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## **2024 Public Sector Conference**

Yes, No, Maybe So? – Applicability of the Labor Code to Public Entities

Friday, May 10, 2024  
2:30 p.m. – 3:45 p.m.

Speakers:

Arthur Liou

Katy Suttorp

### **Conference Reference Materials**

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LABOR AND  
EMPLOYMENT  
LAW



# Yes, No, Maybe So? Applicability of Labor Laws to Public Entities

Arthur Liou & Katy Suttorp  
Melissa Johnson (moderator)

## Who Are Public Employers?

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- **Cities** – both charter and general law
- **Counties** – both charter and general law
- **State of CA** – courts, state agencies
- **Special Districts** – hospital, parks, water, cemeteries, fire protection, etc.
- **Joint Powers Authorities**
- **K-12 School Districts**
- **Community College Districts**
- **The California State University**
- **University of California**

## Sources of Law: FLSA

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“Public agency” includes the Government of the United States; the government of a State or political subdivision thereof; any agency of the United States . . . , a State, or a political subdivision of a State . . . .”

No exceptions for state to the definition

## Federal Fair Labor Standards Act (FLSA) Section 203(t)



## Sources of Law: California Labor Code

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- Common Applicability Questions
  - Minimum wage
  - Overtime
  - Meal and rest breaks
  - Timely payment of wages
  - Workers' compensation
  - Paid sick leave
  - Vacation vesting
  - Reimbursement for necessary work expenses
  - Deductions from wages
  - Private Attorneys General Act

## Other Sources of California Law

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- Government Code
  - FEHA
  - PERB-administered statutes
  - CFRA
- Education Code
- Public Resources Code
- California and Federal constitutions

## Applicability of California Labor Code & Wage Orders

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- Some Laws Expressly Apply to (Some) Public Employers:
  - Healthy Workplaces, Healthy Families Act of 2014
  - Kin Care
  - Minimum Wage
  - Lactation Accommodation
  - One Day's Rest in Seven

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## **Healthy Workplaces, Healthy Families Act of 2014 (Cal. Labor Code § 245)**

- “Employer” means any person employing another under any appointment or contract of hire and includes “the state, political subdivisions of the state, and municipalities”
- Exceptions: Employees covered by qualifying CBAs, in-home supportive services providers, and certain employees of air carriers are not covered by this law



# Labor Code § 233

## Kin Care



- “Employer” means any person employing another under any appointment or contract of hire and includes “the state, political subdivisions of the state, and municipalities”
- “Family member” has same meaning as defined in 245.5
- “Sick leave” means accrued increments of compensated leave provided by an employer to an employee for use by the employee during an absence for any of the reasons specified in subdivision (a) of Section 246.5.

# Labor Code § 1182.12

## Minimum Wage Increase



- Applies to the “state, political subdivisions of the state, and municipalities”
- Increases the minimum wage to \$16 per hour as of January 1, 2024

## Labor Code § 1030 Lactation Accommodation

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- Requires accommodation of reasonable lactation breaks
- Specifies that “employer” includes “the state and any political subdivision.”

## One Day's Rest in Seven



- Sections 550, 551, 553, and 554 of the Labor Code imposing a “one day’s rest in seven” rule upon “cities which are cities and counties and the officers and employees thereof.”

## SB 1334 (2022): Meal/rest breaks for patient care workers

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- Bill declares that “[w]orker health and safety and high-quality patient care are matters of statewide concern and are the basis of numerous laws and regulations.” (SB 1334, § 1(d).)
- Definition of “employer”: “**Employer’ means the state, political subdivisions of the state, counties, municipalities, and the Regents of the University of California.**” (LC 512.1(e)(2).)
- Employee must get unpaid 30-minute meal period for shifts over 5 hours and second meal period for shifts over 10 hours. 10-minute rest period every 4 hours. Penalty of one hour additional pay for each workday with missed meal/rest period.

## Applicability of California Labor Code & Wage Orders

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- Some parts of Labor Code expressly exclude public employers:
  - Labor Code § 220
  - Labor Code § 226



## Labor Code § 220(a)

Provides: “Sections 201.3, 201.5, 201.6, 201.7, 201.8, 203.1, 203.5, 204, 204a, 204b, 204c, 204.1, 205, and 205.5 do not apply to the payment of wages of employees directly employed by the State of California.”



## Labor Code § 220(b)



Provides: “Sections 200 to 211, inclusive, and Sections 215 to 219, inclusive, do not apply to the payment of wages of employees directly employed by any county, incorporated city, or town or other municipal corporation. All other employments are subject to these provisions”



## Labor Code § 226(i)



- This section does not apply to the state, to any city, county, city and county, district, or any other governmental entity
- [E]xcept that if [the entity] furnishes its employees with a check, draft, or voucher paying the employee's wages, [the entity] shall use no more than the last four digits of the employee's social security number or shall use an employee identification number other than the social security number [on the furnished document]

## Court Guidance When Labor Code Is Silent

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- I. Whether the statute or wage order at issue includes a definition of “employer” or other terms regarding applicability that expressly includes or excludes public agencies
  - Yes: Determine which types of public agencies are included/excluded
  - No: Consider any relevant case law (agency type or statute)

# Court Guidance When Labor Code Is Silent

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## II. Apply Rules of Statutory Construction

- “[W]hen the Legislature has employed a term or phrase in one place and excluded it in another, it should not be implied where excluded;”  
*Pasadena Police Officers Assn. v. City of Pasadena* (1990) 51 Cal.3d 564, 576
- When two statutes touch upon a common subject, they are to be construed in reference to each other, so as to harmonize the two in such a way that no part of either becomes surplusage.” *DeVita v. County of Napa* (1995) 9 Cal.4th 763, 778

# Court Guidance When Labor Code Is Silent

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## II. Apply Rules of Statutory Construction

- “A traditional rule of statutory construction is that, absent express words to the contrary, governmental agencies are not included within the general words of a statute” *Campbell v. Regents of University of California* (2005) 35 Cal.4th 311, 330

# Court Guidance When Labor Code Is Silent

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## III. Sovereign Powers

- Courts deem the Legislature to have intended to exclude a public employer from a wage and hour requirement “only if their inclusion would result in an infringement upon sovereign governmental powers”

**Court Application:  
Labor Code § 510  
Daily Overtime**



- Not Applicable to Water Storage Districts.

*Johnson v. Arvin-Edison  
Water Storage District  
(2009) 174 Cal.App.4th  
729.*

# **Court Application: Labor Code § 512 Meal Periods**



Not Applicable to Water Storage Districts

*Johnson v. Arvin-Edison Water Storage District* (2009) 174 Cal.App.4th 729

Not Applicable to corrections officers with the California Department of Corrections and Rehabilitation

*California Correctional Peace Officers' Association v. State of California* (2010) 188 Cal.App.4th 646, 651-652



# California Wage Orders

Do the Industrial Welfare Commission (“IWC”) Wage Orders Apply to Public Agencies?

- There are 17 Wage Orders
- It varies by Wage Order and sometimes by occupation within a given Wage Order





# California Wage Orders: Wage Order 4



Covers professional, technical, clerical, mechanical, and similar occupations

Applies to “State or any political subdivision thereof, including any city, county, or special district”:

Section 1 - Applicability

Section 2 - Definitions

Section 4 - Minimum Wage

Section 10 - Meals and Lodging

Section 20 –Penalties

# California Wage Orders: Wage Order 4



## Some Excluded Sections:

- Section 3: Daily overtime and double pay
- Section 5: Reporting time pay
- Section 9: Uniforms and equipment
- Sections 11 and 12: meal and rest periods
- Section 14: Seats

# California Wage Orders: Wage Order 9



Covers the “transportation industry”  
Applies to “State or any political subdivision thereof, including any city, county, or special district”:

Section 1 - Applicability

Section 2 - Definitions

Section 4 – Minimum Wage

Section 10 – Meals & Lodging

Section 20 – Penalties

With regard to commercial drivers,  
Sections 11 and 12 – Meal & Rest  
Periods

## Charter cities and counties

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- Charter cities have “plenary authority” over employee compensation, and city charters supersede all inconsistent laws with respect to “municipal affairs.” (Cal. Const., Art. XI, § 5.)
- Counties (including general law counties) have power to determine compensation of employees, and county charters will supersede general laws. (Cal. Const., Art. XI, §§ 1(b), 4(f), 4(g).)

## Charter cities and counties

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- *State Building and Construction Trades Council v. City of Vista* (2012) 54 Cal.4th 547, 556, test for whether state law or home rule power controls:
  - Does ordinance at issue regulate “municipal affair”?
  - Is there an actual conflict between state and local law?
  - Does the state law address a “matter of statewide concern”?
  - Is the law reasonably related to resolution of that concern and narrowly tailored to avoid unnecessary interference in local governance?

## Charter cities and counties

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- Compensation generally found to be matter of local rather than statewide concern (*Sonoma County Org. of Public E'ees v. County of Sonoma* (1979) 23 Cal.3d 296, 316-317.)
- Courts have found the following state laws inapplicable to charter cities or counties
  - Overtime (*Curcini v. County of Alameda* (2008) 164 Cal.App.4th 629)
  - Meal and rest breaks (*Curcini*)
  - Prevailing wage (*State Bldg. & Constr. Trades Council v. City of Vista* (2012) 54 Cal.4th 547)
  - Uniform reimbursement (*In re Work Uniform Cases* (2005) 133 Cal.App.4th 328)



## The University of California

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- California Constitution, art. IX, § 9: The Regents of the University of California have “full powers of organization and government, subject only to such legislative control as may be necessary to **insure the security of its funds** and **compliance with the terms of the endowments** of the university and such **competitive bidding procedures** as may be made applicable to the university by statute for the letting of construction contracts, sales of real property, and purchasing of materials, goods, and services.”

# The University of California

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- UC is also subject to legislative regulation through:
    - Legislature's power of appropriation
    - General police power regulations applicable to private persons and corporations
    - Legislation regulating public agency activity on matters of statewide concern not involving internal university affairs.
- (San Francisco Labor Council v. Regents of the University of California*  
*(1980) 26 Cal.3d 785, 789)*



# The University of California

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Courts have found the following state laws inapplicable to UC

- Prevailing wage (*San Francisco Labor Council v. Regents* (1980) 26 Cal.3d 785; *Regents v. Aubry* (1996) 42 Cal.App.4th 579)
- Overtime (*Kim v. Regents* (2000) 80 Cal.App.4th 160)
- Uniform reimbursement (*In re Work Uniform Cases*)
- IWC wage orders (*Gomez v. Regents* (2021) 63 Cal.App.5th 386)
- LC 218.5: attorney's fees for nonpayment of wages (*Goldbaum v. Regents* (2011) 191 Cal.App.4th 703)
- LC 1197.5: Equal Pay Act (*McGee v. Regents* (C.D. Cal. 2021) 2021 WL 3264305)
- LC 221, 223: employer can't collect/receive employee wages, payment of contractually promised wages (*Pham v. Bast* (N.D. Cal. 2018) 2018 WL 4003387)

## Joint Powers Authorities

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*Gateway Community Charter v. Spiess* (2017) 9 Cal.App.5th 499

- Holding: nonprofit public benefit corporation that operated charter schools was not an "other municipal corporation" exempt from waiting time penalties under the Labor Code. (Labor Code section 203 and 220(b).)
- Applied maxims of statutory construction to conclude the phrase "other municipal corporation" should be limited to entities akin to a city, county or town

## Joint Powers Authorities

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*Stone v. Alameda Health Systems* (2023) 88 Cal.App.5th 84\*

- Health system was *not* an exempt "municipal corporation" under section 220
- Health system was not excluded from meal and rest break requirements
  - Statutes do not expressly include government entities and no indication of a contrary legislative intent
  - The requirement does not infringe on sovereign government powers
- Health system was an exempt "other governmental entity" under section 226 reasoning the term "governmental entity" was broader than "municipal corporation"

\*Review granted by the California Supreme Court

## CBA/MOU Exemptions

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- Can range from simple to complex
- Labor Code § 204: Semi-monthly payment of wages
  - “However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.” (LC 204(c).)
- Labor Code § 227.3: Payment of vacation upon termination of employment
  - “Unless otherwise provided by a collective-bargaining agreement . . . .” (LC 227.3)

## CBA/MOU Exemptions

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- Labor Code § 245.5(a): Paid sick leave (Healthy Workplaces, Healthy Families Act of 2014)
  - Valid collective bargaining agreement that expressly provides for the wages, hours of work, and working conditions of employees,
  - Expressly provides for paid sick days or a paid leave or paid time off policy that permits the use of sick days for those employees,
  - Final and binding arbitration of disputes concerning the application of its paid sick days provisions,
  - Premium wage rates for all overtime hours worked, and
  - Regular hourly rate of pay of not less than 30 percent more than the state minimum wage rate.

## CBA/MOU Exemptions

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- Labor Code § 512.1: meal and rest breaks for public employees providing direct patient care
  - Valid collective bargaining agreement provides for meal and rest periods, and
  - If the employee does not receive a meal or rest period as required by the agreement, CBA provides a monetary remedy that, at a minimum, is equivalent to one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.

# Questions?

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**SELECTED WAGE & HOUR PROVISIONS AND THEIR APPLICATION TO PUBLIC SECTOR EMPLOYMENT – UPDATED MAY 10, 2024\***

<b>Topic</b>	<b>Source of Law</b>	<b>The State</b>	<b>Charter Cities &amp; Counties</b>	<b>Gen'l Law Cities &amp; Counties</b>	<b>Special Districts<sup>i</sup></b>	<b>University of California</b>	<b>CBA/MOU Carve Outs</b>
<b>MINIMUM WAGES</b>	<b>FLSA</b>	Applies but due to 11 <sup>th</sup> Amendment, only DOL can enforce without waiver.	Applies; sovereign immunity under 11th Amendment extends only to states, not to their political subdivisions. <i>See, e.g., Northern Insurance Co. of New York v. Chatham County, Georgia</i> (2006) 547 U.S. 189			Applies but due to 11 <sup>th</sup> Amendment, only DOL can enforce without waiver.	Extremely narrow – and requires DOL approval.
	<b>Wage Orders,<sup>ii</sup></b>	Explicitly applies to all time under employer's control; wage orders' express exemption for public employers does not cover minimum wage requirements; minimum labor standards are also widely understood to be a matter of statewide concern sufficient to overcome home rule and/or constitutional defenses. <i>Sheppard v. North Orange County Regional Occupational Program</i> (2010) 191 Cal. App. 4th 289 (public school districts considered part of state; minimum labor standards not preempted by Ed. Code); <i>Cf. State Bldg. and Const. Trades Council of Cal., AFL-CIO v. City of Vista</i> (2012) 54 Cal.4th 547 (finding prevailing wages not a matter of statewide concern, unlike minimum labor standards that are broadly applicable).				N/A. <i>Gomez v. Regents</i> (2021) 63 Cal.App.5th 386: UC constitutionally immune, not covered by Wage Orders or min wage req'ts b/c not a matter of statewide concern sufficient to compel payment for all time worked	N/A
	<b>Lab. Code § 1182.12</b>	Applies to the state, political subdivisions of the state, and municipalities				N/A <i>Gomez v. Regents</i> (2021) 63 Cal.App.5th 386	N/A
<b>OVERTIME</b>	<b>FLSA</b>	Applies but due to 11 <sup>th</sup> Amendment, only DOL can enforce without waiver.	Applies; sovereign immunity under 11th Amendment extends only to states, not to their political subdivisions. <i>See, e.g., Northern Insurance Co. of New York v. Chatham County, Georgia</i> , 547 U.S. 189.			Applies but due to 11 <sup>th</sup> Amendment, only DOL can enforce without waiver.	Extremely narrow – and has to be approved by DOL.
	<b>Lab. Code §510</b>	Generally assumed to be inapplicable because OT provisions in Wage Orders do not apply to public sector and §515(b)(2) invokes IWC's exemptions to the regulation of hours worked. §1194 not applicable. <i>Curcini v. County of Alameda</i> (2008) 164 Cal. App. 4th 629; <i>Dimon v. County of Los Angeles</i> (2008) 166 Cal. App. 4th 1276.			N/A per <i>Johnson v. Arvin-Edison Water Storage District</i> (2009)174 Cal. App. 4th 729.	N/A per <i>Kim v. Regents</i> (2000) 80 Cal.App.4th 160 (OT not matter of statewide concern b/c not generally applicable in W.O.)	§514 carve out applies if wage >130% of min with premium after 8 hrs
<b>PREVAILING WAGES</b>	<b>Lab. Code §§1720-1781</b>	Expressly applies	N/A per <i>City of Vista</i> (2012) 54 Cal.4th 547; But Legislature conditioning funds on compliance not so "coercive" as to violate home rule. <i>City of El Centro v. Lanier</i> (2016)	Expressly applies		Labor Code §§1720, 1720.2, 1720.3, and 1771, apply to UC's bond-funded construction contracts.	N/A



**SELECTED WAGE & HOUR PROVISIONS AND THEIR APPLICATION TO PUBLIC SECTOR EMPLOYMENT – UPDATED MAY 10, 2024\***

<b>Topic</b>	<b>Source of Law</b>	<b>The State</b>	<b>Charter Cities and Counties</b>	<b>General Law Cities</b>	<b>Special Districts<sup>i</sup></b>	<b>University of California</b>	<b>CBA Carve Outs</b>
<b>EXPENSE REIMBURSEMENT</b>	<b>Lab. Code §2802</b>	Probably applies (but not to uniforms (per Gov't Code §19850.1 which requires state to provide uniforms and allowance for maintenance)).	Probably exempt <i>if</i> deemed compensation <sup>iii</sup> and a “matter of local concern” per <i>In re Uniforms</i> (2005) 133 Cal.App.4 <sup>th</sup> 328.	Not exempted, except perhaps by implication (surrounding provisions explicitly apply to public employers).	Not exempted, but if the reimbursement constitutes compensation, UC would likely be constitutionally exempt. <i>In Re Uniforms</i> , 133 Cal.App.4 <sup>th</sup> 328.	N/A per <i>In Re Uniforms</i> , 133 Cal.App.4 <sup>th</sup> 328	§ 2804 makes reimbursement non-waivable.
		N/A to CSU. <i>Krug v. CSU</i> (2023) 94 Cal.App.5 <sup>th</sup> 1158. *Review pending*					
		§2802 may apply for “traditional indemnity” expenses (lost or stolen tools, mileage, legal expenses, etc.) per <i>In Re Uniforms</i> , 133 Cal.App.4 <sup>th</sup> 328; See also <i>Los Angeles Protective League v. City of Los Angeles</i> (1994) 27 Cal. App. 4 <sup>th</sup> 168 (assuming § 2802 <i>does</i> apply in public sector but would not cover criminal defense costs).					
<b>MEAL PERIODS<sup>iv</sup></b>	<b>Lab. Code §512</b>	Current view: Meal and rest break provisions in Wage Orders and §226.7 penalties likely do not apply to any public sector employer. Statute is silent, and therefore interpreted not to apply due to infringement of sovereign powers. See <i>California Correctional Peace Officers’ Association v. State of California</i> (2010) 188 Cal. App. 4 <sup>th</sup> 646; <i>Johnson v. Arvin-Edison Water Storage District</i> , 174 Cal. App. 4 <sup>th</sup> 729; But if employees were not paid for hours actually worked, they may have minimum wage claims with PAGA penalties (§2699). However, more recent decisions question whether this principle applies equally to all types of public entities. See, e.g. <i>Stone v. Alameda Health Systems</i> (2023) 88 Cal.App.5 <sup>th</sup> 84 (Review pending).					No, other than for bakery, motion picture employees.
		<b>**It is expected that the Supreme Court’s review of Stone will clarify the applicability of § 512 (and other Labor Code provisions) to public employers.**</b>					
	<b>W.O. 9 (transit)</b>	Applies to “[s]tate or any political subdivision thereof, including any city, county, or special district.”					W.O. 9 (transit), §11.
<b>VACATION VESTING</b>	<b>Lab. Code §227.3</b>	State employees must be paid accrued vacation upon separation per Gov. Code §19839. <i>Bonn v. CSU, Chico</i> (1979) 88 Cal.App.3d 985.	More of an open question for other public sector employees as §227.3 does not explicitly apply, but not expressly excluded per §220(b). Courts occasionally assume it does not apply. See, e.g., <i>Kistler v. Redwoods Comm. Coll. Dist.</i> (1993) 15 Cal. App. 4 <sup>th</sup> 1326; <i>Correctional Peace Officers</i> , 188 Cal. App. 4 <sup>th</sup> at 654 (statute is not applicable by implication simply because not excluded by §220(b)).		If considered “compensation,” may be constitutionally exempt per Cal. Const. Art IX, § 9.		CBA carve out in §227.3 itself.
		Case law predating §227.3 prohibits use-it-or-lose-it policies.					

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<b>TIMELY FINAL PAYMENT, PENALTIES</b>	<b>Lab. Code §§201, 202, 203<sup>v</sup></b>	Expressly applies <i>McLean v. State of California</i> (2014) 228 Cal.App.4th 1500. Accrued leaves may be paid into retirement or deferred with EE consent per §§201, 202.	Counties and all “incorporated cities” expressly excluded per §220(b).	“Incorporated Cities” expressly excluded per §220(b).	May apply to districts not considered municipal corporations because “all other employments” expressly covered per §220(b). <i>See McLean</i> , 228 Cal.App.4th 1500; <i>but see Johnson</i> , 174 Cal. App. 4th at 740-41.	Might apply per §220(b), to extent considered a matter of statewide concern. <i>McLean</i> 228 Cal.App.4th 1500 (timely payment as fundamental public policy)	§§ 201, 202 defer to CBAs (w/in limits) re. time & method of final payment, but §203 does not
<b>SEMI-MONTHLY PAYMENT</b>	<b>Lab. Code §§204 through 211</b>	§§204 and 205 explicitly exclude the State; other sections presumably apply.	Counties and all “incorporated cities” expressly excluded per §220(b).	“Incorporated Cities” expressly excluded per §220(b).	May apply to districts not considered municipal corporations because “all other employments” expressly covered per §220(b). <i>See McLean</i> , 228 Cal.App.4th 1500; <i>but see Johnson</i> , 174 Cal. App. 4th at 740-41.	§204(e) expressly applies to UC	N/A
<b>ENFORCEMENT PROVISIONS</b>	<b>Lab. Code §§215-219</b>	Presumably applies per §220(b).	Counties and all “incorporated cities” expressly excluded per §220(b).	“Incorporated Cities” expressly excluded per §220(b).	May apply to districts not considered municipal corporations because “all other employments” expressly covered per §220(b). <i>See McLean</i> , 228 Cal.App.4th 1500; <i>but see Johnson</i> , 174 Cal. App. 4th at 740-41.	Might apply per §220(b), but see Cal. Const. Art IX, §9; <i>See Goldbaum v. Regents of University of California</i> (2011) 191 Cal.App.4th 703 at 715 (holding UC constitutionally exempt from §218.5).	N/A

*Presented for informational purposes, not as legal advice. Thanks to Kate Hallward, Miles Locker, Carol Koenig, and Emily Prescott for valuable input in prior versions of this chart. 2024 updates by Arthur Liou and Katy Suttorp.*

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WITHHOLDING OF WAGES	<b>Lab. Code §§221-223</b>	Prohibition against wage garnishments apply despite Gov. Code §19838's authorizing state to collect overpayments through payroll deductions. <i>CSEA v. State of California</i> (1984) 198 Cal.App.3d 374.	N/A per <i>Assoc. for LA Deputy Sheriffs v. County of LA</i> (2021) 60 Cal.App.5th 327. But see <i>City of Oakland v. Hassey</i> (2008) 163 Cal. App. 4th 1477 (ER may require repayment but may not withhold whole paycheck).	Presumably applies; not exempted.	Presumably applies; not exempted.	May not apply in light of <i>Assoc. for LA Deputy Sheriffs v. County of LA</i> (2021) 60 Cal.App.5th 327.	CBA cannot waive statutory prohibition, <i>Berkeley Unified School District</i> (2012) PERB Decision No. 2268-E.
PAY STUBS, SSN PRIVACY	<b>Lab. Code §226</b>	§226 itemized pay statement requirements, per subsection (i), do not apply to the state, any city, county, district, or any other governmental entity, except that pay stubs may not include more than last four digits of SSN.					N/A
FAMILY SICK LEAVE	<b>Lab. Code §§233, 234</b>	Explicitly covered because §233 defines “Employer” as any person employing another under any appointment or contract of hire and includes the state, political subdivisions of the state, and municipalities; no exception for any public sector employer, although UC and charter cities could be deemed exempt if not a matter of statewide concern.					N/A
NO RECORDING IN RESTROOMS, CHANGING AREAS	<b>Lab. Code §435</b>	Explicitly applies to all “private and public employers except the federal government.”					N/A
LACTATION BREAKS	<b>Lab. Code §§1030 to 1033</b>	Explicitly applies to every employer including the state and any political subdivision.					N/A

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<sup>i</sup> Note – whether a special district is a “municipal corporation” under §220(b) is often disputed. See *Division of Labor Law Enforcement v. El Camino Hospital District* (1970) 8 Cal. App.3d Supp. 30.

<sup>ii</sup> Wage orders apply to public employees with respect to minimum wage. Section 1(B) (application) of all of the Wages Orders (except #14) exempt all public employees<sup>ii</sup> except from §§ 1 (application), 2 (definitions), 4 (minimum wage), 10 (paid meals and lodging) and 20 (penalties). Apart from any penalties provided for in the Labor Code, § 20 of each Wage Order sets out penalties for violation of the Order itself. So, for public sector employees, the relevant violation would be the minimum wage requirements. If a public employer fails to pay the minimum wage for all hours worked, it faces a \$50 penalty for the initial violation and \$100 penalty for each employee and each subsequent pay period in violation. On its face, nothing in § 20 indicates that only the labor commissioner can seek or impose such penalties; an employee should have standing. Note that in cases involving minimum wage violations, liquidated damages and attorneys’ fees are available per §1194.2, additional penalties per §2699 – and neither exempts public sector.

<sup>iii</sup> *In Re Uniform Cases* (2005) 133 Cal.App.4<sup>th</sup> 328 considered reimbursement for uniforms to be a form of “compensation” because it is an expense that an employee would otherwise incur (if wearing own clothes, for example) and reasoned that the Labor Code cannot mandate such “compensation” - at least with respect to State, County, Charter City and UC employees.

<sup>iv</sup> Only the Wage Orders, and not the Labor Code, require rest breaks. Therefore, public sector employees are not legally entitled to rest breaks, except for those covered by Wage Order 9 or patient care workers covered by Labor Code 512.1. Because most public sector employees are not covered by the meal and rest break provisions of the wage orders, they have no recourse under §227.6, but may be able to seek penalties per PAGA (§2699).