

Employees live on premises? Here's how to compensate

Do you require some employees to live on the premises so they can be on call to provide emergency or other services? If so, you can structure the compensation system to pay only for actual time worked. You don't have to compensate them for the time spent waiting to deal with some work-related matter, even if you restrict their movements significantly.

The California Industrial Welfare Commission has promulgated "wage orders" to regulate wages, work hours and working conditions in various industries. Wage Order No. 5 governs the public housekeeping industry, including homes for the aged. It defines hours worked as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted" to work. If the employee is required to reside on the employment premises, "that time spent carrying out assigned duties shall be counted as hours worked."

As the following case shows, the wage order allows employers to pay only for time spent actually working, not time spent waiting for something to happen.

Recent case: Ron and Sharon Isner worked for a company managing nonprofit housing for the elderly. When on duty or on call, they stayed in an on-site apartment and had to be within hearing distance of an alarm or telephone. The alarm sounded when an elderly resident pushed a button signaling he or she needed assistance. The Isners also had to be prepared to respond to smoke alarms and other emergencies.

The Isners could watch television, read, surf the Internet and engage in other activities but had to remain in the apartment so they could respond to alarms. When one sounded, they would investigate and put that time on their time sheets. The company paid them for all time spent responding to alarms, but not for the rest of the time they spent in the apartment.

They sued, alleging they should have been paid for all their on-duty time.

The Court of Appeal of California disagreed. It concluded that Wage Order No. 5 applied, interpreting it to mean that only time spent actually working counted as paid time. It did not matter that the Isners could not leave the apartment. The court reasoned that the Isners were like motel clerks, who might have to be on hand to check in customers but did not have to sit at the motel desk the entire evening. (*Isner, et al., v. Falkenberg*, No. B195860, Court of Appeal of California, Second Appellate District, 2008)

California labor rules

Confused about wage orders and other California labor rules? Need to check to make sure your postings are accurate and up to date?

For more on wage orders and the California Industrial Welfare Commission (IWC), go to

www.dir.ca.gov/iwc/iwc.html. There you can download the relevant wage order for your industry and learn how to display the information correctly. Posters must be placed where employees will likely see them during the normal workday.

The California IWC also provides links to other state and federal agencies and their posting requirements. See www.dir.ca.gov/wpnodeb.html. There, you can find links to most of the posting requirements California employers must follow, including the requirements for minimum wage, whistle-blowing protections, sexual harassment, pregnancy disability leave, family care and disability leave, the right to time off to vote and many others.