

Wage and Hour Considerations for Remote Workers

By **Bianca Saad**

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How do an employer's pay obligations differ when an hourly/nonexempt employee is working remotely from home?

It's important to keep in mind that when having a nonexempt employee work remotely, your obligations under California's wage-and-hour laws remain the same, and you need to ensure you have measures in place to maintain accurate records of the employees' hours worked.

In addition to accurately tracking all hours worked by your nonexempt remote employees, it's critical to ensure they take required meal and rest breaks, get paid for any overtime hours, and are not engaging in "off-the-clock" work (there is no such thing in California).

Establishing a remote work/telecommuting policy is a great way to communicate your expectations to your remote employees, particularly when it comes to keeping an accurate record of their hours worked, including overtime, as well as taking their appropriate meal and rest breaks.

In addition to having a telecommuting policy, you may choose to have your remote employees sign a telecommuting agreement, acknowledging their work schedule and other parameters within the telecommuting policy itself, such as whether they need approval to work overtime.

Accurate Timekeeping

Many employers already use some type of software that allows them to accurately record hours worked by an employee, and this should be no different for an employee working remotely.

By making sure your remote employees have access to your software or timekeeping system on their remote devices, you can accurately track and monitor your remote employees' daily and weekly hours worked.

Meal and Rest Breaks

In California, nonexempt employees' uninterrupted meal break of at least 30 minutes must begin no later than 4 hours and 59 minutes into their shift. Additionally, a nonexempt employee whose total daily work time is at least 3.5 hours must be permitted a rest break of at least 10 "net" minutes for every four hours worked, or "major fraction thereof."

Because remote employees aren't supervised in the same way that an on-site employee is, there can be some added challenges to monitoring breaks; however, having a clearly written meal and rest break policy can help combat those challenges.

In addition to your standard meal and rest break policy, your telecommuting policy can reiterate that employees are expected to take their uninterrupted, off-duty meal and rest breaks.

Overtime

In addition to ensuring that your remote employees take their meal and rest breaks, you also need to track and pay for any overtime hours worked.

As a reminder, California law requires all overtime hours to be paid (1.5 times the employee's regular rate of pay for all hours worked beyond 8 hours in a workday or 40 hours in a work week), even if that time was not approved.

Having a clearly written telecommuting policy and agreement in place can help you to manage your remote employees' work schedules and expectations regarding overtime.

Business Expenses Reimbursements

Employers must reimburse employees (whether nonexempt or exempt) for all "necessary expenditures or losses incurred" in the performance of their job duties (Labor Code Section 2802). This could include an employee's personal cell phone, computer equipment and other services and/or supplies required for a remote employee to work.

When looking at whether an employee is entitled to reimbursement, the question will be whether it is "necessarily incurred."

A clearly written telecommuting policy can help establish guidelines surrounding which expenses are reimbursable, as well as provide a method for employees to submit for reimbursement. Another approach might be to provide all necessary equipment for a remote worker, such as computers/laptops, printers and a phone—which could eliminate or reduce an employee's need to use personal devices.