

LABOR AND
EMPLOYMENT
LAW

CALIFORNIA
LAWYERS
ASSOCIATION

presents

**Employment Law 101 – Fundamentals for the New Employment
Practitioner**

Wage and Hour Basics

Thursday, February 13, 2020
2:00 p.m. – 3:30 p.m.

Speakers:

Alexandra Stathopoulos

Hina Shah

Conference Reference Materials

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WAGE AND HOUR BASICS

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SOURCES OF WAGE AND HOUR LAW

Federal

- Fair Labor Standards Act - 29 USC. §201-219
- Code of Federal Regulations -Title 29 , Ch. V
- DOL Opinion Letters
- Agency: Department of Labor

State

- CA Labor Code
- Industrial Welfare Commission Wage Orders (18)
- DLSE Opinion Letters
- DLSE Enforcement Policies & Interpretation Manual
- Agency: Division of Labor Standards Enforcement (DLSE or Labor Commissioner)

Local Municipalities

- MW Ordinances (24)
- Living Wage Ordinances (41)

DEFINING THE EMPLOYMENT RELATIONSHIP

EMPLOYEE OR INDEPENDENT CONTRACTOR?

EMPLOYEE OR INDEPENDENT CONTRACTOR?

Wage and hour laws apply to employees—a foundational question employers grapple with is whether a worker should be classified as an employee or an IC.

So... How do you know how to classify?

- Law presumes worker is employee; burden on employer to prove worker is properly classified.
- Various multi-factor tests used by federal and state courts and regulatory agencies.
- Things got more complicated in April 2018 when the California Supreme Court introduced the new “ABC” test for wage order claims...
- And as of January 1, 2020, they are even more complicated with the enactment of AB 5 (codifying the “ABC test” and expanding its application).

INDEPENDENT CONTRACTORS—WHICH TEST APPLIES?

In California, the standard for whether workers should be classified as employees or ICs differs depending on the type of claim and the type of worker.

- A.B. 5 creates Labor Code sections 2750.3 and 3351, and Unemployment Insurance Code sections 606.5 and 621. These sections expand the reach of the *“ABC” test* from just wage order claims (since *Dynamex*) to California’s wage orders, Labor Code, UI Code, and Workers’ Compensation laws.
- BUT there are numerous multi-factor exemptions listed within the new laws where the ABC test would not apply. For these workers, the more flexible *“Borello” test* applies. There are also certain types of claims that do not fall under A.B. 5, like FEHA claims and torts.

And of course, Federal law supplies its own standard.

INDEPENDENT CONTRACTORS—BORELLO TEST

Where *Dynamex* does not apply or a worker falls under an exemption to A.B. 5, the common law *Borello* test applies. *S.G. Borello & Sons, Inc. v Dept. of Industrial Relations*, 48 Cal.3d 341 (1989).

Most significant factor → whether the person to whom the service is rendered has *control* or the *right to control* the worker both as to the work done and the manner in which it is performed.

INDEPENDENT CONTRACTORS—ABC TEST

In April 2018, the California Supreme Court addressed the IC test for wage order claims in *Dynamex Operations West, Inc. v. Superior Court of Los Angeles*. AB 5 took effect Jan. 1, 2020 and expands the ABC test to claims under the Labor Code, Unemployment Insurance Code, and Workers' compensation laws (with numerous exemptions).

“ABC” Test

- **A:** Worker free from control/discretion of hirer in connection with performance of work;
and
- **B:** Worker performs work that is outside the hiring company's usual course of business;
and
- **C:** Worker is customarily engaged in an independently established trade, occupation, or business of same nature as work performed for hiring company.

Example: Plumber hired by a retail store to fix a bathroom leak.

INDEPENDENT CONTRACTORS—ABC TEST, PRONG “A”

“A” Prong

It is the right of control rather than the exercise of control that is legally determinative.

Lack of control must exist both in contract and in practice.

To a large extent, this is the control aspect of the *Borello* test.
In this sense, it is not particularly new or different
from what already existed.



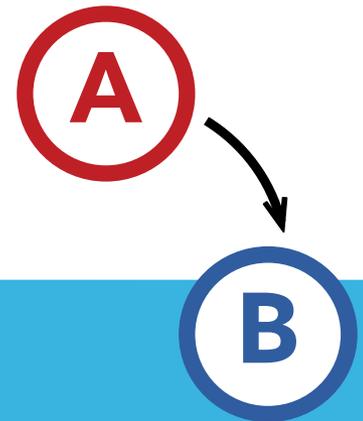
INDEPENDENT CONTRACTORS—ABC TEST, PRONG “B”

“B” Prong

One must show that the worker’s job is independent, separate and distinct from the company’s business, and not a regular or continuous part of the business.

- Example: Work-from-home seamstresses who make dresses from cloth and patterns supplied by the company that will thereafter be sold by the company (not IC).
- Example: Bakery hires cake decorators to work on a regular basis on its custom-designed cakes (not IC).

The Court described this prong as addressing “workers whose roles are most clearly comparable to those of employees...”



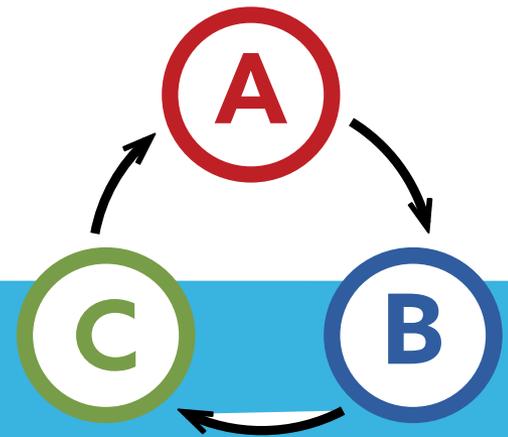
INDEPENDENT CONTRACTORS—ABC TEST, PRONG “C”

“C” Prong

Does the worker have the impetus for being self-employed, exhibiting indicia of a business such as incorporation, licensure, advertisement, or routine offerings to provide the services of the independent business to the public or to a number of potential customers?

The “C” prong appears to require that the individual...

- (1) was already in a business for him- or herself and
- (2) works in a customarily independent profession.



WHETHER THE ABC TEST APPLIES RETROACTIVELY

- On or before, Dec. 31, 2019—*Dynamex* decision applies.
- Starting on Jan. 1, 2020— A.B. 5 applies.



INDEPENDENT CONTRACTORS—FEDERAL “ECONOMIC REALITIES” TEST

And, if that wasn't confusing enough, under Federal law we apply the “Economic Realities” test. Factors the U.S. Supreme Court considers significant in determining IC status:

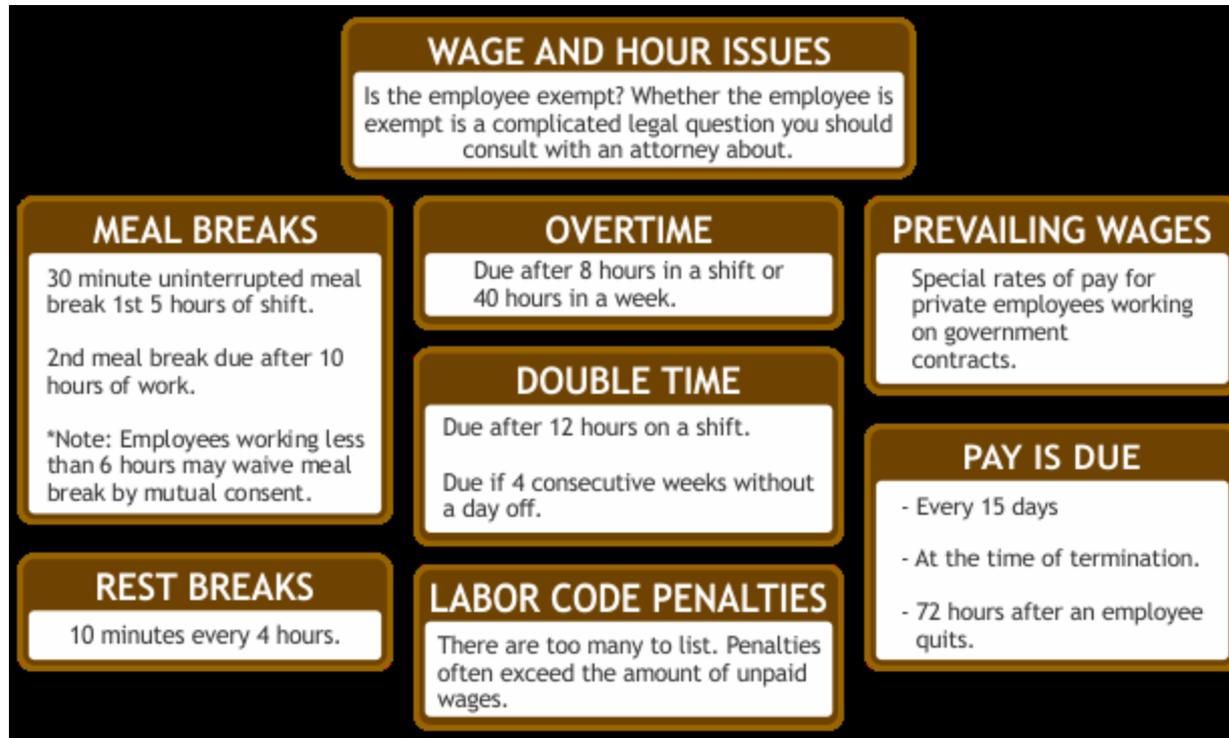
- The extent to which the services rendered are an integral part of the principal's business.
- The permanency of the relationship.
- The amount of the alleged contractor's investment in facilities and equipment.
- The nature and degree of control by the principal.
- The alleged contractor's opportunities for profit and loss.
- The amount of initiative, judgment, or foresight in open market competition with others required for the success of the claimed IC.
- The degree of independent business organization and operation.

See **Fact Sheet 13: Employment Relationship Under the Fair Labor Standards Act (FLSA)**, <https://www.dol.gov/whd/regs/compliance/whdfs13.htm>.

SO YOU HAVE AN EMPLOYEE....

WHAT WAGE AND HOUR LAWS APPLY?

WAGE AND HOUR ISSUES - GENERALLY



AT-WILL EMPLOYMENT

- Employees can generally be fired at any time and without any reason.
- Employees are also free to leave at any time and without any reason.
- No notice is required.

Certain Exceptions Apply:

- Unionized workers
 - Permanent public sector
 - Contract w/ “just cause” termination language
 - Discrimination/retaliation prohibited by law
 - Wrongful termination in violation of public policy
- 

IMMIGRATION REFORM & CONTROL ACT (IRCA):

- Employee verification system – Form I-9
 - Employer sanctions for knowingly hiring and/or continuing to employ unauthorized workers
 - Criminal sanctions for using fraudulent means to obtain employment
 - Anti-Discrimination Provision
- 

UNDOCUMENTED WORKERS

- Workers are covered under employment and labor laws, regardless of immigration status. However, under some laws, undocumented workers will be limited in the remedies they can recover.
- Unlawful for an employer to report or threaten a worker to immigration or the police in retaliation for asserting legal rights
- There are serious penalties if an employer threatens to call or calls immigration or the police in retaliation for the worker enforcing her workplace rights.
- Undocumented workers are not eligible for unemployment benefits

ARBITRATION

- AB 51 added Labor Code § 432.6 precluding employers from requiring applicants or current employees to agree as a condition of employment, continued employment, or the receipt of any employment-related benefit to waive any right, forum, or procedure related to any violations under FEHA or the Labor Code. (TRO in place until 1/30/2020)
 - U.S. Supreme Court rules in *Lamps Plus, Inc. v. Varela*, in a 5-4 decision, that, under the FAA, classwide arbitration cannot be ordered if the arbitration agreement is ambiguous as to whether the parties agreed to it.
 - California courts invalidate arbitration clauses as unconscionable (*OTO, LLC v. Kho*, 8 Cal. 5th 111 (2019); *Subcontracting Concepts (CT), LLC v. De Melo*, 34 Cal. App. 5th 201 (2019)).
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MINIMUM WAGE

Federal	California	San Francisco
\$7.25 (since July 2009)	Jan. 2020: \$12 (≤ 25); \$13 (≥ 26) [will increase every year by \$1 until \$15)	\$15.59 (as of July 1, 2019)
	Jan. 19: \$11(≤ 25); \$12 (≥ 26)	\$15 (as of July 2018)
	Jan. 18: \$10.50 (≤ 25); \$11 (≥ 26)	\$14 (as of July 2017)

Note: Always check to see whether city or county orders require a higher minimum!

OVERTIME COMPENSATION

Federal: 1.5 times the regular rate after 40 hours a week

California: Daily and Weekly [for most industries]

1.5 x regular rate of pay for work over 8 hours in a day or 40 hours in a week

1.5 x regular rate of pay for the first 8 hours on the 7th consecutive day

2.0 X regular rate of pay for work over 12 hours in a day

2.0 X regular rate of pay for work of over 8 hours on the 7th consecutive day

CALCULATING THE REGULAR RATE

Federal:

- Hourly Employee: The regular hourly wage or the minimum wage (whichever is higher) is the regular rate
- Non-Exempt Salaried Employee: The regular rate is the average hourly rate calculated by dividing the total pay for employment (except the statutory exclusions) in any workweek by the total number of hours actually worked.

California:

- Hourly Employee: The regular hourly wage or the minimum wage (whichever is higher) is the regular rate
- Non-Exempt Salaried Employee: The salary compensates only the employee's regular, non-overtime hours, regardless of any agreement between the employer and employee. - CA LC §515(d)

LIQUIDATED DAMAGES – DOUBLE DAMAGES

Federal: Equal to amount of unpaid wages (MW/OT); EOR may avoid LDs if show actions were in good faith and reasonable grounds that it did not violate FLSA (29 U.S.C. §260)

California: Equal to amount of unpaid minimum wages; EOR may avoid LDs if show actions were in good faith and reasonable grounds that it did not violate CA Labor Code and IWC Orders (CA Labor Code §1194.2)

PAYMENT OF WAGES - CALIFORNIA

- Employees must be paid all wages (including earned, unpaid vacation time) in full at the time of termination or within 72 hours of an employee quitting if employee did not give notice. (Cal. Labor Code § § 201, 202)
 - An employer that “willfully” fails to pay all final wages to an employee within the time limits specified above may be assessed “waiting time” penalties, up to 30 days of wages. (Cal. Labor Code § 203)
 - Willful is the employer’s intentional failure to perform an act that is required by law.
 - Trial courts do not have the discretion to waive or reduce waiting time penalties (*Diaz v. Grill Concepts Services* , 2DCA 5/4/18)
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FEDERAL RECORD KEEPING

For all non-exempt employees, employers must keep accurate records, including:

- Hours worked each day.
- Total hours worked each workweek.
- Regular pay rate.
- Total daily or weekly straight-time earnings.
- Total overtime earnings for the workweek.
- All additions to or deductions from the employee's wages.
- Total wages paid each pay period.
- Date of payment and the pay period covered by the payment.

Payroll records must be kept for 3 years and timekeeping records must be kept for 2 years.

- 29 C.F.R. s 516.2 et seq.



CALIFORNIA RECORD KEEPING

For all non-exempt employees, employers must keep accurate records including:

- total hours worked each day;
- start and end time of each work period;
- total hours worked in the payroll period and the applicable rates of pay; and
- total wages paid each payroll period.

An employer must maintain records of wages and wage rates, job classifications, and other terms and conditions of employment.

Employer must keep records for at least 3 years.

- Labor Code 226; 1197.5; Wage Orders §7

CALIFORNIA RECORD KEEPING

Employers must provide itemized pay statements showing:

- Gross wages, net wages, and all deductions;
- Total hours worked and inclusive date of the pay period;
- For piece-rate employees: the number of piece-rate units earned and the applicable piece rate;
- The employees name and last four digits of their social security number or tax ID number;
- The name and address of the legal employer; and,
- The applicable pay rate.

Labor Code 226



CALIFORNIA INSPECTION RIGHTS

Current and former employees have a right to inspect:

1. Any records which the employer is required to maintain pursuant to the requirements in the wage orders (includes time records, total wages paid and hours worked in each pay period);[Wage Orders s 7]
2. Pay stubs (can inspect and copy); [Labor Code 226]
3. Any documents that the employee signed (can inspect and copy). [Labor Code 432]

STATUTE OF LIMITATIONS

- 2 years – oral contract; FLSA
 - 3 years – statutory/regulatory wage claim; under FLSA for willful violation
 - 4 years – written contract
 - 1 year – penalty claims (longer SOL for Section 203 penalties unless seeking ONLY penalties)
 - Business & Professions Code section 17200 for unpaid wage claims - 4 years on wage claims (Court suits only, not LC administrative hearings)
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REST BREAKS

- 10 minutes rest period for shifts from 3 ½ to 6 hours in length;
- 20 minutes total rest periods for shifts of more than 6 hours and up to 10hours;
- 30 minutes total rest periods for shifts of more than 10 hours and up to 14 hours.
- Authorized rest periods are counted as hours worked and must be paid.
- Employer must pay one additional hour of pay at the employee's regular rate of pay for each work day that there is a rest break violation.

MEAL BREAKS

- **30 minute unpaid meal break** for work period of more than 5 hours; a second meal period of 30 minutes if work period is more than 10 hours in a day.
 - Employer must relieve employee of all duties during meal break, and employee is free to leave the premises.
 - On-duty meal agreements allowed if the nature of the work prevents employee from being relieved of all duty. Must be paid.
 - Employee can waive meal breaks under certain circumstances.
 - Employer must pay one additional hour of pay at the employee's regular rate of pay for each work day that there is a meal break violation.
- 

SICK LEAVE

- On or after July 1, 2015, an employee working in California for 30 days for the same employer within a year is entitled to paid sick leave.
 - Employees earn 1 hour for every 30 hours worked (accrual starts on first day of employment or July 1, 2015 whichever is later)
 - Accrual of unused sick time can carry over to next year but Employers may cap total accrual to 48 hours or 6 days
 - Employers may limit use of paid sick leave to 24 hours or 3 days in each year of employment, calendar year or 12 month period.
- 

SICK LEAVE

- An employer that already has a paid leave policy or paid time off policy can keep it if:
 - the policy satisfies the accrual, carry-over and use requirements under this law or,
 - the policy which provided for a different accrual method allows employees to earn no less than 1 day (or 8 hours) of accrued time off within the first 3 months of employment of each calendar year (or each 12 month period), and at least 3 days (or 24 hours) of paid time off within the first 9 months of employment. Any subsequent modifications of these pre-existing policies must comply with the accrual methods outlined above.

Cal. Labor Code 246



RETALIATION

It is unlawful for an employer to retaliate against an employee for

Filing a wage claim

Making complaints about noncompliance with wage and hour law

Testifying in court or at hearing regarding the alleged wage violations

Talking to a government agency about wage violations

Or otherwise exercising rights under the wage and hour laws

- 29 U.S.C. §215; Labor Code §98.6

EMPLOYEE CLASSIFICATION

DETERMINING WHETHER AN EMPLOYEE IS "EXEMPT"

EMPLOYEE CLASSIFICATION—GENERAL

- Federal and state laws can exempt certain employees from wage and hour requirements, including overtime pay and meal and rest break requirements.
- Presumed non-exempt, unless employer can prove an exemption applies.
- Exemptions differ depending on whether you're looking at federal or state law.
- Each exemption has own salary and duties requirements.
- Multiple exemptions may apply to the same employee.

EMPLOYEE CLASSIFICATION— SALARY REQUIREMENTS

California: Generally, employees must be paid a monthly salary of at least two times the state minimum wage for full-time employment:

- \$4,160.00/mo (\$49,920 annually) for employers with 25 or fewer employees as of Jan. 1, 2020.
- \$4,506.67/mo (\$54,080 annually) for employers with 26 or more employees as of Jan. 1, 2020.

FLSA (Federal): Generally, employees must be compensated at the equivalent of a rate of at least \$684/wk (\$35,568 annually).

EMPLOYEE CLASSIFICATION— EXECUTIVE / MANAGERIAL EXEMPTION

- Manages an enterprise or recognized department. Customarily and regularly directs the work of two or more employees.
- Has the authority to hire, fire, or otherwise determine the terms of employment of other employees (or the employee's recommendations on such matters are given particular weight.)

EMPLOYEE CLASSIFICATION— ADMINISTRATIVE EXEMPTION

FLSA

- Employee's primary duties consist of office or non-manual work directly related to management policies or general business operations of the employer or employer's customers. Exercises discretion and independent judgment on matters of significance.

California:

- Similar test...
- Must also work under only general supervision, assisting exempt employees, or performing specialized work or special assignments, and devote more than 50% of time to administrative activities.

EMPLOYEE CLASSIFICATION— ADMINISTRATIVE EXEMPTION (CONT'D)

- Good rule of thumb—“**Administrative/Production Dichotomy**” *McKeen-Chaplin v. Provident Sav. Bank, FSB*, 862 F.3d 847, 851-52 (9th Cir. 2017).
- Work must be administrative in nature and must be of substantial importance to management policy or general operations. *Harris v. Sup. Court*, 53 Cal. 4th 170 (2011).

EMPLOYEE CLASSIFICATION— COMPUTER PROFESSIONALS

California

- Is primarily engaged in work that is intellectual or creative and requires the exercise of discretion and independent judgment.
- Devotes more than 50% of work time to one or more of the following duties:
 - applying systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
 - designing, developing, documenting, analyzing, creating, testing or modifying computer systems or programs, including prototypes, based on and related to user or system design specifications; or
 - documenting, testing, creating or modifying computer programs related to the design of software or hardware for computer operating systems.

EMPLOYEE CLASSIFICATION— COMPUTER PROFESSIONALS

- Is highly skilled and proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming and software engineering. Job titles do not determine whether an exemption applies.
- Earns at least \$46.55 per hour or \$96,968.33 per year for full-time employment (at least \$8,080.71 per month).

EMPLOYEE CLASSIFICATION— COMPUTER PROFESSIONALS (CONT'D)

FLSA

Less stringent test—employee's primary duties must be comprised of:

- Application of systems analysis techniques and procedures to determine hardware, software or system functional specifications; or
- Design, development, documentation, analysis, creation, testing or modification of computer systems or programs based on and related to user or system design specifications or machine operating systems.

EMPLOYEE CLASSIFICATION— OUTSIDE SALES

FLSA:

- Primary duty is making sales and/or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and
- Who is customarily and regularly engaged away from the employer's place or places of business.

California:

- Any person, 18 years of age or over, who customarily and regularly performs more than 50% of work away from the employer's place of business selling tangible or intangible items or obtaining orders or contracts for products, services or use of facilities.

EMPLOYEE CLASSIFICATION— INSIDE SALES

FLSA:

- The employee must be employed by a “retail or service establishment.”
- The employee's regular rate of pay must exceed 1.5 times the applicable minimum wage for every hour worked in a workweek in which overtime hours are worked.
- More than half the employee’s total earnings in a representative period must consist of commissions.

California:

- Similar to federal law, but not limited to “retail or service establishment.”
 - Earns more than 1.5 times the minimum wage for each hour worked.
 - More than half of employee’s compensation is in the form of commissions.
 - **Still entitled to meal and rest breaks even if exempt from other requirements!**
- 

EMPLOYEE CLASSIFICATION— PROFESSIONAL EXEMPTION

California

- Licensed or certified by the State of California and primarily engaged in the practice of one of the following recognized professions: law, medicine, dentistry, optometry, architecture, engineering, teaching or accounting, **OR**
- Primarily engaged in work that either:
 - Requires advanced knowledge in a science or learning field customarily acquired by a prolonged course of specialized intellectual instruction and study, as opposed to a general academic education or an apprenticeship, and from training in the performance of routine mental, manual or physical processes or work that is an essential part of any of the above work; or

EMPLOYEE CLASSIFICATION— PROFESSIONAL EXEMPTION

- Primarily engaged in work that either:
 - Is original and creative in character in a recognized field of artistic endeavor, as opposed to work that can be produced by a person endowed with general manual or intellectual ability and training, and the result of which depends primarily on the employee's invention, imagination or talent, or work that is an essential part of any of the above work; and
 - The work must be predominantly intellectual and varied in character, as opposed to routine mental, manual, mechanical or physical work, and the output produced or the result accomplished cannot be standardized in relation to a given period of time.
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EMPLOYEE CLASSIFICATION— PROFESSIONAL EXEMPTION (CONT'D)

FLSA

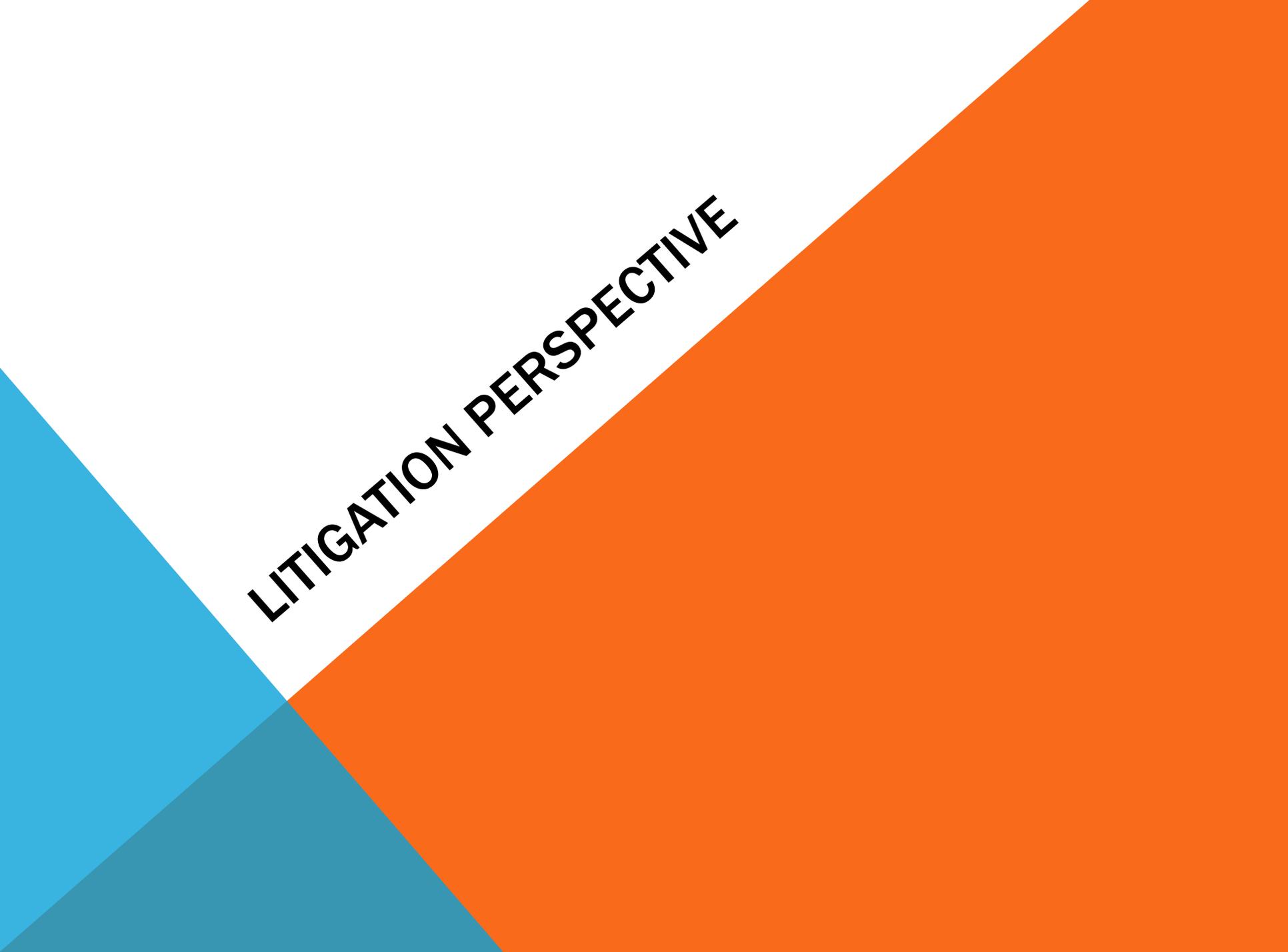
Primary duties require either:

- Advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction, which means work that is predominantly intellectual in character and includes the consistent exercise of discretion and independent judgment.
- Imagination, originality and creativity in a recognized field of artistic or creative endeavor, such as music, creative writing, or theater.

EMPLOYEE CLASSIFICATION— FLSA “HIGHLY COMPENSATED EMPLOYEE”

Finally, the FLSA has one exemption that California does not have... the “Highly-Compensated Workers” or “Highly Compensated Employee” (HCE) exemption. To qualify:

- The employee must earn total annual compensation of \$107,432 or more, which includes at least \$684 per week paid on a salary basis;
- The employee’s primary duty includes performing office or non-manual work; and
- The employee customarily and regularly performs at least one of the exempt duties or responsibilities of an exempt executive, administrative or professional employee.



LITIGATION PERSPECTIVE

LITIGATING WAGE AND HOUR CLAIMS

- Single-Plaintiff Actions
 - Class Actions
 - FLSA Collective Actions
 - PAGA Actions
 - Labor Commissioner Hearings
- 

COMMON ISSUES LITIGATED—FLSA

- Overtime – 1.5x regular rate of pay
 - Minimum Wage – at least \$7.25/hr
 - Liquidated damages
 - 2 year SOL (3 years if violation is “willful”)
- 

COMMON ISSUES LITIGATED—CALIFORNIA

- Minimum Wage (Lab. Code §§ 1194, 1194.2, 1197, 1197.1)
 - Overtime (Lab. Code §§ 510, 558, 1194)
 - Off-the-Clock Work (minimum wage and OT)
 - Non-Productive Time (minimum wage and rest breaks)
 - Meal & Rest Breaks (Lab. Code §§ 226.7, 512, 558)
 - Inaccurate Wage Statements (Lab. Code § 226)
 - Vacation pay (Lab. Code § 227.3)
 - Paid Sick Leave (Lab. Code § 246)
 - Waiting Time Penalties for late wages (Lab. Code §§ 201-203)
- 

ISSUES NOT COVERED TODAY...

- Unreimbursed business expenses
- Tips / tip pooling
- Commute/travel time
- Reporting time pay
- The “day of rest”
- Payroll periods and paydays
- Employment of minors
- Application issues (FCRA claims, background checks, salary requests, etc.)
- Equal Pay Act
- Seating requirements / other Wage Order requirements re working conditions

And many more...





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Alex Stathopoulos, a managing associate in the San Francisco employment group, defends employers in complex wage and hour class actions and provides creative and practical counseling on a wide range of employment issues, including new and developing areas of the law.

Orrick's Employment Law and Litigation group was recently named **Labor & Employment Department of the Year** in California for the fourth consecutive year by The Recorder, the premier source for legal news, in recognition of their significant wins on behalf of leading multinational companies on today's most complex and challenging employment law matters.

Alex was recently named California Young Lawyers Association (CYLA) Section Liaison to the Labor and Employment Section of the California Lawyers Association (CLA).

Alex focuses her practice on defending employers in class- and collective-actions brought under federal and state wage and hour laws, including misclassification, meal and rest periods, off-the-clock work, expense reimbursement, and Private Attorney General Act (PAGA) claims. She also routinely defends employers in high-stakes single plaintiff cases involving leaves and accommodations, discrimination, harassment, retaliation, whistleblowing, wrongful termination, and trade secrets.

Her counseling practice focuses on providing advice to management, designing appropriate workplace policies and procedures, and offering creative and practical solutions to address a wide range of employment issues, including new and developing areas of the law.

Prior to law school, she was a communication consultant to *Fortune* 500 companies, providing written deliverables and analysis on topics that included employee health plans, compensation, and retirement benefits.

Representative Engagements

Alex has significant experience litigating a broad range of employment issues. Her recent experience includes the following:

Practice Areas

- Employment Law & Litigation

Honors

- American Jurisprudence Award in Labor & Employment Arbitration
- Prosser Prize in Civil Trial Practice
- Prosser Prize in California Marital Property
- Quarterfinalist in Berkeley Law's James Patterson McBaine Honors Moot Court Competition (2012)

Education

- J.D., University of California, Berkeley School of Law, 2012
- B.S., Business Administration, University of California, Berkeley, Haas School of Business, 2007
- B.A., Philosophy, University of California, Berkeley, 2007, *cum laude*

Memberships

- California Lawyers Association, Labor and Employment Law Section, Section Liaison, 2018
- Association of Business Trial Lawyers

Class & Collective Actions

- Obtaining voluntary dismissal of an FLSA collective action following minimal discovery.
- Representing a national retailer in four coordinated state class actions and a related federal collective action alleging minimum wage, overtime, regular rate, off-the-clock work, unreimbursed business expenses, pay cards, wage statements, and PAGA claims.
- Representing a leading technology company in a putative hybrid state class action / federal collective action alleging off-the-clock claims.
- Representing a national bank in putative statewide class action alleging misclassification of information technology employees.

Administrative Charges

- Obtaining dismissal of EEOC charge alleging age discrimination and wrongful termination.
- Convincing Labor Commissioner to dismiss wage claim filed with the DLSE.

Single Plaintiff Discrimination/Wrongful Termination

- Achieving summary judgment on behalf of an energy company in a single plaintiff action alleging a host of claims including gender and disability discrimination, failure to accommodate, harassment, and retaliation.
- Demurrer sustained without leave to amend in single plaintiff wrongful termination action against retailer.

In addition, Alex has helped employers obtain resolution through negotiation and mediation. She has a demonstrated commitment to pro bono work, including work to secure relief for asylum-seekers and providing counseling on employment issues to non-profits.

Publications

- Contributor, Orrick's Employment Law & Litigation Blog
- Co-Author, "Criminal Background Policy Checkup," *SHRM HR Magazine* (Legal Trends), July 2012.

Admissions

- California

Biography

Hina B. Shah is an Associate Professor of Law and Director of the Women's Employment Rights Clinic (WERC) at Golden Gate University School of Law. WERC advocates for the rights of low-wage and immigrant workers through direct service, impact litigation, and public policy work and in coordination with community-based organizations. WERC also served as legal counsel to the California Domestic Workers Coalition, helping expand and protect overtime rights for domestic workers in California. Professor Shah has written numerous amicus briefs on important legal issues affecting low-wage workers. She argued on behalf of amici before the California Supreme Court in *Mendiola v. CPS Security Solutions, Inc.*, 60 Cal.4th 833 (2015).

Professor Shah has lectured and written on the plight of low-wage and immigrant workers, including *Radical Reconstruction: (Re)Embracing Affirmative Action in Private Employment*, published in the U. of Baltimore L. Rev., *Broadening Low-Wage Workers' Access to Justice: Guaranteeing Unpaid Wage in Targeted Industries*, published in the Hofstra Labor & Employment Law Journal and *Notes from the Field: The Role of the Community Lawyer in Grassroots Advocacy*, published in the Clinical Law Review.

Prior to joining GGULaw, Professor Shah worked for over a decade as an employment litigator for private union-side law firms and non-profits organizations and has substantial appellate experience as a Staff Attorney at the Ninth Circuit.

She currently serves on the executive committee of the Labor and Employment Law Section of the California Lawyers Association.