

REDUCING RISK

WAGE AND HOUR AUDIT BEST PRACTICES



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AGENDA

- Why conduct an audit
- What to audit
- Best practices

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WHY AUDIT?

- Avoidance or mitigation of risk of individual, collective, or class litigation
- Reducing impact of agency investigation and enforcement
- Recent settlements and verdicts

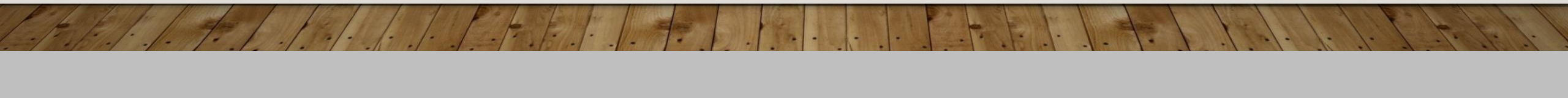
PAGA 2.0

- Nearly 20 years after its enactment, to balance interests of the State, workers, and employers, Governor Gavin Newsom signed into law on July 1, 2024, a legislative amendment completely overhauling the PAGA statute.
- Penalties capped for diligent and timely corrections
- Right to cure
- Right to injunctive relief

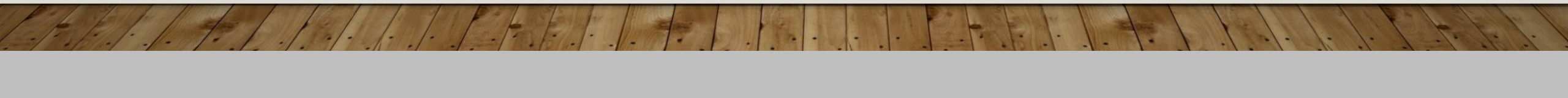
PAGA 2.0

“All reasonable steps’ may include, but are not limited to, taking an action to initiate any of the following: conduct an audit of the alleged violations and take action in response to the results of the audit, disseminate lawful written policies as to the alleged violations, train supervisors on applicable Labor Code and wage order compliance, or take appropriate corrective action with regard to supervisors. Whether the employer’s conduct was reasonable shall be evaluated by the totality of the circumstances and take into consideration the size and resources available to the employer, and the nature, severity and duration of the alleged violations. The existence of a violation, despite the steps taken, is insufficient to establish that an employer failed to take all reasonable steps.”

Labor Code section 2699(g)



PLANNING AN AUDIT

- Understand the Company's objectives
 - Know your audience
 - Determine the scope
 - Consider attorney-client privilege coverage
 - Enlist a team
 - Consult data sources
 - Document steps
 - Evaluate available remedial measures
- 



AUDIT TOPICS

RECORDKEEPING

- Employee/HR files
- Required policies
- Hiring and onboarding
- Job descriptions
- Training
- Payroll
- Timekeeping
- Wage statements
- Commission agreements
- Expense reimbursements
- Paid sick leave use/accrual
- Industry-specific requirements
- RIF business cases
- Termination documentation





RECORDKEEPING

ELECTRONIC COMMUNICATIONS?

CONTRAST: LITIGATION HOLD

- Upon notice of evidence preservation obligations, keep and do not destroy documents or electronically stored information per the terms of the litigation hold

EMPLOYEE CLASSIFICATION

- Employee vs. independent contractor
- Exempt vs. nonexempt
- Gig workers



EQUAL PAY

- Gender
- Parallel job roles
- Commensurate experience
- Tenure
- Education, specialization
- Performance



WORKING HOURS

- Workweek
- Workday
- Alternative work schedules



TIMEKEEPING

- Clocking in and out
- Rounding
- Meal periods
- Coffee badging
- Off-the-clock work
- Compensable time



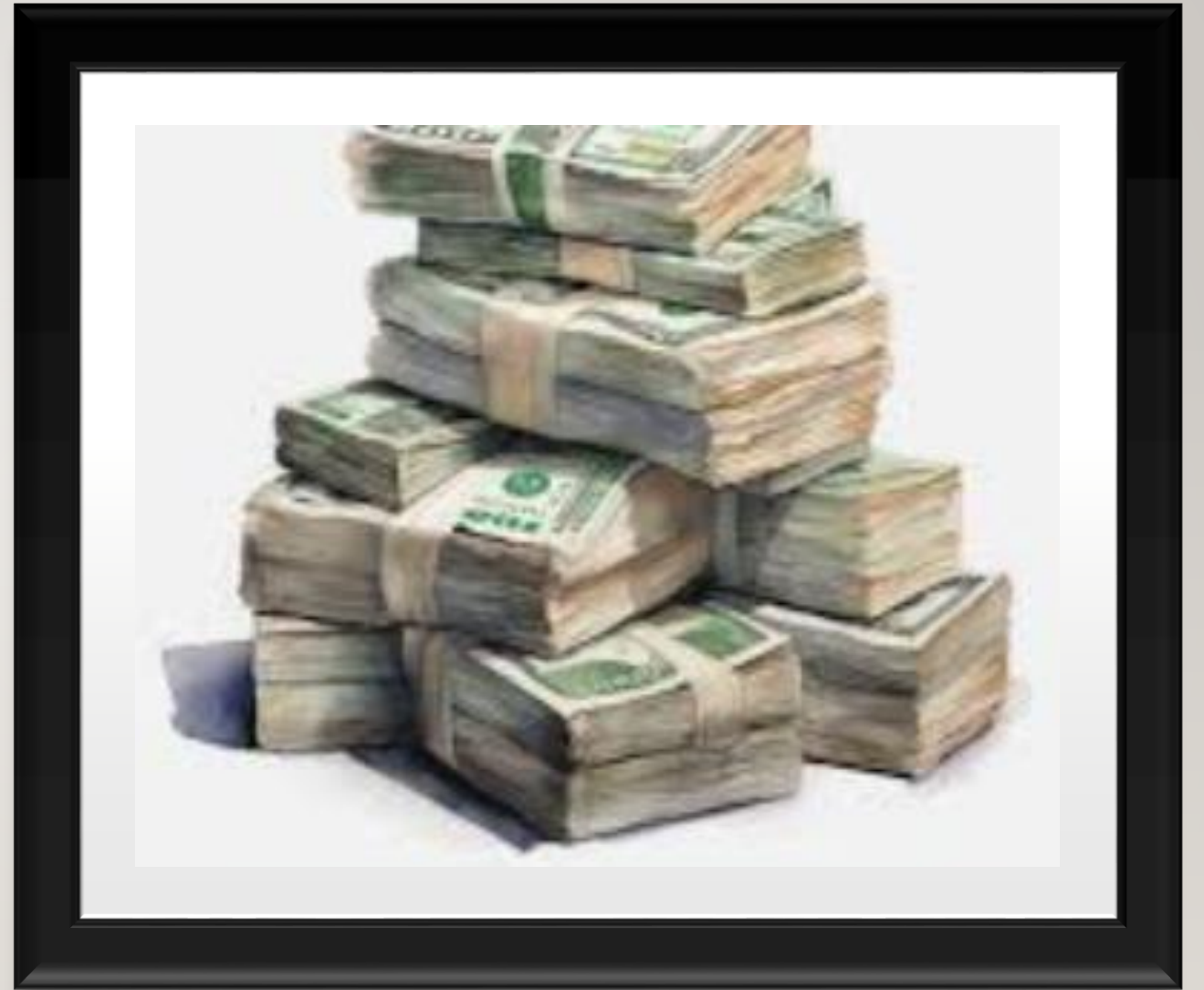
MEAL PERIODS AND REST BREAKS



- Timing and completion
- Attestations
- Waivers
- On-duty meal periods

COMPENSATION

- Reporting time
- Meal and rest breaks
- Minimum wage
- Overtime
- Regular rate of pay
 - Commissions
 - Incentives
 - Piece rate
- Paid sick leave



WAGE STATEMENTS

- A cautionary tale
- Code compliance
- Common mistakes

Earnings Information	Current	Year
Total Gross	4,389.30	
Retentions	0.00	
Retentions	0.00	
Retime	0.00	
EARNINGS TOTAL	4,389.30	5,
Taxable Gross	351.14	
able Gross	3,971.12	4,

Mandatory & Other Deductions	Current	Ye
Federal Withholding	311.17	
Additional Federal Withholding	0.00	
State Withholding	135.96	
Additional State Withholding	0.00	
FICA	0.00	
Health Care	62.67	
Health Care Buyout	0.00	
Disability Insurance	0.00	
	351.14	
	0.00	
	0.00	

PERFORMANCE MANAGEMENT



- Periodic reviews
- Feedback
- Investigation
- Corrective action/discipline

LEAVES OF ABSENCE AND ACCOMMODATIONS

- State, local, and federal provisions
- Leave as an accommodation
- Forms and communications





TERMINATION PRACTICES

- Decision-making tree
- Protected activity check
- Final wages
- Forms
- Severance/separation agreements
- Older workers
- Noncompete/nonsolicitation

AUDIT PRACTICES

- Checklist
- Forms
- Cadence
- Documentation
- Interviews
- Attorney-client privilege/work product reminder
- Self-correction options

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Thank you