover anything



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**Other Lawsuits**

- Served with complaint – 30 days to file a response or compel arbitration
- If class action and you have a valid arbitration agreement, move to compel arbitration
- If class action or PAGA and no arbitration agreement – consider mediation



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**Mediation**

- Voluntary process
- Split costs
- Quicker, confidential, and avoids costs, hassle and distraction of litigation
- Different from arbitration

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**Non-Exempt Employees**

- Caregivers are non-exempt employees – must pay hourly with overtime when applicable
- Can't salary or do flat, day or sleeping rates

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**Minimum Wage**

- Current CA minimum wage is \$16.90 per hour
- Minimum required salary for exempt employees is \$70,304
- Live-in: Minimum pay is \$532.35 per day at CA minimum wage for personal attendants

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### Minimum Wage

- Local minimum wage: Alameda, Belmont, Berkeley, Burlingame, Cupertino, Daly City, East Palo Alto, El Cerrito, Emeryville, Foster City, Fremont, Half Moon Bay, Hayward, Los Altos, Los Angeles (city and county), Malibu, Menlo Park, Milpitas, Mountain View, Novato, Oakland, Palo Alto, Pasadena, Petaluma, Redwood City, Richmond, San Carlos, San Diego, San Francisco, San Jose, San Leandro, San Mateo (city and county), Santa Clara, Santa Cruz, Santa Monica, Santa Rosa, Sonoma, South San Francisco, Sunnyvale and West Hollywood



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### Wage Order 15

- California Wage Orders
- Wage Order 15 – Private Homes
- Personal Attendant Exemption
  - Private Home
  - 80/20 Duties Test



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### Personal Attendants

- Personal Attendant Traps
  - 80/20
  - Be careful re housekeeping, others in home, gardening and pet care
  - Private homes
  - Not facilities or hospitals



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### Personal Attendants

- Overtime after 9 and 40
- But if work through RC, OT only after 40 hours in a work week
- No other OT or doubletime
- No meal or rest periods
- No reporting time



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### Personal Attendants

- Personal Attendants
  - Have rules in handbook, job description, client service agreement and timecards or telephony script
  - Train during orientation and monitor
  - No exemption = expense & complexity



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### Non-Personal Attendants

- Overtime – Non-Personal Attendants
  - After 8 hours in a work day, after 40 hours in a work week, and for the first 8 hours on a 7<sup>th</sup> consecutive day of work in a work week
  - Doubletime after 12 hours and after 8 hours on a seventh consecutive day of work in a work week



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**Non-Personal Attendants**

- Meal and Rest Periods
  - N/A for personal attendants
  - Non-personal attendants:
    - Paid 10-minute rest period for every 4 hours (or major fraction thereof) worked
    - Unpaid 30-minute meal period for every five hours worked

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**Non-Personal Attendants**

- Meal Period Waivers
  - If not work more than six hours in a work day
  - Available to any employee
- Can't waive rest periods

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**Non-Personal Attendants**

- On-Duty Meal Period Agreement
  - If work more than six hours in a work day
  - Voluntary written on-duty meal period agreement
  - Only applies if leaving would endanger client's health and safety

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### Mileage Reimbursement

- 2026 IRS Mileage Rate: 72.5/mile
- For ANY work-related travel during the same work day, no matter how long the break
- But not for commuting mileage



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### Travel Time

- Travel time
  - Non-commuting, work-related travel must be paid
  - Must pay at minimum wage or higher
  - Can be different rate than typical pay
  - Must be included as hours worked for overtime calculation



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### Split Shifts

- Unpaid break in work day not requested by employee
- Document employee time off requests
- One hour of pay
- Can offset by anything paid above minimum wage, not including OT



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**Other Expense Reimbursement**

- Cell phones
- Home internet usage
- Technology reimbursement

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**Bonuses**

- Non-discretionary
  - Tied to work-related metrics
- Discretionary
  - No set criteria
  - Holiday bonuses
- Non-discretionary bonuses must be included in the regular rate for OT and paid sick leave calculations

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**Calculating OT & Paid Sick Leave**

- Blended average for two different rates
- Example
  - 30 hours @ \$18/hr. + 20 hours @ \$20/hr. = \$940 total straight time
  - $\$940 / 50 \text{ hours} = \$18.80$  straight rate
  - = \$9.40 overtime premium

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### Calculating OT & Paid Sick Leave

- Must include non-discretionary bonuses
  - Also includes other payments, e.g. gas stipends, on-call stipends, etc.
- Example
  - 40 hours X \$20/hr. + \$50 gas bonus = \$850 straight time comp
  - \$850/40 hours = \$21.25 straight rate
  - = \$10.63 OT premium



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### Paid Sick Leave

- Should accrue rather than frontload
- Accrue one hour for every 30 hours worked
- Caps if accrue:
  - Use cap: 40 hours or 5 days
  - Accrual cap: 80 hours or 10 days



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### Paid Sick Leave

- Alternative day option is important for caregivers – live-ins!!!
- Local jurisdictions have more generous policies: Berkeley, Emeryville, Los Angeles, Oakland, San Diego, San Francisco, Santa Monica and West Hollywood



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### Paid Sick Leave

- Need policy to implement caps!
- Must pay at employee's regular rate
- However all paid at straight time, no OT



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### Rounding

- Must be neutral and not benefit employer
- In practice, almost never does
- Stop rounding!



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### On-Call

- Staff exempt employees when possible
- Can't be so restrictive or must pay for all on-call time
- Must pay for all hours worked while on-call – don't just pay a stipend!



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**On-Call**

- On-call hours count for overtime
- Stipends must be included in regular rate for OT and paid sick leave calculations

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**Holidays**

- Not required to pay extra or give time off
- Identify special pay rates and what days
- Holiday pay not included in regular rate for overtime purposes if 1.5x regular rate and you have a policy

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**Vacation & Paid Time Off**

- Vacation not required
- All paid time off paid at straight time with no overtime
- Paid time off does not count as hours worked for weekly overtime calculations

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**Final Pay**

- Pay on termination – can't wait for direct deposit!
- If resign, you have 72 hours unless employee provides 72 hours or more notice, then by final day
- Expensive penalties if fail to comply

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**Uniforms**

- Uniforms
- If you require, generally you must provide unless it's generic
- Can't require employees to purchase
- Must pay for care unless simple fabrics and drip to dry

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**PAGA Audits**

- Critical for payroll compliance
- Reduce potential penalties to 15% before notice or 30% after notice if take all reasonable steps to come into compliance within 60 days
- Can do it yourself with some help

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**Questions**

- Feel free to contact our firm:
  - [info@legallynanny.com](mailto:info@legallynanny.com)
  - 714-336-8864
- Or visit our website:
  - [www.legallynanny.com](http://www.legallynanny.com)

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**Questions**

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**Thank You!**

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