

LABOR & EMPLOYMENT

>>ALERT

CALIFORNIA EXPANDS FINAL PAY TIMING EXEMPTION TO PRINT PRODUCTIONS

The recently-enacted California Photo Shoot Pay Easement Act allows employers to pay models, producers, photographers and other employees on a print shoot in California on the next regular payday following the end of their work on the production.

Under prior law, print models and other crew on a print shoot in California had to be paid on their last day worked. The new law comes as a relief to employers of models and crew members who otherwise faced steep waiting time penalties for failure to provide immediate payment, even when employees only worked on one-day photo shoots.

THE CALIFORNIA LABOR CODE

Under California Labor Code Section 201, employers generally must pay a discharged employee earned and unpaid wages immediately upon the employee's termination, which has been held to include the completion of a project, such as a print shoot. Employers who fail to timely pay discharged employees under the Labor Code are subject to a waiting time penalty of one day's pay for each day (including weekends) between the discharge and the day the final wages are paid, up to a maximum of thirty days. With limited exceptions, this law applies to employees who work even one-day assignments, including, until recently, models hired for short-term photo shoots, as explained in a [previous alert](#).

THE BOTTOM LINE

California's new Photo Shoot Pay Easement Act now relieves print production employers from the rigid California law that subjects employers to harsh penalties if they do not pay employees immediately upon discharge. However, print production employers should be careful about payroll practices, as they are still subject to waiting time penalties for failing to follow other California payroll requirements.

Over the last decade, print models hired by advertising agencies or production companies in California have successfully sought waiting time penalties under the Labor Code. For example, a model who earned \$1,000 for a one-day assignment and received payment thirty or more days after the assignment concluded could seek \$30,000. Even where a model is provided to an advertising agency through a loan-out company or a talent agency, the agency may be deemed to be the model's "employer," and, consequently, was responsible for either paying models immediately upon "discharge" or facing steep waiting time penalties.

CALIFORNIA PHOTO SHOOT PAY EASEMENT ACT

The new law provides an exemption for print production from this otherwise

strict provision of the California Labor Code. It brings print production in line with motion picture production (which includes moving-image commercials), which has long been exempt from the same-day provision of the Labor Code. Models and crew on any "still image shoot, including film or digital photography, for use in print, digital or internet media" are now exempt from the same-day requirement, and print producers may now pay these employees in accordance with regular pay practices.

PAYROLL REQUIREMENTS

However, even though print production employers in California are now released from the requirement to pay final wages at the time of discharge, they should still be mindful of California's other particular payroll requirements.

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California employers must:

- 1) Establish a weekly, biweekly or semimonthly payroll period;
- 2) Communicate it to employees in postings and Wage Theft Protection Act notices upon hire (for all non-exempt employees);
- 3) Pay employees consistently within 7-10 days of the end of the pay period; and
- 4) Keep in mind that any wages earned:
 - a. Between the 1st and 15th days of any calendar month must be paid no later than the 26th day of that month;
 - b. Between the 16th and last day of the month must be paid by the 10th day of the following month; and
 - c. During any other set pay period must be paid within seven calendar days of the end of the payroll period.

Overtime wages must be paid no later than the payday for the next regular payroll period.

Failure to adhere to these payroll practices may subject employers to waiting time penalties of a day's pay for every day delayed beyond the payroll due date, with a maximum penalty of 30 days' pay.

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