



REDUCING RISK

1. WAGE AND HOUR
2. CHILD SAFETY

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#1 AREA OF WAGE AND HOUR LIABILITY – MEAL PERIOD VIOLATIONS (NO/LATE/SHORT MEAL PERIOD)

Meal Period - California

- CA requires employers to authorize and permit non-exempt employees to take a duty-free meal period (unpaid) of at least 30 minutes if more than 5 hours are worked (unless 6 hours of work completes the employee's workday).
- Must be scheduled to begin prior to the end of the 5th hour of work – i.e., must be taken by 4:59 hours of work.
 - Example: Work starts at 8:00 AM. Meal period taken at 12:59pm – OK
 - Example: Work starts at 8:00 AM. Meal period taken at 1pm - VIOLATION

MEAL PERIODS – CALIFORNIA (CONT.)

- Employees working between 5 and 6 hours can waive a meal period.
 - Recommend waiver be in writing. HR can help with form.
 - Employee cannot waive meal when daily hours exceed 6 in one day.
- Second duty-free meal period must be provided on workdays when an employee will work more than 10 hours. Must be taken before the end of the 10th hour (9 hours 59 minutes).
 - If workday will be completed in 12 hours or less and the first meal period is taken, second meal period may be waived. Recommend it is waived in writing.
 - Employee cannot waive meal period if employee's workday exceeds 12 hours.

MEAL PERIODS – CALIFORNIA (CONT.)

- Meal periods must be duty-free. If employee is not relieved of all duties during meal period, they must be paid for the actual time worked plus a meal period premium.
- Meal period premium equals one additional hour of pay at the regular rate of pay.
 - Regular rate of pay = rate calculated using all forms of payment received
 - Includes value of meals and lodging

DISTINCTION – ON DUTY MEAL PERIOD

- On duty meal period is permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the employer and employee an on-the-job paid meal period is provided.
- The on duty meal period is not a waived or missed meal. Thus, no missed meal penalty payment required.
- However, on duty meal period must be counted as hours worked and paid accordingly.

TO OUR NON-CALIFORNIA FRIENDS...

- Congratulations
- Meal periods under FLSA are not required, but if provided they must be completely duty free if an employee won't be paid for them.
- Some states following FLSA adopt more stringent rules – confirm with your Conference HR department your practices are compliant

#2 AREA OF WAGE AND HOUR LIABILITY – REST PERIOD VIOLATIONS

- California law requires employers to authorize and permit non-exempt employees to take a 10-minute paid duty-free rest break for every 4 hours or major fraction thereof worked.
- Rest breaks may not be combined with other meal or rest periods or taken at the beginning or end of a shift; they must be taken separately, preferably as close to the middle of the 4 hour work period as possible.
- Rest breaks are paid time and, unlike meal periods, are not recorded on timesheets.
- Non-California – rest breaks not required, check with your conference HR department

#3 AREA OF WAGE AND HOUR LIABILITY – OVERTIME

- California

- Overtime must be paid for hours worked over 8 in a day, or over 40 in a workweek.
 - 1.5 times the employee's regular rate of pay for hours worked beyond 8 in a day or the first 8 hours worked on a 7th consecutive day worked in a single workweek.
 - 2 times the employee's regular rate of pay for all hours worked beyond 12 in a day or hours worked beyond 8 on the 7th consecutive day worked in a single workweek.

- Non-California

- Overtime must be paid for hours worked over 40 in a workweek – at least 1.5 times the employee's regular rate of pay
- Check with conference HR re overtime calculations

SIMPLE WAYS TO REDUCE WAGE AND HOUR LIABILITY EXPOSURE

- Train supervisors: they need to know what to look for when reviewing time cards.
- Time clock software? Use lockouts if possible to ensure people do not take short lunches.
- Train staff: ensure they understand they are provided, and are expected to take, timely meal periods and must report if they miss or have to work during meal period.
- Schedule meal periods and rest breaks
- Audit time sheets and pay practices regularly

SIMPLE WAYS TO REDUCE WAGE AND HOUR LIABILITY EXPOSURE, CONT.

- Add meal period/rest break acknowledgement to time keeping system (yes/no checkbox, etc.). Employees must acknowledge they were provided meal periods and rest breaks
- Post something like this next to timeclock:
 - *“Non-exempt/hourly employees are authorized and permitted to take their meal periods and rest breaks each day. If you believe you will not be able to take your scheduled, authorized meal period or rest break, you must notify your supervisor prior to the scheduled time of the meal period or rest break to determine an alternate time.”*
- Maintain clear meal period and rest break policies

SIMPLE WAYS TO REDUCE WAGE AND HOUR LIABILITY EXPOSURE, CONT.

- Rounding time is no longer permitted
- Use volunteer agreements approved by HR for volunteers
- Review exempt/non-exempt classifications with HR
- Continue to exercise extreme caution with independent contractors

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CHILD SAFETY – RECENT DEVELOPMENTS



\$102 Million

- School related child abuse jury verdict, Santa Clara County, 2022 – two high school students

\$135 Million

- School related child abuse jury verdict, Riverside County, 2023 – two high school students
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FOOD FOR THOUGHT...

- Significant increase in case filings due to CA legislature reviving claims, no matter how old, for a 3-year period ending 12/31/2023
- Verdict values, and therefore settlement values, significantly increasing.
 - Juries losing touch, disregarding legal principles and reacting emotionally
- Insurance availability and exhaustion is an issue with older claims
- Effective 1/1/2024, California has eliminated statute of limitations for child abuse claims for acts of abuse that occur in 2024 or later.
- Legal standard of care has steadily increased

CALIFORNIA ASSEMBLY BILL AB506

- Administrators, employees, and regular volunteers of youth service organizations shall complete training in child abuse and neglect identification and reporting. (Equivalent to online training provided by Office of Child Abuse Prevention in the State Department of Social Services.)
- Administrators, employees, and regular volunteers must undergo Live Scan background checks.
- Youth service organizations shall develop and implement child abuse prevention policies and procedures including, but not limited to,
 - Policies to ensure suspected incidents are reported outside the organization (law enforcement, etc.)
 - Policies requiring, to the greatest extent possible, the presence of at least two mandated reporters whenever administrators, employees or regular volunteers are in contact with or supervising children.
- Regular volunteer is defined as person who is 18 years of age or older and who has direct contact with, or supervision of, children for more than 16 hours per month or 32 hours per year.

LESSONS FROM RECENT LITIGATION

- Disclaimer – we've trained on child abuse identification, prevention and reporting many times. This is not child abuse identification, prevention, and reporting training. While that comprehensive training is important and should be undertaken regularly, this presentation aims to simply share information to help you refine your practices based on recent litigation experience

LESSONS FROM RECENT LITIGATION

- Review your policies – and make them strong, but realistic
 - E.g., should your policy say “Adults should never be alone with children?”
- Conduct child abuse identification and reporting training regularly – and document it!
- Enforce the rules or change them into something you can/will enforce
- Address misconduct of any kind aggressively and document it well.
- Address sexual misconduct allegations with extreme care and diligence, and err on the side of caution. Take all reasonable steps available to address the matter. If law enforcement gets involved but clears an accused or does not pursue prosecution, school must still conduct its own subsequent investigation into the alleged misconduct and document it.
- Strong reference check procedures and document reference check process, including ARM insurability check (more later)

LESSONS FROM RECENT LITIGATION

- If possible, utilize a communications platform for students and teachers that can be monitored by administration and/or parents and prohibit messaging or communicating using other platforms (text, social media direct messaging, etc.)
- Don't shy away from addressing warning signs and be willing to speak up. Counsel employees where you see areas for improvement. Deal with small problems before they become big problems.
- If a teacher is told not to be alone with students (or a particular student) and he or she does it anyway, aggressively treat it as insubordination.

DOCUMENT RETENTION

- Consider maintaining the following indefinitely (in same category as school board minutes and other permanent records):
 - School handbooks and policies (particularly child safety policies)
 - Records of background check clearance
 - Reference check process
 - Mandated reporter acknowledgments
 - Records of child abuse identification and reporting training completion
 - Records regarding sexual misconduct complaints and resolutions
 - Records indicating who attended the school and when

NEW TOOLS TO SCREEN PERSONNEL

- In effect now: ARM Insurability Check as part of background and reference check procedure.
 - Email full name(s) with date of birth to employmentscreening@adventistrisk.org
 - 3 business day turnaround, up to 2 weeks where extra time needed for background research.
- Potential future database for checking/reporting suspect individuals. Status, likelihood of adoption, and estimated time of adoption currently unknown.

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CONCLUSION - Q&A

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