

CALIFORNIA TRUCK & DELIVERY DRIVER **WAGE THEFT**

THE ULTIMATE STRAIGHT TALK GUIDE TO
GETTING YOUR HARD EARNED WAGES BACK

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PREFACE

Congratulations! You made an excellent decision to obtain this book. It is the best investment you will make for getting your hard earned wages back from the company. The information I provide you can help you get on the road to recovering lots of money stolen from you by the company. This book will help win your wage and hour case. I personally guarantee it.

Every day trucking companies and delivery companies up and down California are ripping off wages from drivers just like you. This book will help you get back the money you deserve.

I love you Pop.

CHAPTER I. INTRODUCTION

I don't have to tell you that driving a truck is a hard way to make a living. When I was a kid, I used to ride with my Dad and my uncle when they drove trucks. I don't have to tell you how hard it is today just to make ends meet. It's hard enough when you are getting paid what you're supposed to be paid. It's really tough when the company is ripping you off. Based on what I see, if you are a California truck driver, delivery driver, or commercial driver - the company is probably ripping you off.

How do I know? I am a wage and hour class action lawyer. It is my understanding that I represent more drivers than any lawyer in California. I have represented thousands of California truck and delivery drivers. I help drivers like you get back the wages the company stole from you and your family.

1. What Is Wage Theft?

The law calls it "wage and hour" law. This is a polite description for the company stealing your wages. In reality, it is wage theft. If you pulled these stunts, you would go straight to jail. When the company does it, it's called "part of doing business." The reality is, the law protects companies and allows them to steal your wages without going to jail. I call it robbery without a gun.

It isn't legal, but no one is going to jail for this theft. This is why almost all trucking companies steal wages - because they know that the worst that will happen to them is that

they have to pay your hard earned money back. Even then, they profit from stealing your wages. It isn't right.

So I wrote this guide. This California Truck & Delivery Driver Wage Theft guide is about helping you get your hard earned wages back from the company.

My name is Bill Turley. I am a California wage and hour lawyer. I specialize in driver wage and hour class actions. I help drivers get their hard earned wages back. In a way, I am the new sheriff in town. Only, I'm not so new - I have been representing drivers for years. I am here to help you get your wages back from the company.

This California Truck & Delivery Driver Wage Theft guide for California drivers will help you keep the company's hand out of your wallet and help you make sure you get back all of the money the company has stolen from your paychecks.

2. Why I Wrote This Wage Theft Guide For California Drivers

I wrote this California Truck & Delivery Driver Wage Theft guide for California drivers for four reasons:

First, I wrote this book for my own clients. I believe informed clients get better results. So, originally, I compiled most of this information for my clients to better understand their case. This helps me get the best result possible for each of my clients.

Second, I don't like seeing good, hard-working, folks get ripped off by their employers. I talk to truck drivers, delivery drivers, and commercial drivers every day. Time and again, I see the company taking advantage of drivers.

Third, I want to level the playing field between you and the trucking and delivery companies. At times, it's appropriate to think of these companies and their lawyers as sharks. These sharks prey on drivers just like you. I wrote this book to help you avoid being an easy target and becoming just another victim. I hope this guide helps you get back all of your hard earned wages.

Fourth, I have a big place in my heart for truck drivers. My grandfather drove trucks. All of his sons drove trucks. My Dad grew up driving trucks. He drove a bread truck in the mornings before school. I called him Pop. Pop loved to drive.

I wasn't born with a silver spoon in my mouth - far from it. I actually stuttered badly when I was a kid. When it came time to read aloud in class, I couldn't do it. My stuttering was so bad that Mrs. Bauer put me into remedial reading in third grade. I guess she figured I couldn't read. Not exactly a stellar start for a law career.

Sometimes, I rode with Pop when I was a boy, sitting in the front seat of various trucks, from box trucks to tractor trailers. I remember listening to him turn up the radio when Roger Miller's King of the Road came on. We would sing along together. Looking back, I think Pop realized that singing along to the radio would help with my stuttering. I loved riding with Pop. I sure do miss him.

3. California's King Of The Road

I am privileged to represent thousands of California truck and delivery drivers. I am blessed to represent so many good, hard-working people. Today, I am told my law firm represents more truck drivers and delivery drivers than any

law firm in California. So, in that sense, I am “California’s King of the Road.”

But I am not a king. I am a regular guy - just like you and just like the drivers that I represent. I have been bestowed the honor of being their voice. That doesn’t make me a king. It just means that I am blessed to represent so many good, hardworking, and down-to-earth people.

4. Why Listen To Me?

One of the first questions you should be asking yourself is, “Why should I follow the advice in this book?” It’s a good question.

I’m a trial lawyer. I have offices up and down California: San Francisco, Oakland, Bakersfield, Los Angeles, and San Diego.

Most folks don’t realize that there are many different types of lawyers and that very few lawyers are actually trial lawyers. In fact, very few wage and hour class action lawyers have experience as trial lawyers.

Most class action lawyers have very little, if any, trial experience. Now, realize that 98% - 99% of all class action cases settle. Your case will, in all likelihood, settle also. However, companies pay top dollar in settlements to trial lawyers because, at the end of the day, the companies know that a trial lawyer will be facing them in court if they don’t settle. It is that threat that gets you the best result.

I’ve had the good fortune of being recognized by my peers. I have been repeatedly awarded Super Lawyer, given the highest rating by Avvo.com, and repeatedly named a Top

Attorney in the New York Times and Los Angeles Magazine. I was elected President of the Consumer Attorneys of San Diego (formerly San Diego Trial Lawyers Association) and I am also on the Board of Governors of Consumer Attorneys of California.

I have been extensively published and I am often asked to teach other lawyers on wage and hour class actions. For example, I have been repeatedly invited to speak at ACI Wage and Hour Class Action seminars and Consumer Attorneys of California seminars and programs. I am also named as Amicus Counsel on over 20 California Supreme Court cases.

I represent the workers in the ground-breaking California Supreme Court case *Brinker vs. Superior Court*. This case affected every worker in California, including you. This case has paved the way for you to get back the money that the company has ripped off from you.

5. Why Fantastic Ratings, Awards, Teaching, And Leadership Are A Benefit To You

I don’t mean to suggest the only way someone can be a really good wage and hour class action lawyer is to have fantastic ratings, win prestigious lawyer awards, be asked to teach other lawyers about the wage and hour law at lawyer seminars, or be elected to lead lawyer organizations. What these things do mean, is that people who do know good lawyers from bad lawyers have chosen me for these honors.

6. Disclaimer

Please keep in mind that although my goal is to inform, nothing in this California driver wage and hour guide

constitutes or is intended to constitute legal advice and should not be taken as legal advice. This guide provides an overview of California wage and hour law for truck drivers, delivery drivers, and commercial drivers.

You need to be the judge as to whether your personal circumstances are similar or dissimilar to those described in this book. This book in no way attempts to be exhaustive on any of these subject areas. I am simplistic in order to achieve clarity.

You are cautioned that the facts and circumstances described in this book may differ from your particular case or evidence. Every case is different, with its own unique facts and issues. In other words, your mileage may vary.

Neither I, nor any other lawyer, can guarantee that you are going to win your wage and hour class action lawsuit. There are no guarantees in life or law. There are numerous reasons why class action cases are not successful.

But I can say that I have won a lot of class action lawsuits. I don't get paid (or charge the client) unless I win. I am not going to take a case unless I think I can win it.

Please be cautioned here. You need to make sure that the lawyer you consult with specializes in driver wage and hour class actions. The law pertaining to drivers is, in some instances, very different from other California workers.

In addition, you need to consider that the law is dynamic. In other words, the law can and does change. This is another reason why you should consult with a California wage and hour lawyer that specializes in truck drivers, delivery

drivers, and commercial drivers, if you have any questions or concerns that the company has stolen your wages.

The circumstances, events, and case studies described in this book are not intended to describe actual events or persons. Any resemblance to real cases, events, truck companies, delivery companies, and/or persons is purely coincidence.

CHAPTER II. WHAT IS A WAGE AND HOUR CLASS ACTION LAWSUIT?

A class action is a type of lawsuit in which one or several persons sue on behalf of a larger group of persons. In every class action, the issues in dispute are common to all members of the class. In addition, there are so many persons affected by these common issues, that it would be too difficult to bring them all before the court.

When this is the situation, the law allows as few as one person to represent the entire class of people that have been affected by the illegal action. Depending upon the type of class action, resolution of the lawsuit usually binds all members of the class certified by the Court.

When you have had your wages stolen by the company, it is likely that your co-workers have also had their wages stolen by the company. A wage and hour class action allows you, an individual, to sue the company on behalf of yourself and all workers that have had their wages stolen by the company.

When your wages have been stolen, it may not be practical for you to sue the company in an individual case. Lawsuits are very, very expensive. Usually, the company will lawyer-up with a high priced gun for a lawyer. When you bring an individual case for your wages, it is rare that you will find a lawyer that can go toe-to-toe with the company's high-priced lawyer. This is because your lawyer will usually advance the costs and the attorneys' fees recovered from the case may not be enough to provide an incentive for the best lawyers to be involved.

However, with a class action lawsuit, you can get a really, really good lawyer that regularly takes down big companies and has the resources to advance the money to beat the company.

A class action lawsuit allows you to be a David against the company Goliath. In many instances, when the company is mid-sized or even a huge national type company, a class action is the best way to get your stolen wages back.

7. *What's In It For Me?*

You may be asking yourself, “Why should I be a class representative in a wage and hour class action?”

Another question you might have is, “What’s in it for me?” Or, “Why should I be a class representative in a wage and hour class action?” These are valid questions. Here are some answers:

Not Being A Silent Victim

There is a lot to be said about the satisfaction of standing up for your rights. There is a lot to be said about standing up and saying, “I’m not going to take it anymore.” You don’t have to be a silent victim. You don’t have to allow the company to get away with stealing your hard earned wages.

Getting Your Hard Earned Wages Back

With successful cases, you are going to get your wages back. You are getting your money back, so to speak. I don’t know about you, but for most of my clients, getting back the money the company stole from them is pretty high on their list.

Getting Co-Workers Their Money

When you bring a wage and hour class action you are helping your co-workers get their wages back, too. There is a lot of satisfaction in helping other people.

Getting A Class Representative Enhancement

A class representative, in essence, represents the class of workers in a wage and hour class action.

By being a class representative, you will oftentimes be entitled to a class representative’s enhancement or an incentive payment.

When there is a wage and hour class action lawsuit settlement, class representatives are oftentimes awarded extra “incentive” or “service” payments to compensate them for the extra time and effort they perform and by being the one that brought the case. Both federal and California law allow class representative’s an enhancement or an incentive payment. Of course, the payment has to be approved by the court.

Under both Federal and California law - wage and hour class representatives are often provided additional compensation for the expense and time they incurred in bringing the wage and hour class action lawsuit.

For example, enhancement payments of \$5,000 to \$7,500 are common, sometimes up to \$25,000 or more. Essentially, the court compensates you for your time and efforts in bringing these wage and hour class action lawsuits.

CHAPTER III. CALIFORNIA WAGE ORDERS

The Industrial Welfare Commission (“IWC”) was established to regulate wages, hours and working conditions in California. IWC wage orders must be posted by all companies/employers in an area frequented by employees, where they may be easily read during the workday.

The IWC is currently not in operation. The Division of Labor Standards Enforcement (DLSE) is supposed to enforce the provisions of the wage orders.

8. *Wage Order No. 9 - Transportation Industry*

Wage Order No. 9 applies to the transportation industry in California. This is important for several reasons. First, it defines who is protected by Wage Order 9. Here is a list of the occupations directly covered under Wage Order No. 9:

“Transportation Industry” means any industry, business or establishment operated for the purpose of conveying persons or property from one place to another whether by rail, highway, air or water, and all operations and services in connection therewith; and also includes storing or warehousing of goods or property, and the repairing, parking, rental, maintenance, or cleaning of vehicles.

Here is a list of the industries covered by Wage Order No. 9:

- Airlines
- Ambulance service
- Armored car service

Boat rentals
 Boats, cruise, ferry
 Bus lines
 Buses, tour
 Car loading
 Car rentals
 Car washes, when not in retail business
 Courier service
 Cruise boats
 Express and parcel delivery companies
 Ferryboats
 Garages, repair (except when operated by vehicle dealer or gas station, see Order 7)
 Garages, storage
 Garbage collectors
 Limousine service
 Logging trucks, commercial (for on-site logging, see Order 16)
 Maintenance of vehicles, e.g., garages, car washes, etc., if not connected with gas station or vehicle dealer (if connected with gas station or vehicle dealer, See Order 7)
 Mini-storage connected with a transportation firm (if not connected with a transportation firm, see Order 5)
 Moving and storage warehousing (of commodities moved)
 Parcel delivery service
 Parking lots

Railways
 Rental of vehicles (cars, trucks, boats, ships, airplanes)
 Repairs to vehicles (except when operated by vehicle dealer or gas station, see Order 7)
 Ship rental
 Ship repair
 Stevedoring
 Storage and moving warehouse (of commodities moved)
 Storage garages
 Taxi service, including water taxis
 Tire aligning and balancing companies
 Tour buses, companies
 Tow companies
 Transportation companies
 Trucking, including commercial trucking of farm products
 Truck rental
 Vehicle rental, including boats and ships
 Vehicle repairs (except when operated by vehicle dealer or gas station, see Order 7)
 Warehousing and storage (of commodities moved)
 Water taxi service

As you can see, truck drivers, delivery drivers, and commercial drivers are covered by Wage Order No. 9.

Second, Wage Order No. 9's applicability is important because it helps determine whether you fall under California

law or Federal law. This topic is covered in the Overtime section of this book (see Chapter V. Overtime for Drivers).

CHAPTER IV. DIFFERENT PAY STRUCTURES & COMPENSATION PLANS

Under California law, it is legal for companies to pay drivers based upon different pay structures or compensation plans. Here are the most common:

- Hourly pay
- Piece rate - by the mile, stops, and/or weight, etc. (one or a combination)
- Weekly salary

All of these can be done legally under California and/or federal law. However, most of the time, based on what I have seen, the company is not following wage and hour law in some respect. When this happens, drivers are not getting the wages that they are entitled to under the law.

9. Being Compensated For All Time Worked

Under California truck driver wage and hour law, the company has to pay you for all of the time that you work. This is where many California truck and delivery companies screw over drivers (See Chapter VI. Driver Piece Rate Compensation Plans).

Under California law, the company has to pay you for all of the time you work. While there are exceptions to this, I find that companies are giving the shaft to California drivers - from delivery truck drivers to tow-truck drivers to limousine drivers.

CHAPTER V. OVERTIME FOR DRIVERS

I would like to tell you that the law is simple with regard to overtime for California truck drivers and delivery drivers. It's not.

Generally, whether or not you, as a truck driver, are entitled to overtime, depends on whether you fall under California overtime law or Federal overtime law. California overtime law is very different from Federal overtime law. Knowing when you, as a truck driver, are entitled to overtime and when you are not entitled to overtime, is not so straight forward.

10. An Editorial On How Law Is Made

This part of the law is a tad confusing. If you are confused by this, don't be surprised - so are many lawyers and judges. Remember, oftentimes, the law is not black and white. This is an area of the law with a lot of grey areas.

In essence, the law is a set of rules. Sometimes, the rules are made by statutes. Other times, the law is made by courts. Law made by courts is called "common law."

When the law is made by courts, the law can resemble a zig-zag pattern. Court-made law, or common law, is driven by the specific facts of each case. So, each case tends to make a new rule.

In addition, different courts (read: Judges) usually make different rules. Throw in the political bent of the respective Judges and, presto, you have law that resembles a zig-zag

pattern. In other words, wage and hour law is not so clear and not so straight-forward.

Put another way, the way the law develops is like making sausage. Only, sausage usually tastes better.

11. Overtime Exemption

The general rule is that all employees in California are entitled to overtime pay, unless they meet one of the exemptions. Wage Order No. 9, for example, has an exemption that affects many truck drivers in California. The exemption states:

The provisions of this section [California Overtime] are not applicable to employees whose hours of service are regulated by:

(1) The United States Department of Transportation Code of Federal Regulations, Title 49, Sections 395.1 to 395.13, Hours of Service of Drivers, or;

(2) Title 13 of the California Code of Regulations, subchapter 6.5, Section 1200 and the following sections, regulating hours of drivers.

This means that, if you fall under one of these two sections, you are not entitled to overtime under California law.

12. Gross Weight Rating Of More Than 26,001 lbs.

If you drive (or ride as a helper/second driver) a truck that has a gross weight rating of more than 26,001 lbs., then you are exempt from California overtime law.

Keep in mind, if the truck you drive has a gross weight rating of more than 26,001 lbs., then none of the discussion in this section matters to you because you are not eligible for California overtime.

13. Gross Weight Rating Of 10,000-26,000 lbs.

If you drive (or ride as a helper/second driver) a truck that has a gross weight rating between 10,000-26,000 lbs., then you are exempt from California overtime law if you also drive in interstate commerce. “Interstate commerce” is a term of art. See Section 21 of this chapter to read how federal law defines interstate commerce.

A little later in this chapter, I go into an in-depth discussion on interstate commerce. If the vehicle you drive has a gross weight rating between 10,000-26,000 lbs., then you really need to pay attention to the discussion on interstate commerce.

14. Gross Weight Rating Of Less Than 10,000 lbs.

Assuming you do not meet one of the other overtime exemptions (you drive smaller vehicles of 10,000 pounds or less), you are entitled to overtime. If you drive both larger vehicles (10,001 pounds or more) and smaller vehicles (10,000 pounds or less) in the same week, you are probably entitled to overtime.

15. How To Determine Gross Weight Rating

Courts have differed on how to determine the gross weight rating and has not yet been determined for California drivers. However, most courts across the country define the gross weight of a vehicle as the value specified by the

manufacturer as the loaded weight of a single motor vehicle. However, when a vehicle is towing a trailer, most courts also combine the actual weights of the vehicle and the trailer in determining the gross weight rating.

16. Farm Vehicles

If you drive a farm vehicle, you are exempt from California overtime laws, meaning you do not get paid overtime. On days that you are not driving a farm vehicle, you are entitled to overtime compensation (assuming that you don't fall under one of the other exemptions).

17. Transporting Hazardous Waste

If you drive (or ride as a helper/second driver) in a vehicle that transports hazardous waste, you are exempt from California overtime laws, meaning you do not get paid overtime. Stated differently, on days that you drive a vehicle that transports hazardous waste, you don't get California overtime.

On other days when you aren't transporting hazardous waste and assuming you don't fall under one of the other exemptions, you should get California overtime.

18. Tow A Trailer More Than 40 Feet

If you drive a truck that tows a trailer of more than 40 feet in length, then you are exempt from California overtime, meaning you do not get paid overtime.

19. California Public Utility Commission (PUC)

If you drive a truck that is regulated by the California Public Utility Commission (PUC), then you are exempt from California overtime law, meaning you don't get paid overtime.

20. Tow A Regulated Trailer With A Total Gross Weight Rating Of More Than 10,000 lbs.

If you drive a truck that tows a regulated trailer with a total gross weight rating of more than 10,000 lbs., you are probably exempt from California overtime law, meaning you may not be eligible for California overtime.

21. Interstate Commerce

If you drive in interstate commerce (drive across state lines) or can be reasonably expected to drive across state lines (read: make runs outside of California), then you are not entitled to overtime.

While it is certain that you are considered to be transporting property in interstate commerce when you cross state lines (read: drive runs outside of California), the definition of "interstate commerce" is much broader than that. For example, if goods originate outside of California, you haul them solely in California, and the California part of the route that you drive is simply part of a lengthier interstate journey, your California delivery run is considered part of interstate commerce.

An analysis of the goods/products that you are delivering needs to be made in order to determine whether or not you are entitled to overtime. If the goods/products are

considered interstate commerce, then you are not entitled to overtime. If the goods/products are not part of interstate commerce (read: solely within California), then you are entitled to overtime.

Even if you make runs solely within California, your driving is still considered part of interstate commerce. You are not entitled to overtime if the goods/property you are hauling were originally delivered from outside of California and the California route is merely part of the final phase of delivery. This is called the “the practical continuity of movement in interstate commerce” rule.

If you are hauling goods that came from outside of California to fill a specific customer’s orders, then you are considered part of interstate commerce and you are not entitled to overtime compensation.

If a company places orders with an out-of-state vendor for delivery to specified California customers, a temporary holding of the goods within a California warehouse for processing does not alter the interstate character of the transportation chain, culminating in delivery to the customer.

On the other hand, if a customer places orders with an out-of-California vendor with delivery to the company’s California warehouse for future delivery to customers yet to be identified, the transportation chain culminating in delivery to the customer is considered intrastate in nature. This means you are entitled to overtime.

On the flip side, assuming the goods you are hauling are not considered part of interstate commerce (see above) and you don’t fall under one of the other exemptions, you may

be entitled to overtime if there is no possibility of driving outside of California, or the possibility is remote.

If the company has runs that go outside of California and the company assigns routes on a permanent or semi-permanent basis and you are not assigned a route outside of California, then you may be entitled to overtime - even if the other drivers in the same company that are assigned routes outside of California are not entitled to overtime.

If you are on a permanent/semi-permanent route, you will usually be entitled to overtime, even if the company has you fill in on a route that goes out of state. But if the company assigns routes on a more random basis, you may not be entitled to overtime, even if you never drove a route outside of California. However, because the exemption does not apply if the potential for driving interstate (read: outside of California) is remote, the company usually does not establish that there was a reasonable expectation that you could drive interstate when it randomly fills vacant interstate routes with drivers who otherwise have regular, intrastate routes.

If you haul a small amount of goods that are considered interstate goods (that is, you have only participated in a small amount of interstate activity), then you may still be eligible for overtime.

Where raw goods are shipped from out of California and then assembled or manufactured in California, the final shipment from the assembly plant to California is not interstate commerce. Any time the goods are changed or processed, the shipment chain is broken and any in-California shipping from that point forward is no longer interstate commerce.

The Department of Transportation now uses a 4-month rule. If you drive in interstate commerce once every four months, you are exempt from California overtime. However, once you no longer meet the interstate commerce activity requirements for four months, you are potentially entitled to overtime again.

However, in other seemingly similar situations, some courts appear to be willing to take a week-to-week approach. It seems that this weekly approach is more reasonable.

Here is the kicker. While you are probably not entitled to overtime if you drive outside of California, you *may* have a stronger case overall if you do drive outside of California for all of your other claims (i.e. missed meal and rest periods).

22. Overtime Under The Fair Labor Standards Act (“FLSA”)

The Federal Fair Labor Standards Act (“FLSA”) requires companies to pay overtime wages for work performed, in excess of forty hours per week, at a rate equal to one and one-half times the employee’s regular rate. The FLSA provides a number of exemptions for certain employers and/or employees from its overtime requirements.

The FLSA specifically exempts “any employee with respect to whom the Department of Transportation (“DOT”) has power to establish qualifications and maximum hours of service pursuant to the provisions of the Motor Carrier Act (“MCA”).”

For an employee to be exempt from overtime-pay requirements under the Motor Carrier Act, the company has the burden to show:

- (1) That it is a carrier whose transportation of passengers or property by motor vehicle is subject to the Secretary of Transportation’s jurisdiction, i.e., it’s transportation of passengers or property takes place in interstate commerce;
- (2) The employee is a driver, driver’s helper, loader, or mechanic; and
- (3) The employee engages in activity that affects the safety of operation of motor vehicles in the transportation of passengers or property in interstate or foreign commerce.

23. A Final Word On Overtime For Drivers In California

Under California law, if you are not exempt from California overtime, then you are entitled to overtime pay when you work over eight (8) hours a day or forty (40) hours a week. Overtime compensation is calculated as time and one-half of your regular wages.

Many times, I see companies that don’t factor in incentive pay and such into overtime rates. Oftentimes, this is illegal.

For work over 12 hours a day, you are entitled to double time. That is, pay at twice your regular rate.

Finally, if you are in a Labor Union (for example, the Teamsters), you are probably not entitled to overtime under California law. However, if you drive a vehicle that is less than 26,000 lbs. and you don’t drive in interstate commerce, under federal overtime laws, you may be entitled to overtime for all hours worked over 40 hours a week.

As you can see, overtime laws for California truck drivers are a tad confusing. There are additional nuances and such that I have not discussed in this book. The complexity of these laws is why you need to consult with a wage and hour class action lawyer that specializes in driver cases.

CHAPTER VI. DRIVER PIECE RATE COMPENSATION PLANS

24. Common Types Of Piece Rate Systems

Some California truck delivery companies use a formula, or “piece rate system,” to pay its drivers. Here are common components of piece rate systems for delivery drivers:

- (1) The number of miles you drive on your route;
- (2) The number of delivery stops made on your route;
- (3) The number of cases of product you deliver on your route; and/or
- (4) Pay by the run or pay for a round trip.

25. Waiting Time For Drivers

For drivers, “waiting time” has to be distinguished from “waiting time penalties.” They are very different. “Waiting time” for drivers is the time a driver spends waiting (i.e. for the truck to be loaded/unloaded or for a terminal to open up), usually while in the truck or near the truck.

“Waiting time penalty” is a payment that is owed to California workers when their pay is not properly provided at the time of termination of their employment. I have a whole section on waiting time penalties (see Chapter VIII. Waiting Time Penalties). This section is about the driver’s waiting time.

Many companies don’t pay for waiting time. For example, companies often don’t pay you when you make a delivery

and have to wait while the truck is being unloaded or you have to wait at a terminal until it is your turn for your truck to get unloaded. Not getting paid for this waiting time is illegal under California law.

Under California piece rate compensation laws for truck drivers, the company has to pay you for all of the time you work - not just for piece rate items – including waiting to load/unload a truck or waiting in line at a terminal.

26. Pre-Trips And Post-Trips

Most drivers are required to perform a pre-trip inspection on the truck/tractor and trailer. This is a DOT requirement. Most trucking companies require drivers to note any damage to the vehicle in the pre-trip inspection report. This usually takes at least 15 minutes, if not more time. In addition, the DOT requires a post-trip inspection. This requires an additional 15 minutes or more.

Many California truck companies don't pay drivers while they do pre-trips and post-trips. This is illegal under California law. Under California piece rate compensation laws, the company is required to pay for all of the time you work - not just for piece rate items (miles driven, stops made, etc.).

The company has to compensate you for all work time, including pre-trips and post-trips.

CHAPTER VII. MEAL PERIODS (LUNCHES) AND REST BREAKS - SOMETHING IMPORTANT TO KEEP IN MIND

27. Don't Be Fooled

I need to back up a tad. I need to explain to you three very important points that you need to understand. First, it is my understanding that I represent more truck, delivery, and commercial drivers than any lawyer in California. Please don't take this the wrong way; I am simply trying to establish that I know driver wage and hour law.

Second, the ground-breaking case that lays out meal period (lunches) and rest period law in California is the California Supreme Court case, *Brinker v. Superior Court*. This is my case. I represent the workers in the *Brinker* case. This is THE case that establishes your right to take a meal period and rest break.

Third, this is an area of law that I frequently am asked to teach to other wage and hour lawyers. Again, I am not trying to brag here; it is just important that you understand that I know driver wage and hour law really, really well.

Why am I bringing this up? It's because I talk to truck, delivery, and commercial drivers every day. I constantly hear drivers say, "I got (or get) meal periods and rest periods." Then, when I drill down, it becomes very apparent that while many drivers think or believe that they are getting lawful meal periods and rest breaks, in reality, they are not.

Why is this important? Because this usually really adds up – I'm talking about a lot of money. I explain this more below.

Here is the next important point. Time and again, I see wage and hour lawyers that don't specialize in truck, delivery, and commercial driver cases completely undervalue driver cases because they don't understand the nuances of driver wage and hour law. I haven't seen this a few times - I have seen this a lot of times.

I have a handful of cases right now where supposedly experienced wage and hour lawyers have completely undervalued driver wage and hour cases. We are talking undervaluing the case by millions and millions of dollars. This usually adds up to thousands and thousands of dollars that individual drivers may not receive.

The problem here is drivers don't know this. On one level, drivers don't know that what they think is a legally compliant meal period and rest break, in reality, isn't.

On another level, drivers may consult or hire a wage and hour lawyer who doesn't understand driver cases and is either telling them that they don't have a case or is seriously undervaluing the case. There are really experienced wage and hour lawyers that have had great success in "non-driver" cases. But, they simply don't seem to know the ins and outs of how to win a driver wage and hour class action case.

The trouble is, their clients (read: drivers) don't know that their lawyer is clueless about driver wage and hour law. So the driver is either told that there is no case or a case that is worth millions and millions of dollars gets settled for not enough money. In other words, the drivers get 1/5 of the money (or even less in many cases) that they should be getting. I'd like to tell you that I have only seen this once or twice. But I can't. It happens all of the time, which is one

of the main reasons why I wrote this guide. I don't want this to happen to you.

28. Meal Periods - Most California Truck Companies Do Not Provide Meal Periods That Comply With California Law

Under California law, you are entitled to a duty-free meal period before you work 5 hours, unless you agree to waive the meal period and your shift ends before the end of your 6th hour. If you work over 6 hours, then the meal period must be provided to you before you work your 5th hour.

You are also entitled to a second meal period when you work 10 hours. You may have heard that you can "waive" your meal periods. You may also have heard that you don't "have" to take your meal period if you don't want to.

However, many - if not most - trucking companies have a written policy saying that meal periods are "mandatory." The problem here is that the meal periods being provided simply don't comply with California law.

Based on what I see every day, it is extremely rare when a truck/delivery company complies with California law with regard to meal breaks.

Under California law, you are entitled to a meal period for 30 uninterrupted minutes. In *Brinker v. Superior Court*, the California Supreme Court established meal and rest break law in California. In California, the company has a duty to provide you with a meal period.

The company satisfies this obligation if it:

1. Relieves you of all duty;
2. Relinquishes control over your activities;
3. Permits you a reasonable opportunity to take an uninterrupted 30-minute break; and
4. Does not impede or discourage you from doing so, or provide you an incentive to forego.

In the real world, almost no trucking companies meet this rigorous standard. Based upon what I have seen, almost every California truck driver is getting ripped off by the company because they are not getting legally compliant meal breaks.

My law firm regularly wins class action meal period cases for California truck drivers.

Whether taking the meal period is “mandatory” by the company or not, most trucking companies are simply not following California law. There are a number of ways that California trucking companies are not following California meal period law. Either the timing of the meal period policy is facially unlawful (meaning that the policy does not comply with the law with the way it is written) or the company’s uniform practices and/or policies simply do not follow the standards laid out in the *Brinker* case.

Most drivers have no idea how the company is breaking California law, with regard to meal breaks. Most drivers think that just because the company makes them clock out for ½ hour or they have to sign a route sheet saying they took a meal period, that somehow means that they received

a meal period under California law. However, this is very rarely the case.

I realize that I have a huge advantage over most lawyers, because I represent more drivers than any lawyer in California and I am the workers’ lawyer in the *Brinker* case. This is the case that made these great laws for California workers. I talk to drivers every day. It is very, very rare that I find the company complying with California law.

So here is the takeaway point. Even if you spoke to a lawyer that says the company didn’t break the law with regard to providing you with meal periods - don’t buy it. Seriously, I can’t tell you how many lawyers I have talked to that aren’t truck driver specialists that simply don’t get it.

29. Auto-Meal Deductions

Most truck companies and delivery companies automatically deduct 30 minutes from your time each day for a meal period. This is called “auto-meal deduct” or “auto-meal deduction.” The company’s logic here is, since you are not at a fixed work site that allows you to clock-in and out for meal periods, like most workers, the company will automatically deduct 30 minutes from your time each day. They rationalize this by making meal periods “mandatory.”

Many companies will make you sign off on a route sheet or some other document each day, where drivers are forced to verify that they ‘received’ a meal period as a condition of getting paid or working with the company. This is all, no doubt, concocted by their lawyer to be used as “proof” that the company “provided” you a meal period and that you actually received meal periods.

It's all B.S. Don't worry about this stuff. None of this is what the law calls "dispositive," which is a legal term that means you can still win your case even if the company does all of this stuff. I am usually able to get around these shenanigans that the company's lawyers think up.

I haven't seen a truck or delivery company yet that has an auto-meal deduction policy and practice that complies with California law. Every one that I have seen is in violation of California wage and hour laws. It is a form of wage theft.

For example, the company deducts 30 minutes from your time each day, whether you receive a legally complaint meal period or not. Please remember that it is rare that companies actually provide drivers with a legally complaint meal period. It's a double-whammy, so to speak, for you not to actually receive a meal period and have the company automatically deduct the 30 minutes from your work time.

If the company automatically deducts 30 minutes from your time for meal periods - they deserve to be sued.

Although I have seen companies use auto-meal deduction for salaried drivers, it usually happens to drivers that get paid by the hour.

Most of the drivers that I represent work at least 8 hour shifts. Most work much longer shifts.

But either way, you are often entitled to time and one half when companies steal your wages with auto-meal deduct. If you already work 8 hours and the company auto-deducts ½ hour for a meal, then you've worked over 8 hours and you are owed overtime wages, or time and one half for the ½ hour.

You are going to see that this ½ hour at time and one half really adds up.

30. Computerized/Phone/Digital Payroll Systems

Many companies have computers in the cab or time and attendance programs that work over a handheld and/or cell phone. Oftentimes, these systems will make drivers log off or punch out for meal periods over the computer, handheld or phone. The system may prevent you from using the system for the 30 minutes or so that you are "on your meal period."

I hear drivers saying that, oftentimes, they are working while they are logged off the system. For example, they are unloading the truck or doing paper work.

Even if you aren't "working" during the 30 minutes that you are logged out for a meal period, it doesn't mean that you have received a legally complaint meal period.

31. Rest Breaks

You are entitled to a paid rest period of 10 minutes for every four hours you work, or major fraction thereof. What does this mean? If you work 3 ½ hours, you are entitled to a paid 10-minute rest break. If you work 6 hours you are entitled to a second paid 10-minute rest break. When you work 10 hours, you are entitled to a third paid 10-minute rest break.

In order to qualify as a rest break, you can't be required to have any work duties and/or you must be relieved of all duties. Based upon what I see every day, very few trucking companies meet their obligation of providing duty-free

rest breaks. This occurs for all types of pay structures and compensation plans.

With truck driver piece rate compensation systems, companies almost never, ever provide paid rest breaks, or compensation in lieu thereof. In other words, you are not being compensated with a paid 10-minute rest break. On top of that, the trucking company is not meeting their obligation to provide duty-free rest periods.

When I speak to drivers, they frequently assume that they might have actually received rest periods. However, when I drill down, it becomes apparent that they did not get what is called “code compliant rest periods.” This happens time and again.

CHAPTER VIII. WAITING TIME PENALTIES

When your employment terminates, the company must pay you within a certain period of time. A company that willfully fails to pay the wages due to you (whether you were laid off, fired, or you quit) within the prescribed time frame, may be assessed a waiting time penalty. The waiting time penalty is an amount equal to your daily rate of pay for each day the wages remain unpaid, up to a maximum of thirty (30) calendar days.

The assessment of the waiting time penalty does not require that the company intended the action or anything blameworthy.

What is needed in order for you to get waiting time penalties:

- The company knows what it is doing;
- That the action occurred and is within the employer’s control; and
- That the employer fails to perform a required act.

32. Waiting Time Penalty Rules

In most instances, the law is a set of rules. It is certainly that way with waiting time penalties.

Here are the waiting time penalty rules:

- If you are fired or laid off, the company must pay all of your wages, including accrued vacation, on the day (read: at the time) that you are terminated.

- If you don't have an employment contract for a definite period of time and you give at least 72 hours prior notice of your intention to quit and you quit on the day of the notice, the company must pay all of the wages you are owed, including accrued vacation, at the time of quitting.
- If you don't have an employment contract for definite period of time and you quit without giving 72 hours prior notice, the company must pay you all of the wages you are owed within 72 hours of your quitting. You may request that your final wage payment be mailed to a designated address. The date of mailing will be considered the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.
- You will not be awarded waiting time penalties if it is determined that you avoided or refused to receive payment of the wages due.

33. Good Faith Dispute

However, assessment of the penalty is not automatic, as a "good faith dispute" that any wages are due will prevent imposition of the penalty. Many companies (or rather their slick lawyers) try to overstate what this means. The good faith dispute has to be over whether there are wages owed. There is rarely, if ever, a good faith dispute if wages undisputedly owed are not paid within 72 hours.

If a good faith dispute exists concerning the amount of the wages due, no waiting time penalties would be imposed. A "good faith dispute" that any wages are due occurs when the company presents a defense, based in law or fact which,

if successful, would preclude any recovery on the part of the employee. The fact that a defense is ultimately unsuccessful will not preclude a finding that a good faith dispute did exist. However, a defense that is unsupported by any evidence, is unreasonable, or is presented in bad faith, will preclude a finding of a "good faith dispute."

34. Exceptions

There are a few exceptions to these waiting time penalty rules for some seasonal workers, motion picture workers, oil drilling industry workers, theater workers and concert event workers.

35. Additional Waiting Time Penalty Laws

Waiting time penalties apply to the willful failure to pay any wages. This includes regular time, overtime, piece rate pay, commission pay, meal period premiums, rest period premiums, accrued vacation pay, and accrued bonus pay.

All compensation must be considered in determining if all wages due were paid, as required by law.

36. Calculating Waiting Time Penalties

The penalty is measured at your daily rate of pay and is calculated by multiplying the daily wage by the number of days that you were not paid, up to a maximum of 30 days.

The 30-day period is counted in calendar days, including weekends, holidays, and any other days that you would not normally work. If the company pays you the wages owed, then the daily penalty stops accruing. Or, if you commence an action for the wages, the penalty stops accruing (meaning,

you are probably better off waiting until the 30 days are up, before you bring your action for wages).

Here is a quick example. Suppose you normally work 10 hours a day, you are exempt from overtime because you haul a 48-foot trailer, and you make \$22.00 an hour. For this example, we will assume you are entitled to the maximum 30 days of waiting time penalties.

$$\$22 \times 10 \text{ hours} = \$220$$

$$\$220 \times 30 \text{ days} = \$6,600$$

In this example, you are entitled to \$6,600 in waiting time penalties. As you can see, this can really add up fast.

CHAPTER IX. ITEMIZED PAY STATEMENTS

37. Pay Statement Requirements

Under California law, itemized pay statements must include:

1. The employer's name and address;
2. The employee's name and only the last four digits of her social security number;
3. The inclusive dates for which the employee is being paid;
4. The gross wages earned;
5. The net wages earned;
6. The total hours worked for nonexempt employees;
7. For employees paid on a piece-rate basis, the applicable piece rate and units earned;
8. All applicable hourly rates; and
9. All deductions.

38. Consequences Of Non-Compliance

When the company knowing and intentionally fails to provide this information itemized on your pay stub and you suffer an injury, you may be entitled to substantial penalties.

Under California law, if the company fails to provide you with a wage statement, you are deemed to suffer injury.

Under California law, where the company provides you a wage statement, but fails to provide the information described above, you are deemed to suffer an injury.

You are deemed to have suffered an injury when you have received a statement (read: pay stub) and you cannot promptly and easily determine from the wage statement alone:

- Gross wages;
- Net wages;
- Deductions made;
- The company's name and address; or
- Your name and identification number.

When you suffer injury as a result of the company's knowing and intentional violation, you are entitled to recover actual damages, or a prescribed penalty of \$50 for the initial violation and \$100 for each subsequent violation.

However, the penalty is capped at \$4,000.

In addition, you can also recover costs and reasonable attorney's fees.

CHAPTER X. MINIMUM WAGE

39. California Minimum Wage

Under California wage and hour laws, almost all employees in California must be paid the minimum wage. The minimum wage from 2008 to June 30, 2014 was \$8.00 per hour. Effective July 1, 2014, the minimum wage in California is \$9.00 per hour. Effective January 1, 2016, the minimum wage in California is \$10.00 per hour.

California and federal law set a minimum wage to protect workers from unfairly low compensation. The basis of a minimum wage is so that people who work and contribute to society earn enough money to meet their own basic needs and provide for their families.

40. Federal Minimum Wage

The current federal minimum wage is \$7.25 per hour. The federal minimum wage provisions are contained in the Fair Labor Standards Act (FLSA).

41. What Is The Difference Between The State And Federal Minimum Wage?

Almost all workers in California fall under both federal and state minimum wage laws. When federal and California minimum wage law conflict, the company must follow the minimum wage law that is more beneficial to you, the worker.

In essence, this means that all California companies who are subject to both laws, must pay the California minimum wage

rate, unless their employees are exempt under California law.

42. Local Minimum Wage

You are entitled to whichever minimum wage rate is highest – whether it’s the federal, state, or local minimum wage. For example, San Francisco has a minimum wage of \$10.74 an hour. Workers in San Francisco are entitled to \$10.74 an hour, which is higher than the state or federal minimum wage rate.

43. The Company Has to Pay You At Least Minimum Wage

California and federal law require companies to pay workers at least minimum wage. The minimum wage problem often arises when flat fee compensation for drivers is not sufficient to cover all hours worked at a minimum wage rate.

CHAPTER XI. AM I AN INDEPENDENT CONTRACTOR OR AN EMPLOYEE?

44. Independent Contractor Vs. Employee?

One of the issues facing drivers today is: Are you an independent contractor or an employee? Many times, companies try and skirt California’s tough wage and hour laws by calling drivers “independent contractors,” instead of employees. They also do this to save money on payroll taxes, workers compensation, and other regular business expenses. However, in most instances, the reality is that the drivers are actually employees, not independent contractors.

Whether a driver is an employee or an independent contractor is usually a huge issue for drivers. It means a lot of money is owed to drivers in past overtime wages, past regular time wages, meal period premiums, rest period premiums, payment for all time worked, waiting time penalties, business expense reimbursements, improper deductions, etc. In most instances, we are talking about big bucks.

45. Shifting The Burden Of Proof Is Huge

Under California law, once a driver comes forward with evidence that they provided services for the company, the driver has established what is called a “prima facie case” that the relationship was one of employer/employee. The burden then shifts to the company to prove, if it can, that you are an independent contractor.

What does this mean in non-lawyer terms? Think baseball. Once you produce evidence that the company was your employer two things happen. First, if the score is tied at the end of the game - you win. Second, just like in baseball, all ties go to you - the runner. I can't tell you how huge this all is in a court case. It is sort of like running downhill, but much easier.

46. It Usually Comes Down To The Company's Right To Control Your Work

In order to determine whether drivers are employees or independent contractors, there are many factors that the law analyzes. For example, you have to look at the service agreement or contract between the worker and employer. Under California law, the label that parties place on their employment relationship is not dispositive and will be ignored if their actual conduct establishes a different relationship. It usually doesn't matter that the company calls you an "independent contractor."

However, the right to control work details is the most important, or most significant, consideration. That is, whether the company has the right to control the manner and means of accomplishing the result desired.

Please note, it is the right to control the work that is more important than whether or not the company actually controlled the work. In most instances, the company will have both the right to control your work and will actually do so, but just the right to control is enough.

The essence of the test is the "control of details." That is, whether the company has the right to control the manner and means by which the driver accomplishes the work.

47. Secondary Factors

While the right to control the work is the primary consideration, the law also looks at additional, "secondary" factors that may be relevant in determining whether a driver is an employee or an independent contractor under California law.

Rather than getting bogged down in these secondary factors - all you need to know is that, in most instances, these factors are very favorable to drivers.

48. A California Package Delivery "Independent Contractor" Case Study: XYZ Package Delivery Company Controls Almost Everything

Steve works for XYZ Package Delivery Company. (The names here have been changed. Any resemblance to any company and/or person is purely coincidental. This is a case study for instructional purposes only).

XYZ Package Delivery Company calls the drivers "independent contractors." In fact, Steve and the other drivers signed an agreement that states they are not employees and instead, they are independent contractors. Sound familiar so far?

However, the company has control over almost every detail of the driver's performance.

The company's instructional videos, shown to the drivers, advises them that "as an XYZ pickup and delivery driver, you have an important role in the XYZ's shipping process." Drivers are instructed about proper loading procedures, how to fill out the paperwork, how to deal with customers,