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# COVID-Era Wage & Hour Basics for Employment Lawyers Who Don't Do Wage & Hour Cases

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**9:00—10:00 A.M.**

**1 Hr. Gen. CLE Credit**

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# **COVID-Era Wage & Hour Basics for Employment Lawyers Who Don't Do Wage & Hour Cases**

**Presented by the LACBA Labor & Employment Law Section and JAMS**

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Ramit Mizrahi  
Mizrahi Law, APC

## **Webinar Panelists**

**Darren M. Cohen** has been licensed to practice law in the State of California since 2002. He is Of Counsel at Kingsley & Kingsley, APC. He has over 18 years experience in employment law, specifically wage and hour individual and class actions matters.

**Chris Jalian** is a senior associate in the Employment Law practice of Paul Hastings and is based in the firm's Los Angeles office. Mr. Jalian has experience with class and representative actions, multi-plaintiff, and single-plaintiff lawsuits defending employers in state and federal courts in cases involving federal and state antidiscrimination, equal pay and whistleblower laws, the Fair Labor Standards Act, and a variety of state wage and hour laws. His clients include financial institutions, major manufacturers, medical and veterinary facilities, hotels and hotel management companies, and retail and entertainment companies.

**Deborah Crandall Saxe** is affiliated with JAMS, where she mediates and arbitrates employment disputes of all kinds, including individual, class, collective, and representative wage and hour matters. Before becoming a full-time neutral, she practiced employment law with international law firms for more than 30 years.

## **COVID-Era Wage & Hour Basics for Employment Lawyers Who Don't Do Wage & Hour Cases**

Program Description: Wage and hour law is complicated and not at all intuitive. Some employment lawyers practice it exclusively and know all about it, but others have more general employment law practices or focus on employment discrimination or traditional labor law. This program is designed for the employment lawyer who does not regularly practice wage and hour law, but wants to know more about it or may want to develop a practice in that area. It will include a discussion of the wage and hour issues that arise when employees are working from home, as they are now because of COVID-19.

**Speakers:** **Darren Cohen**, Kingsley & Kingsley  
**Chris Jalian**, Paul Hastings LLP  
**Deborah C. Saxe**, JAMS

### **Topics:**

#### **I. Sources of Law:**

- A. Federal Law** -- Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et seq.* and Code of Federal Regulations (“CFR”), 29 CFR §§ 500, *et seq.*
- Sets out federal minimum wage (\$7.25/hour since 7/24/2009) and overtime compensation requirements
  - Sets out tests for exemptions from the general requirement that overtime compensation be paid at 1.5 times the regular rate of pay for work in excess of 40 hours/workweek
  - No requirements for meal breaks, rest breaks, wage statements/pay stubs, timing of final pay at termination of employment, reimbursement of business expenses, etc.
  - Allows for “collective actions” – similar to class actions, but not the same
- B. California Law** – Minimum Wage Order
- Must be posted at workplace
  - Sets out California minimum wage requirements (\$13/hour for employers with 26 or more employees and \$12/hour for employers with less than 25 employees)

**C. California Law – 17 Wage Orders<sup>1</sup>**

- Must be posted at workplace
- Issued by the Industrial Welfare Commission (“IWC”), which no longer exists
- Set out California minimum wage requirements (duplicative of the Minimum Wage Order)
- Set out California overtime compensation requirements:
  - 1.5 times the regular rate of pay for all hours worked over 40 hours in a workweek and 8 hours in a workday (up to 12 hours) and for the first 8 hours worked on the seventh consecutive day of work in a workweek
  - 2 times the regular rate of pay for all hours worked in excess of 12 hours in a workday and for all hours worked in excess of 8 on the seventh consecutive day of work in a workweek
- Set out rules for, among other things, meal breaks, rest breaks, suitable seating, and recordkeeping re: hours worked

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<sup>1</sup>

Wage Order 1	Manufacturing Industry
Wage Order 2	Personal Services Industry
Wage Order 3	Canning, freezing, and preserving industry
Wage Order 4	Professional, technical, clerical, mechanical, and similar occupations
Wage Order 5	Public housekeeping industry
Wage Order 6	Laundry, linen supply, dry cleaning, and dyeing industry
Wage Order 7	Mercantile Industry
Wage Order 8	Industries handling products after harvest
Wage Order 9	Transportation industry
Wage Order 10	Amusement and recreation industry
Wage Order 11	Broadcasting industry
Wage Order 12	Motion picture industry
Wage Order 13	Industries preparing agricultural products for market, on the farm
Wage Order 14	Agricultural occupations
Wage Order 15	Household occupations
Wage Order 16	Certain on-site occupations in the construction, drilling, logging and mining industries
Wage Order 17	Miscellaneous employees

## **D. California Law – California Labor Code**

- Sets out rules for, among other things, overtime compensation, meal breaks, wage statements/pay stubs, timing for paychecks (including final paychecks for those ending employment), and reimbursements for business expenses
- Includes statutory penalties for various violations
- Includes the Private Attorneys General Act of 2004 (“PAGA”) (Cal. Lab. Code §§ 2698, *et seq.*), which allows for non-class action representative action suits for civil penalties against employers by employees acting on behalf of the State

### **2. Common Violations**

- Overtime (including off-the-clock work and regular rate of pay issues)
- Meal breaks
- Rest breaks
- Reimbursements for business expenses
- Reporting time pay
- Wage statements/pay stubs
- Payroll timing
- Final Paychecks

### **3. Misclassification**

- Employees misclassified as independent contractors
- Non-exempt employees misclassified as exempt from overtime compensation

### **4. PAGA**

### **5. Class Actions and Class Arbitration Waivers**

#### **Most important cases:**

##### U.S. Supreme Court:

*Lamps Plus, Inc. v. Varela*, \_\_\_ U.S. \_\_\_, 139 S.Ct. 1407 (2019) – an arbitration agreement governed by the Federal Arbitration Act may be interpreted to permit class arbitration only if it expressly permits class arbitration

*AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011) – the Federal Arbitration Act preempts California’s judicial rule that class arbitration waivers in consumer contracts are unconscionable

California Supreme Court:

*Kim v. Reins Int'l Cal., Inc.*, 9 Cal. 5th 73 (2020) – acceptance of CCP 998 offer to settle individual claims does not strip aggrieved employee of standing to pursue related PAGA action

*ZB, N.A. v. Superior Court*, 8 Cal. 5th 175 (2019) – unpaid wages not recoverable through PAGA

*Dynamex Operations W. v. Superior Court*, 4 Cal. 5th 903 (2018) – setting out three-factor “ABC” test to determine whether independent contractor is correctly classified

*Williams v. Superior Court*, 3 Cal. 5th 531 (2017) – allowing discovery of aggrieved employees’ contact information in PAGA actions

*Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004 (2012) – setting forth employer’s duties with respect to meal periods and rest breaks

*Arias v. Superior Court*, 46 Cal. 4th 969 (2009) – an employee can bring a representative action under PAGA without satisfying class action requirements

California Court of Appeal:

*Cochran v. Schwan's Home Serv., Inc.*, 228 Cal. App. 4th 1137 (2014) – an employer must reimburse an employee for the reasonable expense of the mandatory use of a personal cell phone