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Attorneys for Plaintiffs
LAVON GODFREY and GARY GILBERT

ORIGINAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

LAVON GODFREY and GARY GILBERT, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

OAKLAND PORT SERVICES CORP. d/b/a AB TRUCKING, and DOES 1 through 20, inclusive,

Defendants.

Case No. RG08379099

DECLARATION OF LISL R. DUNCAN IN SUPPORT OF PLAINTIFFS' OPENING POST-TRIAL BRIEF

Trial Date: February 14, 2012
Judge: Hon. Robert B. Freedman

I, Lisl R. Duncan, hereby declare and state as follows:

1. I am an attorney duly licensed to practice law before all the courts in the State of California, and I am an associate with Weinberg, Roger & Rosenfeld, counsel of record in this matter. I have personal knowledge of the following facts, and if called to testify, I could and would competently testify to each fact contained in this declaration. I have been assigned to this case since January 2009 and I have reviewed all documents produced by AB in discovery.

2. AB did not provide Plaintiffs with records of meal periods received by drivers.

3. On December 15, 2009, Plaintiffs filed, with their original class certification motion, Plaintiffs' Request for Judicial Notice ("RJN"). A true and correct copy of the RJN is attached herewith for convenience as Exhibit A. Plaintiffs' request was granted on June 25, 2010, a true and correct copy of the Court's Order is attached herewith for convenience as Exhibit B.

FAXED

4. To my knowledge, no information as to the Port of Oakland's ("Port") alleged requirement that passengers in a vehicle entering the Port be labeled a trainee, was provided to Plaintiffs in discovery, nor mentioned by Bill Aboudi in his deposition.

5. To my knowledge, no information as to news reporters or politicians accompanying drivers and being labeled as "trainees" was provided to Plaintiffs in discovery, nor mentioned by Bill Aboudi in his deposition.

6. Attached for the Court's convenience is a true and correct copy of the pertinent portion of the Fair Labor Standards Act, 29 U.S.C. §203(r), dealing with the "enterprise" concept as Exhibit C.

7. Attached herewith is a general guide, which summarizes Ms. Don's testimony at trial, regarding the overall reduction of the total amounts owed, and the general methodology used in creating the four versions of the damages model as Exhibit D.

8. Plaintiffs propounded Requests for Production of Documents and Supplemental Requests for Production of Documents on AB, including requests for timekeeping and payroll information. (See P-Ex. 22.) No documents after 2008 were produced by AB. Additionally, AB produced no "key" naming drivers associated with the unique identifiers ("D-1," "D-2," "D-3," etc.) used on documents, despite Plaintiffs' repeated requests.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this Declaration was executed by me on April 13, 2012, at Alameda, California.

LISL R. DUNCAN

118212/664076

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Exhibit A

Exhibit A

DAVID A. ROSENFELD, Bar No. 058163
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FILED
ALAMEDA COUNTY

DEC 15 2009

CLERK OF THE SUPERIOR COURT
By _____ Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

LAVON GODFREY and GARY GILBERT, on behalf of themselves and all others similarly situated, Plaintiffs, v. OAKLAND PORT SERVICES CORP. d/b/a AB TRUCKING, and DOES 1 through 20, inclusive, Defendants.	Case No. RG 08-379099 PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE Date: January 15, 2010 Time: 11:00 a.m. Dept: 20 Judge: Robert Freedman Reservation Number: 1006715

Pursuant to Evidence Code sections 451 and 452, Plaintiffs respectfully request the Court take judicial notice of:

1. Oakland Living Wage Ordinance (Charter of the City of Oakland, Title 2 "Administration and Personnel," section 2.28 *et. seq* "Living Wage Ordinance".) The relevant portions of which are attached hereto.

2. Industrial Welfare Commission Wage Order 9, "Transportation Industry" attached hereto.

3. Port of Oakland Living Wage and Labor Standards at Port-Assisted Businesses (Charter of the City of Oakland, Article VII "Port of Oakland," section 728.) The relevant portions of which are attached hereto.

4. Schedule N "Declaration of Compliance – Living Wage Ordinance." The relevant portions of which are attached hereto.

Evidence Code section 451(a) allows the Court to take judicial notice of "the decisional, constitutional, and public statutory law of this state and of the United States and the provisions of any charter described in Section 3, 4, or 5 of Article XI of the California Constitution." Public statutory law would include the Industrial Welfare Commission Wage Orders, and city ordinances like the Oakland Living Wage Ordinance and the Port of Oakland Living Wage, which are covered under Article XI "Local Government" of the California Constitution. Evidence Code section 452(b) allows the Court to take judicial notice of the "regulations and legislative enactments issued by ... any public entity in the United States," which would include the Schedule N update of the wage rate.

Based on the above, the Court should take judicial notice of the Oakland Living Wage Ordinance, Industrial Welfare Commission Wage Order 9 "Transportation Industry," and Port of Oakland Living Wage.

Dated: December 15, 2009

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

By: _____
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CAREN P. SENCER
LISL R. DUNCAN
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Remove *highlighting*.

Title 2 ADMINISTRATION AND PERSONNEL

Chapter 2.28 *LIVING WAGE* ORDINANCE

2.28.010 Title and purpose.

This chapter shall be known as the "Oakland *living wage* ordinance." The purpose of this chapter is to require that nothing less than a prescribed minimum level of compensation (a *living wage*) be paid to employees of service contractors of the city and employees of CFARs. (Ord. 12050 § 1, 1998)

2.28.020 Definitions.

The following definitions shall apply throughout this chapter:
"Agency" means that subordinate or component entity or person of the city (such as a department, office, or agency) that is responsible for solicitation of proposals or bids and responsible for the administration of service contracts or financial assistance agreements.
"City" means the city of Oakland and all city agencies, departments and offices.
"City financial assistance recipient" (CFAR) means any person who receives from the city financial assistance as contrasted with generalized financial assistance such as through tax legislation, in an amount of one hundred thousand dollars ($100,000.00) or more in a twelve (12) month period.
1. Categories of such assistance include, but are not limited to, grants, rent subsidies, bond financing, financial planning, tax increment financing, land writedowns, and tax credits. City staff assistance shall not be regarded as financial assistance for purposes of this article. The forgiveness of a loan shall be regarded as financial assistance, and a loan provided at below market interest rate shall be regarded as financial assistance to the extent of any differential between the amount of the loan and the present value of the payments thereunder, discounted over the life of the loan by the applicable federal rate as used in 26 U.S.C. Sections 1274(d), 7872 (f).
2. A tenant or leaseholder of a CFAR who occupies property or uses equipment or property that is improved or developed as a result of the assistance awarded to the CFAR and who will employ at least twenty (20) employees for each working day in each of twenty (20) or more calendar weeks in the twelve (12) months after occupying or using such property, shall be considered a "city financial assistance recipient" for the purposes of this chapter and shall be covered for the same period as the CFAR of which they are a tenant or leaseholder.
"Contractor" means any person that enters into a service contract with the city in an amount equal to or greater than twenty-five thousand dollars ($25,000.00).
"Employee" means any person who is employed (1) as a service employee of a contractor or subcontractor under the authority of one or more service contracts and who expends any of his or her time thereon, including but not limited to: hotel employees, restaurant, food service or banquet employees; janitorial employees; security guards; parking attendants; health care employees; gardeners; waste management employees; and clerical employees; or (2) by a CFAR and who expends at least half of his or her time on the funded project/program or property which is the subject of city financial assistance, or (3) by a service contractor of a CFAR and who expends at least half of his or her time on the premises of the CFAR and is directly involved with the funded project/program or property which is the subject of city financial assistance. Any person who is a managerial, supervisory or confidential employee is not an employee for purposes of this definition.
"Employer" means any person who is a city financial assistance recipient, contractor, or subcontractor.
"Person" means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ individuals or enter into contracts.
"Service contract" means (1) a contract let to a contractor by the city for the furnishing of services, to or for the city, except contracts where services are incidental to the delivery of products, equipment or commodities, and that involves an expenditure equal to or greater than twenty-five thousand dollars ($25,000.00), or (2) a lease or license under which services contracts are let by the lessee or licensee. A contract for the purchase or lease of goods, products, equipment, supplies or other property is not a "service contract" for the purposes of this definition.
"Subcontractor" means any person who enters into a contract with (1) a contractor to assist the contractor in performing a service contract or (2) a CFAR to assist the recipient in performing the work for which the assistance is being given or to perform services on the property which is the subject of city financial assistance. Service contractors of CFARs shall not be regarded as subcontractors except to the extent provided by the definition of "employee" in this section.
"Trainee" means a person enrolled in a job training program which meets the city job training standards. (Ord. 12050 § 2, 1998)

2.28.030 Payment of minimum compensation to employees.

A. Wages. Employers shall pay employees a *wage* to each employee of no less than the hourly rates set under the authority of this chapter. The initial rate shall be eight dollars ($8.00) per hour worked with health benefits, as described in this chapter, or otherwise nine dollars and twenty-five cents ($9.25) per hour. Such rate shall be upwardly adjusted annually, no later than April 1st in proportion to the increase immediately preceding December 31st over the year earlier level of the Bay Region Consumer Price Index as published by the Bureau of Labor Statistics, U.S. Department of Labor, applied to nine dollars and twenty-five cents ($9.25). The city shall publish a bulletin by April 1st of each year announcing the adjusted rates, which shall take effect upon such publication. Such bulletin will be distributed to all city agencies, departments and offices, city contractors and CFARs upon publication. The contractor shall provide written notification of the rate adjustments to each of its employees and to its subcontractors, who shall provide written notices to each of their employees, if any, and make the necessary payroll adjustments by July 1st.

B.1. Compensated Days Off. Employers shall provide at least twelve (12) days off per year for sick leave, vacation, or personal necessity at the employee's request. Employees shall accrue one compensated day off per month of full-time employment. Part-time employees shall accrue compensated days off in increments proportional to that accrued by full-time employees. The employees shall be eligible to use accrued days off after the first six months of employment or consistent with company policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required twelve (12) compensated days off.

2. Employers shall also permit employees to take at least an additional ten days a year of uncompensated time to be used for sick leave for the illness of the employee or a member of his or her immediate family where the employee has exhausted his or her compensated days off for that year. This chapter does not mandate the accrual from year to year of uncompensated days off.

C. Health Benefits. Health benefits required by this chapter shall consist of the payment of at least one dollar and twenty five-cents ($1.25) per hour towards the provision of health care benefits for employees and their dependents. Proof of the provision of such benefits must be submitted to the agency not later than thirty (30) days after execution of the contract to qualify for the *wage* rate in subsection (A) of this section for employees with health benefits. (Ord. 12050 § 3, 1998)

2.28.040 Duration of requirements.

A. For CFARs, assistance given in an amount equal to or greater than one hundred thousand dollars ($100,000.00) in any twelve (12) month period shall require compliance with this chapter for the life of the contract in the case of assistance given to fund a program or five years in the case of assistance given to purchase real property, tangible property or construct facilities, including but not limited to materials, equipment, fixtures, merchandise, machinery or the like.

B. A service contractor and subcontractor shall be required to comply with this chapter for the term of the contract. (Ord. 12050 § 4, 1998)

2.28.050 Notifying employees of their potential right to the federal earned income credit.

Employers shall inform employees making less than twelve dollars ($12.00) per hour of their possible right to the federal Earned Income Credit ("EIC") under Section 32 of the Internal Revenue Code of 1954, 26 U.S.C. Section 32, and shall make available to employees forms informing them about the EIC and forms required to secure advance EIC payments from the employer. These forms shall be provided to the eligible employees in English, Spanish and other languages spoken by a significant number of the employees within thirty (30) days of employment under the terms of this chapter and as required by the Internal Revenue Code. (Ord. 12050 § 5, 1998)

2.28.060 Contract review process and city reporting and record keeping.

A. The City Manager shall promulgate rules and regulations for the preparation of bid specifications, contracts and preparation for contract negotiations.

OFFICIAL NOTICE

INDUSTRIAL WELFARE COMMISSION
ORDER NO. 9-2001
REGULATING
WAGES, HOURS AND WORKING CONDITIONS IN THE

TRANSPORTATION INDUSTRY

Effective July 1, 2004 as amended

Sections 4(A) and 10(C) amended and republished by the Department of Industrial Relations, effective January 1, 2007, pursuant to AB 1835, Chapter 230, Statutes of 2006

This Order Must Be Posted Where Employees Can Read It Easily

IWC FORM 1109 (Rev. 10-2006)
OSP 06 98767

Please Post With This Side Showing

OFFICIAL NOTICE

Effective July 1, 2004 as amended

Sections 4(A) and 10(C) amended and republished by the Department of Industrial Relations, effective January 1, 2007, pursuant to AB 1835, Chapter 230, Statutes of 2006

INDUSTRIAL WELFARE COMMISSION
ORDER NO. 9-2001
REGULATING
WAGES, HOURS AND WORKING CONDITIONS IN THE
TRANSPORTATION INDUSTRY

TAKE NOTICE: To employers and representatives of persons working in industries and occupations in the State of California: The Department of Industrial Relations amends and republishes the minimum wage and meals and lodging credits in the Industrial Welfare Commission's Orders as a result of legislation enacted (AB 1835, Ch. 230, Stats of 2006, adding sections 1182.12 and 1182.13 to the California Labor Code.) The amendments and republishing make no other changes to the IWC's Orders.

1. APPLICABILITY OF ORDER

This order shall apply to all persons employed in the transportation industry whether paid on a time, piece rate, commission, or other basis, except that:

(A) Provisions of Sections 3 through 12 of this order shall not apply to persons employed in administrative, executive, or professional capacities. The following requirements shall apply in determining whether an employee's duties meet the test to qualify for an exemption from those sections:

(1) Executive Exemption. A person employed in an executive capacity means any employee:

(a) Whose duties and responsibilities involve the management of the enterprise in which he/she is employed or of a customarily recognized department or subdivision thereof; and

(b) Who customarily and regularly directs the work of two or more other employees therein; and

(c) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; and

(d) Who customarily and regularly exercises discretion and independent judgment; and

(e) Who is primarily engaged in duties which meet the test of the exemption. The activities constituting exempt work and non-exempt work shall be construed in the same manner as such items are construed in the following regulations under the Fair Labor Standards Act effective as of the date of this order: 29 C.F.R. Sections 541.102, 541.104-111, and 541.115-116. Exempt work shall include, for example, all work that is directly and closely related to exempt work and work which is properly viewed as a means for carrying out exempt functions. The work actually performed by the employee during the course of the workweek must, first and foremost, be examined and the amount of time the employee spends on such work, together with the employer's realistic expectations and the realistic requirements of the job, shall be considered in determining whether the employee satisfies this requirement.

(f) Such an employee must also earn a monthly salary equivalent to no less than two (2) times the state minimum wage for full-time employment. Full-time employment is defined in Labor Code Section 515(c) as 40 hours per week.

(2) Administrative Exemption. A person employed in an administrative capacity means any employee:

(a) Whose duties and responsibilities involve either:

(i) The performance of office or non-manual work directly related to management policies or general business operations of his employer or his/her employer's customers; or

(ii) The performance of functions in the administration of a school system, or educational establishment or institution, or of a department or subdivision thereof, in work directly related to the academic instruction or training carried on therein; and

(b) Who customarily and regularly exercises discretion and independent judgment; and

(c) Who regularly and directly assists a proprietor, or an employee employed in a bona fide executive or administrative capacity (as such terms are defined for purposes of this section); or

(d) Who performs under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge; or

(e) Who executes under only general supervision special assignments and tasks; and

(f) Who is primarily engaged in duties that meet the test of the exemption. The activities constituting exempt work and non-exempt work shall be construed in the same manner as such terms are construed in the following regulations under the Fair Labor Standards Act effective as of the date of this order: 29 C.F.R. Sections 541.201-205, 541.207-208, 541.210, and 541.215. Exempt work shall include, for example, all work that is directly and closely related to exempt work and work which is properly viewed as a means for carrying out exempt functions. The work actually performed by the employee during the course of the workweek must, first and foremost, be examined and the amount of time the employee spends on such work, together with the employer's realistic expectations and the realistic requirements of the job, shall be considered in determining whether the employee satisfies this requirement.

(g) Such employee must also earn a monthly salary equivalent to no less than two (2) times the state minimum wage for full-time employment. Full-time employment is defined in Labor Code Section 515(c) as 40 hours per week.

(3) Professional Exemption. A person employed in a professional capacity means any employee who meets *all* of the following requirements:

(a) Who is licensed or certified by the State of California and is primarily engaged in the practice of one of the following recognized professions: law, medicine, dentistry, optometry, architecture, engineering, teaching, or accounting; or

(b) Who is primarily engaged in an occupation commonly recognized as a learned or artistic profession. For the purposes of this subsection, "learned or artistic profession" means an employee who is primarily engaged in the performance of:

(i) Work requiring knowledge of an advanced type in a field or science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes, or work that is an essential part of or necessarily incident to any of the above work; or

(ii) Work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee or work that is an essential part of or necessarily incident to any of the above work; and

(iii) Whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time.

(c) Who customarily and regularly exercises discretion and independent judgment in the performance of duties set forth in subparagraphs (a) and (b).

(d) Who earns a monthly salary equivalent to no less than two (2) times the state minimum wage for full-time employment. Full-time employment is defined in Labor Code Section 515 (c) as 40 hours per week.

(e) Subparagraph (b) above is intended to be construed in accordance with the following provisions of federal law as they existed as of the date of this wage order: 29 C.F.R. Sections 541.207, 541.301(a)-(d), 541.302, 541.306, 541.307, 541.308, and 541.310.

(f) Notwithstanding the provisions of this subparagraph, pharmacists employed to engage in the practice of pharmacy, and registered nurses employed to engage in the practice of nursing, shall not be considered exempt professional employees, nor shall they be considered exempt from coverage for the purposes of this subparagraph unless they individually meet the criteria established for exemption as executive or administrative employees.

(g) Subparagraph (f) above shall not apply to the following advanced practice nurses:

(i) Certified nurse midwives who are primarily engaged in performing duties for which certification is required pursuant to Article 2.5 (commencing with Section 2746) of Chapter 6 of Division 2 of the Business and Professions Code.

(ii) Certified nurse anesthetists who are primarily engaged in performing duties for which certification is required pursuant to Article 7 (commencing with Section 2825) of Chapter 6 of Division 2 of the Business and Professions Code.

(iii) Certified nurse practitioners who are primarily engaged in performing duties for which certification is required pursuant to Article 8 (commencing with Section 2834) of Chapter 6 of Division 2 of the Business and Professions Code.

(iv) Nothing in this subparagraph shall exempt the occupations set forth in clauses (i), (ii), and (iii) from meeting the requirements of subsection 1(A)(3)(a)-(d) above.

(h) Except, as provided in subparagraph (i), an employee in the computer software field who is paid on an hourly basis shall be exempt, if *all* of the following apply:

(i) The employee is primarily engaged in work that is intellectual or creative and that requires the exercise of discretion and independent judgment.

(ii) The employee is primarily engaged in duties that consist of one or more of the following:

—The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications.

—The design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications.

—The documentation, testing, creation, or modification of computer programs related to the design of software or hardware for computer operating systems.

(iii) The employee is highly skilled and is proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming, and software engineering. A job title shall not be determinative of the applicability of this exemption.

(iv) The employee's hourly rate of pay is not less than forty-one dollars ($41.00). The Division of Labor Statistics and Research shall adjust this pay rate on October 1 of each year to be effective on January 1 of the following year by an amount equal to the percentage increase in the California Consumer Price Index for Urban Wage Earners and Clerical Workers.*

(i) The exemption provided in subparagraph (h) does not apply to an employee if *any* of the following apply:

(i) The employee is a trainee or employee in an entry-level position who is learning to become proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming, and software engineering.

(ii) The employee is in a computer-related occupation but has not attained the level of skill and expertise necessary to work independently and without close supervision.

(iii) The employee is engaged in the operation of computers or in the manufacture, repair, or maintenance of computer hardware and related equipment.

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*Pursuant to Labor Code section 515.5, subdivision (a)(4), the Division of Labor Statistics and Research, Department of Industrial Relations, has adjusted the minimum hourly rate of pay specified in this subdivision to be $49.77, effective January 1, 2007. This hourly rate of pay is adjusted on October 1 of each year to be effective on January 1, of the following year, and may be obtained at www.dir.ca.gov/IWC or by mail from the Department of Industrial Relations.

(iv) The employee is an engineer, drafter, machinist, or other professional whose work is highly dependent upon or facilitated by the use of computers and computer software programs and who is skilled in computer-aided design software, including CAD/CAM, but who is not in a computer systems analysis or programming occupation.

(v) The employee is a writer engaged in writing material, including box labels, product descriptions, documentation, promotional material, setup and installation instructions, and other similar written information, either for print or for on screen media or who writes or provides content material intended to be read by customers, subscribers, or visitors to computer-related media such as the World Wide Web or CD-ROMs.

(vi) The employee is engaged in any of the activities set forth in subparagraph (h) for the purpose of creating imagery for effects used in the motion picture, television, or theatrical industry.

(B) Except as provided in Sections 1, 2, 4, 10, and 20, and with regard to commercial drivers, Sections 11 and 12, the provisions of this order shall not apply to any employees directly employed by the State or any political subdivision thereof, including any city, county, or special district. The application of Sections 11 and 12 for commercial drivers employed by governmental entities shall become effective July 1, 2004 or following the expiration date of any valid collective bargaining agreement applicable to such commercial drivers then in effect but, in any event, no later than August 1, 2005. Notwithstanding Section 21, the application of Sections 11 or 12 to public transit bus drivers shall be null and void in the event the IWC or any court of competent jurisdiction invalidates the collective bargaining exemption established by Sections 11 or 12 for those drivers.

(C) The provisions of this order shall not apply to outside salespersons.

(D) The provisions of this order shall not apply to any individual who is the parent, spouse, child, or legally adopted child of the employer.

(E) Except as provided in Sections 4, 10, 11, 12, and 20 through 22, this order shall not be deemed to cover those employees who have entered into a collective bargaining agreement under and in accordance with the provisions of the Railway Labor Act, 45 U.S.C. Sections 151 et seq.

(F) The provisions of this Order shall not apply to any individual participating in a national service program, such as AmeriCorps, carried out using assistance provided under Section 12571 of Title 42 of the United States Code. (See Stats. 2000, ch. 365, amending Labor Code § 1171.)

2. DEFINITIONS

(A) An "alternative workweek schedule" means any regularly scheduled workweek requiring an employee to work more than eight (8) hours in a 24-hour period.

(B) "Commission" means the Industrial Welfare Commission of the State of California.

(C) "Commercial driver" means an employee who operates a vehicle described in subdivision (b) of Section 15210 of the Vehicle Code.

(D) "Division" means the Division of Labor Standards Enforcement of the State of California.

(E) "Employ" means to engage, suffer, or permit to work.

(F) "Employee" means any person employed by an employer.

(G) "Employer" means any person as defined in Section 18 of the Labor Code, who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person.

(H) "Hours worked" means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

(I) "Minor" means, for the purpose of this order, any person under the age of 18 years.

(J) "Outside salesperson" means any person, 18 years of age or over, who customarily and regularly works more than half the working time 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.

(K) "Primarily" as used in Section 1, Applicability, means more than one-half the employee's work time.

(L) "Public Transit Bus Driver" means a commercial driver who operates a transit bus and is employed by a governmental entity.

(M) "Shift" means designated hours of work by an employee, with a designated beginning time and quitting time.

(N) "Split shift" means a work schedule, which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods.

(O) "Teaching" means, for the purpose of Section 1 of this order, the profession of teaching under a certificate from the Commission for Teacher Preparation and Licensing or teaching in an accredited college or university.,

(P) "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.

(Q) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.

(R) "Workday" and "day" mean any consecutive 24-hour period beginning at the same time each calendar day.

(S) "Workweek" and "week" mean any seven (7) consecutive days, starting with the same calendar day each week. "Workweek" is a fixed and regularly recurring period of 168 hours, seven (7) consecutive 24-hour periods.

3. HOURS AND DAYS OF WORK

(A) Daily Overtime-General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half ($1^1/_2$) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek.

Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

(c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

(B) Alternative Workweek Schedules

(1) No employer shall be deemed to have violated the daily overtime provisions by instituting, pursuant to the election procedures set forth in this wage order, a regularly scheduled alternative workweek schedule of not more than ten (10) hours per day within a 40 hour workweek without the payment of an overtime rate of compensation. All work performed in any workday beyond the schedule established by the agreement up to 12 hours a day or beyond 40 hours per week shall be paid at one and one-half (1½) times the employee's regular rate of pay. All work performed in excess of 12 hours per day and any work in excess of eight (8) hours on those days worked beyond the regularly scheduled number of workdays established by the alternative workweek agreement shall be paid at double the employee's regular rate of pay. Any alternative workweek agreement adopted pursuant to this section shall provide for not less than four (4) hours of work in any shift. Nothing in this section shall prohibit an employer, at the request of the employee, to substitute one day of work for another day of the same length in the shift provided by the alternative workweek agreement on an occasional basis to meet the personal needs of the employee without the payment of overtime. No hours paid at either one and one-half (1½) or double the regular rate of pay shall be included in determining when 40 hours have been worked for the purpose of computing overtime compensation.

(2) If an employer whose employees have adopted an alternative workweek agreement permitted by this order requires an employee to work fewer hours than those that are regularly scheduled by the agreement, the employer shall pay the employee overtime compensation at a rate of one and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours, and double the employee's regular rate of pay for all hours worked in excess of 12 hours for the day the employee is required to work the reduced hours.

(3) An employer shall not reduce an employee's regular rate of hourly pay as a result of the adoption, repeal or nullification of an alternative workweek schedule.

(4) An employer shall explore any available reasonable alternative means of accommodating the religious belief or observance of an affected employee that conflicts with an adopted alternative workweek schedule, in the manner provided by subdivision (j) of Section 12940 of the Government Code.

(5) An employer shall make a reasonable effort to find a work schedule not to exceed eight (8) hours in a workday, in order to accommodate any affected employee who was eligible to vote in an election authorized by this section and who is unable to work the alternative workweek schedule established as the result of that election.

(6) An employer shall be permitted, but not required, to provide a work schedule not to exceed eight (8) hours in a workday to accommodate any employee who is hired after the date of the election and who is unable to work the alternative workweek schedule established by the election.

(7) Arrangements adopted in a secret ballot election held pursuant to this order prior to 1998, or under the rules in effect prior to 1998, and before the performance of the work, shall remain valid after July 1, 2000 provided that the results of the election are reported by the employer to the Division of Labor Statistics and Research by January 1, 2001, in accordance with the requirements of subsection (C) below (Election Procedures). If an employee was voluntarily working an alternative workweek schedule of not more than ten (10) hours a day as of July 1, 1999, that alternative workweek schedule was based on an individual agreement made after January 1, 1998 between the employee and employer, and the employee submitted, and the employer approved, a written request on or before May 30, 2000 to continue the agreement, the employee may continue to work that alternative workweek schedule without payment of an overtime rate of compensation for the hours provided in the agreement. The employee may revoke his/her voluntary authorization to continue such a schedule with 30 days written notice to the employer. New arrangements can only be entered into pursuant to the provisions of this section.

(C) Election Procedures

Election procedures for the adoption and repeal of alternative workweek schedules require the following:

(1) Each proposal for an alternative workweek schedule shall be in the form of a written agreement proposed by the employer. The proposed agreement must designate a regularly scheduled alternative workweek in which the specified number of work days and work hours are regularly recurring. The actual days worked within that alternative workweek schedule need not be specified. The employer may propose a single work schedule that would become the standard schedule for workers in the work unit, or a menu of work schedule options, from which each employee in the unit would be entitled to choose. If the employer proposes a menu of work schedule options, the employee may, with the approval of the employer, move from one menu option to another.

(2) In order to be valid, the proposed alternative workweek schedule must be adopted in a secret ballot election, before the performance of work, by at least a two-thirds (2/3) vote of the affected employees in the work unit. The election shall be held during regular working hours at the employees' work site. For purposes of this subsection, "affected employees in the work unit" may include all employees in a readily identifiable work unit, such as a division, a department, a job classification, a shift, a separate physical location, or a recognized subdivision of any such work unit. A work unit may consist of an individual employee as long as the criteria for an identifiable work unit in this subsection are met.

(3) Prior to the secret ballot vote, any employer who proposed to institute an alternative workweek schedule shall have made a disclosure in writing to the affected employees, including the effects of the proposed arrangement on the employees' wages, hours, and benefits. Such a disclosure shall include meeting(s), duly noticed, held at least 14 days prior to voting, for the specific purpose of discussing the effects of the alternative workweek schedule. An employer shall provide that disclosure in a non-English language, as well as in English, if at least five (5) percent of the affected employees primarily speak that non-English language. The employer

shall mail the written disclosure to employees who do not attend the meeting. Failure to comply with this paragraph shall make the election null and void.

(4) Any election to establish or repeal an alternative workweek schedule shall be held at the work site of the affected employees. The employer shall bear the costs of conducting any election held pursuant to this section. Upon a complaint by an affected employee, and after an investigation by the labor commissioner, the labor commissioner may require the employer to select a neutral third party to conduct the election.

(5) Any type of alternative workweek schedule that is authorized by the California Labor Code may be repealed by the affected employees. Upon a petition of one-third (1/3) of the affected employees, a new secret ballot election shall be held and a two-thirds (2/3) vote of the affected employees shall be required to reverse the alternative workweek schedule. The election to repeal the alternative workweek schedule shall be held not more than 30 days after the petition is submitted to the employer, except that the election shall be held not less than 12 months after the date that the same group of employees voted in an election held to adopt or repeal an alternative workweek schedule. The election shall take place during regular working hours at the employees' work site. If the alternative workweek schedule is revoked, the employer shall comply within 60 days. Upon proper showing of undue hardship, the Division of Labor Standards Enforcement may grant an extension of time for compliance.

(6) Only secret ballots may be cast by affected employees in the work unit at any election held pursuant to this section. The results of any election conducted pursuant to this section shall be reported by the employer to the Division of Labor Statistics and Research within 30 days after the results are final, and the report of election results shall be a public document. The report shall include the final tally of the vote, the size of the unit, and the nature of the business of the employer.

(7) Employees affected by a change in the work hours resulting from the adoption of an alternative workweek schedule may not be required to work those new work hours for at least 30 days after the announcement of the final results of the election.

(8) Employers shall not intimidate or coerce employees to vote either in support of or in opposition to a proposed alternative workweek. No employees shall be discharged or discriminated against for expressing opinions concerning the alternative workweek election or for opposing or supporting its adoption or repeal. However, nothing in this section shall prohibit an employer from expressing his/her position concerning that alternative workweek to the affected employees. A violation of this paragraph shall be subject to California Labor Code Section 98 et seq.

(D) One and one-half (1½) times a minor's regular rate of pay shall be paid for all work over 40 hours in any workweek except minors 16 or 17 years old who are not required by law to attend school and may therefore by employed for the same hours as an adult are subject to subsection (A) or (B) and (C) above.

(**VIOLATIONS OF CHILD LABOR LAWS** are subject to civil penalties of from $500 to $10,000 as well as to criminal penalties. Refer to California Labor Code Sections 1285 to 1312 and 1390 to 1399 for additional restrictions on the employment of minors and for descriptions of criminal and civil penalties for violation of the child labor laws. Employers should ask school districts about any required work permits.)

(E) An employee may be employed on seven (7) workdays in one workweek when the total hours of employment during such workweek do not exceed 30 and the total hours of employment in any one workday thereof do not exceed six (6).

(F) If a meal period occurs on a shift beginning or ending at or between the hours of 10 p.m. and 6 a.m., facilities shall be available for securing hot food and drink or for heating food or drink, and a suitable sheltered place shall be provided in which to consume such food or drink.

(G) The provisions of Labor Code Sections 551 and 552 regarding one (1) day's rest in seven (7) shall not be construed to prevent an accumulation of days of rest when the nature of the employment reasonably requires the employee to work seven (7) or more consecutive days; provided, however, that in each calendar month, the employee shall receive the equivalent of one (1) day's rest in seven (7).

(H) Except as provided in subsections (E) and (G), this section shall not apply to any employee covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work, and working conditions of the employees, and if the agreement provides premium wage rates for all overtime hours worked and a regular hourly rate of pay for those employees of not less than 30 percent more than the state minimum wage.

(I) Notwithstanding subsection (H) above, where the employer and a labor organization representing employees of the employer have entered into a valid collective bargaining agreement pertaining to the hours of work of the employees, the requirement regarding the equivalent of one (1) day's rest in seven (7) (see subsection (G) above) shall apply, unless the agreement expressly provides otherwise.

(J) If an employer approves a written request of an employee to make up work time that is or would be lost as a result of a personal obligation of the employee, the hours of that makeup work time, if performed in the same workweek in which the work time was lost, may not be counted toward computing the total number of hours worked in a day for purposes of the overtime requirements, except for hours in excess of 11 hours of work in one (1) day or 40 hours of work in one (1) workweek. If an employee knows in advance that he/she will be requesting makeup time for a personal obligation that will recur at a fixed time over a succession of weeks, the employee may request to make up work time for up to four (4) weeks in advance; provided, however, that the makeup work must be performed in the same week that the work time was lost. An employee shall provide a signed written request for each occasion that the employee makes a request to make up work time pursuant to this subsection. While an employer may inform an employee of this makeup time option, the employer is prohibited from encouraging or otherwise soliciting an employee to request the employer's approval to take personal time off and make up the work hours within the same workweek pursuant to this subsection.

(K) The daily overtime provision of subsection (A) above shall not apply to ambulance drivers and attendants scheduled for 24-hour shifts of duty who have agreed in writing to exclude from daily time worked not more than three (3) meal periods of not more than one (1) hour each and a regularly scheduled uninterrupted sleeping period of not more than eight (8) hours. The employer shall provide adequate dormitory and kitchen facilities for employees on such a schedule.

(L) The provisions of this section 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.

(M) The provisions of this section shall not apply to taxicab drivers.

(N) The provisions of this section shall not apply where any employee of an airline certified by the federal or state government works over 40 hours but not more than 60 hours in a workweek due to a temporary modification in the employee's normal work schedule not required by the employer but arranged at the request of the employee, including but not limited to situations where the employee requests a change in days off or trades days off with another employee.

4. MINIMUM WAGES

(A) Every employer shall pay to each employee wages not less than seven dollars and fifty cents ($7.50) per hour for all hours worked, effective January 1, 2007, and not less than eight dollars ($8.00) per hour for all hours worked, effective January 1, 2008, except:

LEARNERS: Employees during their first 160 hours of employment in occupations in which they have no previous similar or related experience, may be paid not less than 85 percent of the minimum wage rounded to the nearest nickel.

(B) Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.

(C) When an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment.

(D) The provisions of this section shall not apply to apprentices regularly indentured under the State Division of Apprenticeship Standards.

5. REPORTING TIME PAY

(A) Each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.

(B) If an employee is required to report for work a second time in any one workday and is furnished less than two (2) hours of work on the second reporting, said employee shall be paid for two (2) hours at the employee's regular rate of pay, which shall not be less than the minimum wage.

(C) The foregoing reporting time pay provisions are not applicable when:

(1) Operations cannot commence or continue due to threats to employees or property; or when recommended by civil authorities; or

(2) Public utilities fail to supply electricity, water, or gas, or there is a failure in the public utilities, or sewer system; or

(3) The interruption of work is caused by an Act of God or other cause not within the employer's control.

(D) This section shall not apply to an employee on paid standby status who is called to perform assigned work at a time other than the employee's scheduled reporting time.

6. LICENSES FOR DISABLED WORKERS

(A) A license may be issued by the Division authorizing employment of a person whose earning capacity is impaired by physical disability or mental deficiency at less than the minimum wage. Such licenses shall be granted only upon joint application of employer and employee and employee's representative if any.

(B) A special license may be issued to a nonprofit organization such as a sheltered workshop or rehabilitation facility fixing special minimum rates to enable the employment of such persons without requiring individual licenses of such employees.

(C) All such licenses and special licenses shall be renewed on a yearly basis or more frequently at the discretion of the Division.

(See California Labor Code, Sections 1191 and 1191.5)

7. RECORDS

(A) Every employer shall keep accurate information with respect to each employee including the following:

(1) Full name, home address, occupation and social security number.

(2) Birth date, if under 18 years, and designation as a minor.

(3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.

(4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.

(5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.

(6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

(B) Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee's social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.

(C) All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. An employee's records shall be available for inspection by the employee upon reasonable request.

(D) Clocks shall be provided in all major work areas or within a reasonable distance thereto insofar as practicable.

8. CASH SHORTAGE AND BREAKAGE

No employer shall make any deduction from the wage or require any reimbursement from an employee for any cash shortage, breakage, or loss of equipment, unless it can be shown that the shortage, breakage, or loss is caused by a dishonest or willful act, or by the gross negligence of the employee.

9. UNIFORMS AND EQUIPMENT

(A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer. The term "uniform" includes wearing apparel and accessories of distinctive design or color.

NOTE: This section shall not apply to protective apparel regulated by the Occupational Safety and Health Standards Board.

(B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft. This subsection (B) shall not apply to apprentices regularly indentured under the State Division of Apprenticeship Standards.

NOTE: This section shall not apply to protective equipment and safety devices on tools regulated by the Occupational Safety and Health Standards Board.

(C) A reasonable deposit may be required as security for the return of the items furnished by the employer under provisions of subsections (A) and (B) of this section upon issuance of a receipt to the employee for such deposit. Such deposits shall be made pursuant to Section 400 and following of the Labor Code or an employer with the prior written authorization of the employee may deduct from the employee's last check the cost of an item furnished pursuant to (A) and (B) above in the event said item is not returned. No deduction shall be made at any time for normal wear and tear. All items furnished by the employer shall be returned by the employee upon completion of the job.

10. MEALS AND LODGING

(A) "Meal" means an adequate, well-balanced serving of a variety of wholesome, nutritious foods.

(B) "Lodging" means living accommodations available to the employee for full-time occupancy which are adequate, decent, and sanitary according to usual and customary standards. Employees shall not be required to share a bed.

(C) Meals or lodging may not be credited against the minimum wage without a voluntary written agreement between the employer and the employee. When credit for meals or lodging is used to meet part of the employer's minimum wage obligation, the amounts so credited may not be more than the following:

	Effective January 1, 2007	**Effective January 1, 2008**
Lodging:		
Room occupied alone	$35.27 per week	$37.63 per week
Room shared	$29.11 per week	$31.06 per week
Apartment—two-thirds (2/3) of the ordinary rental value, and in no event more than	$423.51 per month	$451.89 per month
Where a couple are both employed by the employer, two-thirds (2/3) of the ordinary rental value, and in no event more than	$626.49 per month	$668.46 per month
Meals:		
Breakfast	$2.72	$2.90
Lunch	$3.72	$3.97
Dinner	$5.00	$5.34

(D) Meals evaluated as part of the minimum wage must be bona fide meals consistent with the employee's work shift. Deductions shall not be made for meals not received or lodging not used.

(E) If, as a condition of employment, the employee must live at the place of employment or occupy quarters owned or under the control of the employer, then the employer may not charge rent in excess of the values listed herein.

11. MEAL PERIODS

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.

(B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee

with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

(C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

(D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

(E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

(F) The section shall not apply to any public transit bus driver covered by a valid collective bargaining agreement if the agreement expressly provides for meal periods for those employees, final and binding arbitration of disputes concerning application of its meal period 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.

12. REST PERIODS

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

(C) This section shall not apply to any public transit bus driver covered by a valid collective bargaining agreement if the agreement expressly provides for rest periods for those employees, final and binding arbitration of disputes concerning application of its rest period 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.

13. CHANGE ROOMS AND RESTING FACILITIES

(A) Employers shall provide suitable lockers, closets, or equivalent for the safekeeping of employees' outer clothing during working hours, and when required, for their work clothing during non-working hours. When the occupation requires a change of clothing, change rooms or equivalent space shall be provided in order that employees may change their clothing in reasonable privacy and comfort. These rooms or spaces may be adjacent to but shall be separate from toilet rooms and shall be kept clean.

NOTE: This section shall not apply to change rooms and storage facilities regulated by the Occupational Safety and Health Standards Board.

(B) Suitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours.

14. SEATS

(A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.

(B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

15. TEMPERATURE

(A) The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed.

(B) If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort. Where the nature of the employment requires a temperature of less than 60° F., a heated room shall be provided to which employees may retire for warmth, and such room shall be maintained at not less than 68°.

(C) A temperature of not less than 68° shall be maintained in the toilet rooms, resting rooms, and change rooms during hours of use.

(D) Federal and State energy guidelines shall prevail over any conflicting provision of this section.

16. ELEVATORS

Adequate elevator, escalator or similar service consistent with industry-wide standards for the nature of the process and the work performed shall be provided when employees are employed four floors or more above or below ground level.

17. EXEMPTIONS

If, in the opinion of the Division after due investigation, it is found that the enforcement of any provision contained in Section 7, Records; Section 12, Rest Periods; Section 13, Change Rooms and Resting Facilities; Section 14, Seats; Section 15, Temperature;

or Section 16, Elevators, would not materially affect the welfare or comfort of employees and would work an undue hardship on the employer, exemption may be made at the discretion of the Division. Such exemptions shall be in writing to be effective and may be revoked after reasonable notice is given in writing. Application for exemption shall be made by the employer or by the employee and/or the employee's representative to the Division in writing. A copy of the application shall be posted at the place of employment at the time the application is filed with the Division.

18. FILING REPORTS

(See California Labor Code, Section 1174(a))

19. INSPECTION

(See California Labor Code, Section 1174)

20. PENALTIES

(See California Labor Code, Section 1199)

(A) In addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty of:

(1) Initial Violation — $50.00 for each underpaid employee for each pay period during which the employee was underpaid in addition to the amount which is sufficient to recover unpaid wages.

(2) Subsequent Violations — $100.00 for each underpaid employee for each pay period during which the employee was underpaid in addition to an amount which is sufficient to recover unpaid wages.

(3) The affected employee shall receive payment of all wages recovered.

(B) The labor commissioner may also issue citations pursuant to California Labor Code Section 1197.1 for non-payment of wages for overtime work in violation of this order.

21. SEPARABILITY

If the application of any provision of this order, or any section, subsection, subdivision, sentence, clause, phrase, word, or portion of this order should be held invalid or unconstitutional or unauthorized or prohibited by statute, the remaining provisions thereof shall not be affected thereby, but shall continue to be given full force and effect as if the part so held invalid or unconstitutional had not been included herein.

22. POSTING OF ORDER

Every employer shall keep a copy of this order posted in an area frequented by employees where it may be easily read during the workday. Where the location of work or other conditions make this impractical, every employer shall keep a copy of this order and make it available to every employee upon request.

QUESTIONS ABOUT ENFORCEMENT of the Industrial Welfare Commission orders and reports of violations should be directed to the Division of Labor Standards Enforcement. A listing of the DLSE offices is on the back of this wage order. Look in the white pages of your telephone directory under CALIFORNIA, State of, Industrial Relations for the address and telephone number of the office nearest you. The Division has offices in the following cities: Bakersfield, El Centro, Eureka, Fresno, Long Beach, Los Angeles, Oakland, Redding, Sacramento, Salinas, San Bernardino, San Diego, San Francisco, San Jose, Santa Ana, Santa Barbara, Santa Rosa, Stockton, Van Nuys.

SUMMARIES IN OTHER LANGUAGES

The Department of Industrial Relations will make summaries of wage and hour requirements in this Order available in Spanish, Chinese and certain other languages when it is feasible to do so. Mail your request for such summaries to the Department at: P.O. Box 420603, San Francisco, CA 94142-0603.

RESUMEN EN OTROS IDIOMAS

El Departamento de Relaciones Industriales confeccionara un resumen sobre los requisitos de salario y horario de esta Disposicion en español, chino y algunos otros idiomas cuando sea posible hacerlo. Envie por correo su pedido por dichos resumenes al Departamento a: P.O. Box 420603, San Francisco, CA 94142-0603.

其它文字的摘錄

工業關係處將摘錄本規則中有關工資和工時的規定，用西班牙文、中文印出。其它文字如有需要，也將同樣辦理。如果您有需要，可以來信索閱，請寄到：

Department of Industrial Relations
P.O. Box 420603
San Francisco, CA 94142-0603

All complaints are handled confidentially. For further information or to file your complaints, contact the State of California at the following department offices:

Division of Labor Standards Enforcement (DLSE)
For labor law information and assistance for your area call the pre-recorded information lines in **bold** below. If the information you need is not provided in the pre-recorded message, please call the general office number listed.

BAKERSFIELD
Division of Labor Standards Enforcement
5555 California Ave., Suite 200
Bakersfield, CA 93309
661-395-2710
661-859-2462

EL CENTRO
Division of Labor Standards Enforcement
1550 W. Main St.
El Centro, CA 92643
760-353-0607
760-353-2544

EUREKA
Division of Labor Standards Enforcement
619 Second Street, Room 109
Eureka, CA 95501
707-445-6613
707-441-4604

FRESNO
Division of Labor Standards Enforcement
770 E. Shaw Ave., Suite 222
Fresno, CA 93710
559-244-5340
559-248-8398

LONG BEACH
Division of Labor Standards Enforcement
300 Oceangate, 3rd Floor
Long Beach, CA 90802
562-590-5048
562-491-0160

LOS ANGELES
Division of Labor Standards Enforcement
320 W. Fourth St, Suite 450
Los Angeles, CA 90013
213-620-6330
213-576-6227

OAKLAND
Division of Labor Standards Enforcement
1515 Clay Street, Room 801
Oakland, CA 94612
510-622-3273
510-622-2660

REDDING
Division of Labor Standards Enforcement
2115 Civic Center Drive, Room 17
Redding, CA 96001
530-225-2655
530-229-0565

SACRAMENTO
Division of Labor Standards Enforcement
2031 Howe Ave, Suite 100
Sacramento, CA 95825
916-263-1811
916-263-5378

SALINAS
Division of Labor Standards Enforcement
1870 N. Main Street, Suite 150
Salinas, CA 93906
831-443-3041
831-443-3029

SAN BERNARDINO
Division of Labor Standards Enforcement
464 West 4th Street, Room 348
San Bernardino, CA 92401
909-383-4334
909-889-8120

SAN DIEGO
Division of Labor Standards Enforcement
7575 Metropolitan, Room 210
San Diego, CA 92108
619-220-5451
619-682-7221

SAN FRANCISCO
Division of Labor Standards Enforcement
455 Golden Gate Ave. 10th Floor
San Francisco, CA 94102
415-703-5300
415-703-5444

SAN FRANCISCO – HEADQUARTERS
Division of Labor Standards Enforcement
455 Golden Gate Ave. 9th Floor
San Francisco, CA 94102
415-703-4810

SAN JOSE
Division of Labor Standards Enforcement
100 Paseo De San Antonio, Room 120
San Jose, CA 95113
408-277-1266
408-277-3711

SANTA ANA
Division of Labor Standards Enforcement
605 West Santa Ana Blvd., Bldg. 28, Room 625
Santa Ana, CA 92701
714-558-4910
714-558-4574

SANTA BARBARA
Division of Labor Standards Enforcement
411 E. Canon Perdido, Room 3
Santa Barbara, CA 93101
805-568-1222
805-965-7214

SANTA ROSA
Division of Labor Standards Enforcement
50 "D" Street, Suite 360
Santa Rosa, CA 95404
707-576-2362
707-576-2459

STOCKTON
Division of Labor Standards Enforcement
31 E. Channel Street, Room 317
Stockton, CA 95202
209-948-7771
209-941-1906

VAN NUYS
Division of Labor Standards Enforcement
6150 Van Nuys Boulevard, Room 206
Van Nuys, CA 91401
818-901-5315
818-908-4556

EMPLOYERS: Do not send copies of your alternative workweek election ballots or election procedures.

Only the results of the alternative workweek election shall be mailed to:

Department of Industrial Relations
Division of Labor Statistics and Research
P.O. Box 420603
San Francisco, CA 94142-0603
(415) 703-4780

Prevailing Wage Hotline (415) 703-4774

Oakland, California, Code of Ordinances >> - THE CHARTER OF THE CITY OF OAKLAND >> ARTICLE VII - PORT OF OAKLAND >>

ARTICLE VII - PORT OF OAKLAND

Section 700. Establishment of a Port Department. To promote and more definitely insure the comprehensive and adequate development of the Port of Oakland through continuity of control, management and operation, there is hereby established a department of the City of Oakland known as the "Port Department."

(Amended by: Stats. November 1988.)

Section 701. Board of Port Commissioners. The exclusive control and management of the Port Department is hereby vested in the Board of Port Commissioners, which shall be composed of seven (7) members who shall be appointed by the Council, upon nomination by the Mayor.

No person shall be appointed as, or continue to hold office as, a member of the Board who is not at the time of his appointment, and has not been continuously for thirty (30) days immediately preceding his appointment, and who shall not continue to be during his term, a bona fide resident of the City of Oakland.

The members of the Board shall serve without salary or compensation.

(Amended by: Stats. November 1988 and Stats. November 2000.)

Section 702. Organization, Terms of Office. The Board of Port Commissioners shall consist of seven (7) members nominated by the Mayor and appointed by the Council for a term of four (4) years. Members in office at the time this section takes effect shall continue in office until their successors are appointed and qualified. For terms commencing July 10, 1969, two (2) members shall be appointed to fill the positions expiring upon that date, and two (2) additional members shall be appointed to bring the membership of said Board to seven (7); provided, that the terms of such two additional members shall be for such original duration, in no event to exceed four years, as will insofar as practicable permit appointment at the end of subsequent terms of office of members, of either one or two members.

(Amended by: Stats. November 1988.)

Section 703. Removal. Any member of the Board may be removed from office by the affirmative vote of six (6) members of the Council in the same manner and subject to the same conditions as the Council may remove the members of any of the Boards provided for in this Charter in Article VI.

(Amended by: Stats. November 1988.)

Section 704. Ordinances and Resolutions. All action taken by the Board of Port Commissioners shall be by resolution, except as hereinafter set forth in this Article. Any member of the Board may require a record of the vote on any resolution to be made in its minutes. The Board shall keep a minute book wherein shall be recorded the proceedings taken at its meetings and it shall keep a record and index of all of its resolutions and ordinances.

No ordinance or resolution shall be passed or become effective without receiving the affirmative- votes of at least four (4) members of the Board. To constitute an ordinance a bill must, before final action thereon, be passed to print and published with the ayes and noes at least once in the official newspaper of the City. Between the first and final readings at least five (5) days shall elapse. The enacting clause of all ordinances passed by the Board shall be substantially in these words:

Be it ordained by the Board of Port Commissioners of the City of Oakland as follows:

All ordinances shall be signed by the President or Vice-President of the Board and attested by the Secretary.

A certified copy of each ordinance adopted by the Board shall be forthwith filed with the City Clerk, and the City Clerk shall keep a record and index thereof which shall at all times be open to public inspection.

(Amended by: Stats. November 1988.)

Council and Board shall deem proper. No ordinance or other measure passed in respect to any such grant shall be subject to the referendum provisions of this Charter. All proceedings heretofore taken to accomplish such a grant are hereby ratified, confirmed and approved, and the completion thereof and making of such grant is hereby authorized.

(Amended by: Stats. November 1988.)

Section 727. Land Use and Development. The Board shall develop and use property within the Port Area for any purpose in conformity with the General Plan of the City. Any variation therefrom shall have the concurrence of the appropriate City board or commission; provided, that the Board may appeal to the Council for final determination of adverse decisions of such board or commission, in accordance with uniform procedures established by the Council.

(Amended by: Stats. November 1988.)

Section 728. Living Wage and Labor Standards at Port-Assisted Businesses.

(1) Scope and Definitions. The following definitions shall apply throughout this Section:

(A) "Port" means the Port of Oakland.

(B) "Port-Assisted Business" or "PAB" means (1) any person involved in a Port Aviation or Port Maritime Business receiving in excess of $50,000 worth of financial assistance from the Port, or (2) any Port Contractor involved in a Port Aviation or Port Maritime Business if the person employs more than 20 persons per pay period, unless in the prior 12 pay periods the person has not had more than 20 such employees and will not have more than 20 persons in the next 12 pay periods. A PAB shall be deemed to employ more than 20 persons if it is part of an 'enterprise' as defined under the Fair Labor Standards Act employing more than 20 persons. "Port Contractor" means any person party to a Port Contract as herein defined.

(C) "Port Contract" means:

(1) Any service contract with the Port for work to be performed at the Port under which the Port is expected to pay more than $50,000 over the term of the contract;

(2) Any contract, lease or license from the Port involving payments to the Port expected to exceed $50,000 either (a) over the term of the contract, lease or license, or (b) during the next 5 years if the current term is less than 1 year but may be renewed or extended, either with or without amendment;

(3) Any subcontract, sublease, sublicense, management agreement or other transfer or assignment of any right, title or interest received from the Port pursuant to any of the foregoing contracts, leases or licenses.

A contract, lease or license with the Port or any agreement derived therefrom shall not be deemed a Port Contract unless entered into after enactment of this Section, or amended after enactment of this Section to benefit in any way the party dealing with the Port.

(D) "Employee" means any individual employed by a PAB in Port related employment.

(E) "Person" includes any natural person, corporation, partnership, limited liability company, joint venture, sole proprietorship, association, trust or any other entity.

(F) "Valid collective bargaining agreement" as used herein means a collective bargaining agreement entered into between the person and a labor organization lawfully serving as the exclusive collective bargaining representative for such person's employees.

(G) "Port Aviation or Port Maritime business" means any business that principally provides services related to maritime or aviation business related services or whose business is located in the maritime or aviation division areas as defined by the Port.

(2) Exemptions from Coverage. In addition to the above exemption for workforces of fewer than 20 workers, the following persons shall also be exempt from coverage under this Section:

(A) An Employee who is (1) under twenty-one (21) years of age and (2) employed by a nonprofit entity for after-school or summer employment or for training for a period not longer than ninety (90) days, shall be exempt.

(B) An Employee who spends less than 25 percent of his work time on Port-related employment.

(C) A person who employs not more than 20 employees per pay period.

(3) Payment of Minimum Compensation to Employees. Port-Assisted Businesses shall provide compensation to each Employee of at least the following:

(A) Minimum Compensation. The minimum compensation shall be wages and health benefits totaling at least the

rate of the living wage ordinance of the City of Oakland.

(B) Credit for Health Benefits. The PAB shall receive a credit against the minimum wage required by this Section for health benefits in the amount provided by and in accordance with the living wage ordinance of the City of Oakland.

(4) Notifying Employees of their Potential Right to the Federal Earned Income Credit. Each PAB shall inform each Employee who makes less than twelve dollars ($12.00) per hour of his or her possible right to the federal Earned Income Credit ("EIC") under Section 2 of the Internal Revenue Code of 1954, 26 U.S.C. § 32, and shall make available the forms required to secure advance EIC payments from the business. These forms shall be provided to the eligible Employees in English (and other languages spoken by a significant number of such Employees) within thirty (30) days of employment under this Section and as required by the Internal Revenue Code.

(5) Preventing Displacement of Workers. Each PAB, which is to replace a prior PAB shall offer employment to the Service Employees of the prior PAB, if, these Employees worked for the prior PAB for at least 90 calendar days. Such Employees may be not be terminated by the new PAB during the first 90 workdays except for just cause. The new PAB may operate at lower staffing levels than its predecessor but in such event, shall place the prior Employees on a preferential reinstatement list based on seniority. For purposes of this Section, a PAB "replaces" another if it (1) assumes all or part of the lease, contract or subcontract of a prior employer or obtains a new lease, contract, or sublease, and (2) offers employment which Employees of the prior PAB can perform. In the case of a replacement connected to the new PAB relocating from another location, in staffing decisions the new PAB may recognize seniority from its prior locations in addition to the seniority of the prior PAB's workforce. "Service Employees" means all employees except manager, supervisors, professionals, paraprofessionals, confidential and office employees.

(6) Waiver.

(A) A PAB who contends it is unable to pay all or part of the living wage must provide a detailed explanation in writing to the Port Executive Director who may recommend a waver to the Port board. The explanation must set for the reasons for its inability to comply, including a complete cost accounting for the proposed work to be performed with the financial assistance sought, including wages and benefits to be paid all employees, as well as an itemization of the wage and benefits paid to the five highest paid individuals employed by the PAB. The PAB must also demonstrate that the waiver will further the public interests in creating training positions which will enable employees to advance into permanent living wage jobs or better and will not be used to replace or displace existing positions or employees or to lower the wages of current employees.

(B) The Port Board will grant a waiver only upon a finding and determination that the PAB has demonstrated the necessary economic hardship and that waiver will further the public interests in providing training positions which will enable employees to advance into permanent living wage jobs or better. However, no waiver will be granted if the effect of the waiver is to replace or displace existing positions or employees or to lower the wages of current employees.

(C) Such waivers are disfavored, and will be granted only where the balance of competing interests weighs clearly in favor of granting the waiver. If waivers are to be granted, partial waivers are favored over blanket waivers. Moreover, any waiver shall be granted for no more than one year. At the end of the year the PAB may reapply for a new waiver which may be granted subject to the same criteria for granting the initial waiver.

(D) Any party who objects to the grant of a waiver by the Port Board may appeal such decision to the City/Port Liaison Committee, who may reject such waiver.

(7) Retaliation and Discrimination Barred; No Waiver of Rights.

(A) A PAB shall not discharge, reduce the compensation of or otherwise discriminate against any person for making a complaint to the Port, participating in any of its proceedings, using any civil remedies to enforce his or her rights, or otherwise asserting his or her rights under this Section.

(B) Any waiver by an individual of any of the provisions of this Section shall be deemed contrary to public policy and shall be void and unenforceable, except that Employees shall not be barred from entering into a written valid collective bargaining agreement waiving a provision of this Section if such waiver is set forth in clear and unambiguous terms. Any request to an individual by a PAB to waive his or her rights under this Section shall constitute a violation of this Section.

(8) Enforcement.

(A) Each PAB shall maintain for each person in Port-related employment a record of his or her name, pay rate and, if the PAB claims credit for health benefits, the sums paid by the PAB for the Employee's health benefits. The PAB shall submit a copy of such records to the Port at least by March 31st, June 30th, September 30th and December 3lst of each year, unless the PAB has employed less than 20 persons during the preceding quarter in which case the PAB need only submit a copy of such records every December 31st. Failure to provide a copy of such records within five days of the due date will result in a penalty of five hundred dollars ($500.00) per day. Each PAB shall maintain a record of the name, address, job classification, hours worked, and pay and health benefits received of each person employed, and shall preserve them for at least three years.

(B) If a PAB provides health benefits to persons in Port-related employment but does not pay for them on a per-hour basis, then upon the PAB's request, the amount of the hourly credit against its wage obligation shall be the Port's

reasonable estimate of the PAB's average hourly cost to provide health benefits to its Employees in Port-related employment. The PAB shall support its request with such documentation as is reasonably requested by the Port or any interested party, including labor organizations in such industry.

(C) Each PAB shall give written notification to each current Employee, and to each new Employee at time of hire, of his or her rights under this Section. The notification shall be in the form provided by the Port in English, Spanish and other languages spoken by a significant number of the Employees, and shall also be posted prominently in areas at the work site where it will be seen by all Employees.

(D) Each PAB shall permit access to work sites and relevant payroll records for authorized Port representatives for the purpose of monitoring compliance with this Section, investigating employee complaints of noncompliance and evaluating the operation and effects of this Section, including the production for inspection and copying of its payroll records for any or all persons employed by the PAB. Each PAB shall permit a representative of the labor organizations in its industry to have access to its workforce at the Port during non-working time and in non-work areas for the purpose of ensuring compliance with this Section.

(E) Notwithstanding any provision in Article VI of this Charter to the contrary, the City Administrator may develop rules and regulations for the Port's activities in (1) Port review of contract documents to ensure that relevant language and information are included in the Port's RFP's, agreements and other relevant documents, (2) Port monitoring of the operations of the contractors, subcontractors and financial assistance recipients to insure compliance including the review, investigation and resolution of specific concerns or complaints about the employment practices of a PAB relative to this section, and (3) provision by the Port of notice and hearing as to alleged violations of this section.

(9) Private Rights of Action.

(A) Any person claiming a violation of this Section may bring an action against the PAB in the Municipal Court or Superior Court of the State of California, as appropriate, to enforce the provisions of this Section and shall be entitled to all remedies available to remedy any violation of this Section, including but not limited to back pay, reinstatement or injunctive relief. Violations of this Section are declared to irreparably harm the public and covered employees generally.

(B) Any employee proving a violation of this Section shall recover from the PAB treble his or her lost normal daily compensation and fringe benefits, together with interest thereon, and any consequential damages suffered by the employee.

(C) The Court shall award reasonable attorney's fees, witness fees and costs to any plaintiff who prevails in an action to enforce this Section.

(D) No criminal penalties shall attach for any violation of this Section, nor shall this Section give rise to any cause of action for damages against the Port or the City.

(E) No remedy set forth in this Section is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any rights hereunder in a court of law. This Section shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination.

(10) Severability. If any provision or application of this Section is declared illegal, invalid or inoperative, in whole or in part, by any court of competent jurisdiction, the remaining provisions and portions thereof and applications not declared illegal, invalid or inoperative shall remain in full force or effect. The courts are hereby authorized to reform the provisions of this Section in order to preserve the maximum permissible effect of each subsection herein. Nothing herein may be construed to impair any contractual obligations of the Port. This Section shall not be applied to the extent it will cause the loss of any federal or state funding of Port activities.

(Amended by: Stats. March 2002 and March 2004)

RFP Attachment

Schedule N—Declaration of Compliance, Living Wage Ordinance

Office of the City Manager - Contract Compliance and Employment Services

DECLARATION OF COMPLIANCE - LIVING WAGE ORDINANCE

The Oakland Living Wage Ordinance (the "Ordinance"). Codified as Oakland Municipal Code provides that certain employers under contracts for the furnishing of services to or for the City that involve an expenditure equal to or greater than $25,000 and certain recipients of City financial assistance that involve receipt of financial assistance equal to or greater than $100,000 shall pay a prescribed minimum level of compensation to their employees for the time their employees work on City of Oakland contracts. The Redevelopment Agency of the City of Oakland adopted the City's Living Wage policy as its own policy Agency Resolution No. 98-13 C.M.S.

The contractor or city financial assistance recipient (CFAR) further agrees:

To pay employees a wage no less than the minimum initial compensation of $9.58 per hour with health benefits, as described in Section 3-C "Health Benefits" of the Ordinance, or otherwise $11.02 per hour, and to provide for the annual increase pursuant to Section 3-A 'Wages" of the Ordinance. **(Effective July 1, 2004 the new rates will be $9.66 per hour with health and $11.11 per hour without.)**

(a) To provide at least twelve compensated days off per year for sick leave, vacation or personal necessity at the employees request, and, at least ten additional days per year of uncompensated time off pursuant to Section 3- B "Compensated Days Off" of the Ordinance.

(b) To inform employees making less than $12 per hour of their possible right to the federal Earned Income Credit (EIC) and make available the forms required to secure advance EIC payments from the employer pursuant to Section 5 "Notifying Employees of their Potential Right to the Federal Earned Income Credit" of the Ordinance.

(c) To permit access to work sites for authorized City representatives to review the operation, payroll and related documents, and to provide certified copies of the relevant records upon request by the City; and

(d) Not to retaliate against any employee claiming non-compliance with the provisions of this Ordinance and to comply with federal law prohibiting retaliation for union organizing.

The undersigned authorized representative hereby obligates the proposer to the above stated conditions under penalty of perjury.

Company Name	Signature of Authorized Representative
Address	Type or Print Name
Area Code / Phone	Date / Type or Print Title

SCHEDULE N

OAKLAND
Growing for the 150 Years

SCHEDULE N
DECLARATION OF COMPLIANCE – LIVING WAGE ORDINANCE

(For use by all city agencies and departments for procurement, and professional services contracts)

To be completed by the prime and subconsultants (including CFARs)

The Oakland Living Wage Ordinance (the "Ordinance"). Codified as Oakland Municipal Code provides that certain employers under contracts for the furnishing of services to or for the City that involve an expenditure equal to or greater than $25,000 and certain recipients of City financial assistance that involve receipt of financial assistance equal to or greater than $100,000 shall pay a prescribed minimum level of compensation to their employees for the time their employees work on City of Oakland contracts. The Redevelopment Agency of the City of Oakland adopted the City's Living Wage policy as its own policy Agency Resolution No. 98-13 C.M.S.

The contractor or city financial assistance recipient (CFAR) further agrees:

To pay employees a wage no less than the minimum initial compensation of $9.90 per hour with health benefits, as described in Section 3-C "Health Benefits" of the Ordinance, or otherwise $11.39 per hour, and to provide for the annual increase pursuant to Section 3-A 'Wages" of the Ordinance. **Effective July 1, 2006 the new rates will be $10.07 per hour with health and $11.58 without.**

(a) To provide at least twelve compensated days off per year for sick leave, vacation or personal necessity at the employees request, and, at least ten additional days per year of uncompensated time off pursuant to Section 3- B "Compensated Days Off" of the Ordinance.

(b) To inform employees that he or she may be eligible for Earned Income Credit (EIC) and shall provide forms to apply for advance EIC payments to eligible employees. There are several websites and other sources available to assist you. Web sites include but are not limited to: (1) http://www.irs.gov. for current guidelines as prescribed by the Internal Revenue Service and (2) the 2005 Earned Income Tax Outreach Kit www.cbpp.or/eic/2005.

(c) To permit access to work sites for authorized City representatives to review the operation, payroll and related documents, and to provide certified copies of the relevant records upon request by the City; and

(d) Not to retaliate against any employee claiming non-compliance with the provisions of this Ordinance and to comply with federal law prohibiting retaliation for union organizing.

The undersigned authorized representative hereby obligates the proposer to the above stated conditions under penalty of perjury.

Company Name	Signature of Authorized Representative
Address	Type or Print Name
Area Code / Phone / Date	Type or Print Title

OAKLAND

SCHEDULE N
DECLARATION OF COMPLIANCE – LIVING WAGE ORDINANCE

(For use by all city agencies and departments for procurement, and professional services contracts)
To be completed by the prime and subconsultants (including CFARs)

The Oakland Living Wage Ordinance (the "Ordinance"). Codified as Oakland Municipal Code provides that certain employers under contracts for the furnishing of services to or for the City that involve an expenditure equal to or greater than $25,000 and certain recipients of City financial assistance that involve receipt of financial assistance equal to or greater than $100,000 shall pay a prescribed minimum level of compensation to their employees for the time their employees work on City of Oakland contracts. The Redevelopment Agency of the City of Oakland adopted the City's Living Wage policy as its own policy Agency Resolution No. 98-13 C.M.S.

The contractor or city financial assistance recipient (CFAR) further agrees:

To pay employees a wage no less than the minimum initial compensation of $10.39 per hour with health benefits, as described in Section 3-C "Health Benefits" of the Ordinance, or otherwise $11.95 per hour, and to provide for the annual increase pursuant to Section 3-A "Wages" of the Ordinance. **Effective July 1, 2008 the LWO rates will be $10.83 with health benefits and $12.45 without health benefits.**

(a) To provide at least twelve compensated days off per year for sick leave, vacation or personal necessity at the employees request, and, at least ten additional days per year of uncompensated time off pursuant to Section 3- B "Compensated Days Off" of the Ordinance.

(b) Health benefits –Said full-time and part-time employees paid at the lower living wage rate shall be provided health benefits of at least $1.56 per hour. Contractor shall provide proof that health benefits are in effect for those employees no later than 30 days after execution of the contract or receipt of City financial assistance. **Effective July 1, 2008, health benefits of at least $1.62 per hour shall be paid to employees receiving the lower living wage rate of $10.83.**

(b) To inform employees that he or she may be eligible for Earned Income Credit (EIC) and shall provide forms to apply for advance EIC payments to eligible employees. There are several websites and other sources available to assist you. Web sites include but are not limited to: (1) http://www.irs.gov. for current guidelines as prescribed by the Internal Revenue Service and (2) the 2007 Earned Income Tax Outreach Kit http://www.cbpp.org/eic2008/

(d) To permit access to work sites for authorized City representatives to review the operation, payroll and related documents, and to provide certified copies of the relevant records upon request by the City; and

(e) Not to retaliate against any employee claiming non-compliance with the provisions of this Ordinance and to comply with federal law prohibiting retaliation for union organizing.

The undersigned authorized representative hereby obligates the proposer to the above stated conditions under penalty of perjury.

Company Name	Signature of Authorized Representative
Address	Type or Print Name
Area Code / Phone / Date	Type or Print Title

Exhibit B

Exhibit B

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Godfrey Plaintiff/Petitioner(s) VS. **AB Trucking, Inc.** Defendant/Respondent(s) **(Abbreviated Title)**	**No. RG08379099** **Minutes**

Department 20 Honorable Robert B. Freedman , Judge

Cause called for Motion: June 25, 2010.

The Motion of plaintiffs Lavon Godfrey and Gary Gilbert, on behalf of themselves and all others similarly situated ("Plaintiffs") for Class Certification ("Motion") is CONTINUED for further briefing. While the Court finds the Motion to be deficient in many respects, it is inclined to conclude that this action is a potentially suitable vehicle for the litigation of some claims on a class-wide basis. Before this inclination can evolve to a class certification order, however, significant additional work is called for.

Plaintiffs allege in their operative complaint (First Amended Complaint, filed on January 23, 2009, "Complaint") that they were formerly employed as truck drivers by defendant Oakland Port Services Corp. dba AB Trucking ("Defendant"). The Complaint contains causes of action for (1) Violations of Business & Professions Code sections 17200, et seq. ("UCL"), (2) Violation of Labor Code section 1194 and 1182.12 and IWC Wage Order No. 9, Section 4 [Failure to Pay for Each Hour Worked], (3) Violation of the Oakland Living Wage Ordinance, (4) Violations of Labor Code sections 226.7 & 512 and IWC Wage Order 9 [Meal & Rest Periods], (5) Violations of Labor Code sections 201, 202 & 203 [payment of wages after discharge], and (6) Violation of Labor Code section 226 [Payroll Stubs].

The Court notes at the outset that Plaintiffs do not address their 5th and 6th causes of action at all in the Motion. The Court will expect Plaintiffs to explain whether these claims are being abandoned, and if so, why. If they are not being abandoned, Plaintiffs must clearly articulate how they fit into the class claims sought to be certified.

According to their Notice of Motion, Plaintiffs seek certification "that this action is maintainable as a class action." They have not, however, offered an overall definition of the proposed class. Instead, Plaintiffs move directly to the enumeration of 5 so-called "subclasses," none of which are adequately defined. For example, all of the proposed subclasses utilize the language "[a]ll drivers employed by Defendant" with no attempt to define the term "driver." None of the proposed subclass definitions include any specific temporal limitations, apart from generic "during the statutory period" language. In a footnote in their supporting memorandum of points and authorities, Plaintiffs state that "[t]he 'statutory period' is March 2, 2004 through the present." For reasons that should be obvious, however, use of the term "the present" is insufficient for these purposes. In sum, Plaintiffs must present a proposed class definition and proposed sub-class definitions that are clear and concise.

Defendant's argument that the two named plaintiffs lack standing to seek injunctive relief because they are not still working for Defendant is not well taken. Nor is the Court persuaded that the named plaintiffs are not suitable class representatives on the basis of their legal backgrounds. The Court is troubled, however, by the paucity of evidence regarding the work history of either of the named Plaintiffs with Defendant, and specifically with the lack of a declaration from either of them. Indeed, the record is less than clear as to whether Gary Gilbert ever advanced to a paid position with Defendant.

Commonality is determined with reference to the claims asserted. (Hicks v. Kaufman and Broad Home Corp. (2001) 89 Cal.App.4th 908, 916, fn.22.) Accordingly, before the Court can assess this factor critical to the class certification analysis, Plaintiffs must clearly articulate their theories of recovery for the

claims of each subclass. They have not done so with respect to their proposed "misclassified employee class." To begin with, it is not clear what "misclassified" means in this context. Does it mean misclassified as "trainee" rather than "employee", or something else?

Furthermore, Plaintiffs' evidentiary presentation in support of this proposed subclass (aka the "No Wages Received Class") includes a one line excerpt from the deposition of Gary Gilbert, the proposed representative of this subclass, as well as excerpts from Bill Aboudi's deposition regarding "unpaid trainees." Also included, but not discussed, is a copy of a document that was an exhibit to the Gilbert deposition entitled "Oakland Port Services Corporation Truck Driver Training Program Trainee Participation and Release of Liability Agreement." It is not clear to the Court whether Plaintiffs are asserting that this document, which purports to confirm the understood absence of an "employment relationship" is ineffective because it conflicts with otherwise applicable statutory authority and/or IWC Wage Order No. 9(4), or something else.

Plaintiffs' request for judicial notice of the Oakland Living Wage Ordinance, IWC Wage Order 9, Article VII of The Charter of the City of Oakland and Schedule N Declarations of Compliance will be GRANTED. However, the only evidence submitted by Plaintiffs on the issue of whether the Oakland Living Wage Ordinance applies to Defendant is the statement by Bill Aboudi in his deposition that Defendant operates a facility on City property. This cannot be considered "substantial" evidence on this issue for purposes of class certification. Accordingly, unless Plaintiffs are able to present further evidence on this issue, the proposed "Living Wage Class" should be withdrawn from the Motion.

Nor have Plaintiffs articulated what the difference between the meal and rest break subclass and the "not paid for all hours worked" subclass is. In the Court's view, the evidentiary record is adequate to support certification of a meal and rest break subclass, in light of the record testimony of Bill Aboudi and Jovi Aboudi regarding Defendant's time recording policies. Defendant's opposition arguments on this issue go to the merits of the underlying claims, rather than to whether certification is appropriate. Likewise, the evidence in the record is adequate to support certification of an Overtime Class. However, clear subclass definitions are critical.

In sum, Plaintiffs are directed to, essentially, start over. Claims must be clearly articulated, class and subclasses clearly defined, and the evidentiary record supporting each claim clearly identified. Plaintiffs' supplementary presentation shall be filed and served no later than July 19, 2010. Defendant's opposition thereto shall be filed and served no later than August 11, 2010. Defendant is advised to focus its opposition on whether Plaintiffs' claims are suitable for class treatment, as opposed to whether they will ultimately prevail. Plaintiff's reply shall be filed and served no later than August 16, 2010.

The hearing is CONTINUED to August 20, 2010 at 10:00 a.m. in Department 20.

The parties are advised that the Case Management Conference scheduled for June 25, 2010 will also be CONTINUED to August 20, 2010 at 10:00 a.m. in Department 20. Accordingly, no appearances are required on June 25, 2010.

Minutes of 06/25/2010
Entered on 06/25/2010

Executive Officer / Clerk of the Superior Court

By digital _____
Deputy Clerk

Exhibit C

Exhibit C

AMENDMENTS

1974—Subsec. (a). Pub. L. 93–259 inserted finding of Congress that employment of persons in domestic service in households affects commerce.

1949—Subsec. (b). Act Oct. 26, 1949, inserted reference to regulation of commerce with foreign nations.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 29(a) of Pub. L. 93–259 provided that: "Except as otherwise specifically provided, the amendments made by this Act [see Short Title of 1974 Amendment note set out under section 201 of this title] shall take effect on May 1, 1974."

EFFECTIVE DATE OF 1949 AMENDMENT

Section 16(a) of act Oct. 26, 1949, provided that: "The amendments made by this Act [enacting section 216b of this title, amending this section and sections 203 to 208, 211 to 216, and 217 of this title, and repealing section 216a of this title] shall take effect upon the expiration of ninety days from the date of its enactment [Oct. 26, 1947]; except that the amendment made by section 4 [amending section 204 of this title] shall take effect on the date of its enactment [Oct. 26, 1949]."

RULES, REGULATIONS, AND ORDERS WITH REGARD TO FAIR LABOR STANDARDS AMENDMENTS OF 1974

Section 29(b) of Pub. L. 93–259 provided that: "Notwithstanding subsection (a) [set out as an Effective Date of 1974 Amendment note above], on and after the date of the enactment of this Act [Apr. 8, 1974] the Secretary of Labor is authorized to prescribe necessary rules, regulations, and orders with regard to the amendments made by this Act [see Short Title of 1974 Amendment note set out under section 201 of this title]."

§ 203. Definitions

As used in this chapter—

(a) "Person" means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.

(b) "Commerce" means trade, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.

(c) "State" means any State of the United States or the District of Columbia or any Territory or possession of the United States.

(d) "Employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization.

(e)(1) Except as provided in paragraphs (2), (3), and (4), the term "employee" means any individual employed by an employer.

(2) In the case of an individual employed by a public agency, such term means—

(A) any individual employed by the Government of the United States—

(i) as a civilian in the military departments (as defined in section 102 of title 5),

(ii) in any executive agency (as defined in section 105 of such title),

(iii) in any unit of the judicial branch of the Government which has positions in the competitive service,

(iv) in a nonappropriated fund instrumentality under the jurisdiction of the Armed Forces,

(v) in the Library of Congress, or

(vi) the[1] Government Printing Office;

(B) any individual employed by the United States Postal Service or the Postal Regulatory Commission; and

(C) any individual employed by a State, political subdivision of a State, or an interstate governmental agency, other than such an individual—

(i) who is not subject to the civil service laws of the State, political subdivision, or agency which employs him; and

(ii) who—

(I) holds a public elective office of that State, political subdivision, or agency,

(II) is selected by the holder of such an office to be a member of his personal staff,

(III) is appointed by such an officeholder to serve on a policymaking level,

(IV) is an immediate adviser to such an officeholder with respect to the constitutional or legal powers of his office, or

(V) is an employee in the legislative branch or legislative body of that State, political subdivision, or agency and is not employed by the legislative library of such State, political subdivision, or agency.

(3) For purposes of subsection (u) of this section, such term does not include any individual employed by an employer engaged in agriculture if such individual is the parent, spouse, child, or other member of the employer's immediate family.

(4)(A) The term "employee" does not include any individual who volunteers to perform services for a public agency which is a State, a political subdivision of a State, or an interstate governmental agency, if—

(i) the individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered; and

(ii) such services are not the same type of services which the individual is employed to perform for such public agency.

(B) An employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency may volunteer to perform services for any other State, political subdivision, or interstate governmental agency, including a State, political subdivision or agency with which the employing State, political subdivision, or agency has a mutual aid agreement.

(5) The term "employee" does not include individuals who volunteer their services solely for humanitarian purposes to private non-profit food banks and who receive from the food banks groceries.

(f) "Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 1141j(g)[2] of title 12), the raising of livestock, bees, fur-bearing

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[1] So in original. Probably should be preceded by "in".

[2] See References in Text note below.

animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

(g) "Employ" includes to suffer or permit to work.

(h) "Industry" means a trade, business, industry, or other activity, or branch or group thereof, in which individuals are gainfully employed.

(i) "Goods" means goods (including ships and marine equipment), wares, products, commodities, merchandise, or articles or subjects of commerce of any character, or any part or ingredient thereof, but does not include goods after their delivery into the actual physical possession of the ultimate consumer thereof other than a producer, manufacturer, or processor thereof.

(j) "Produced" means produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purposes of this chapter an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any closely related process or occupation directly essential to the production thereof, in any State.

(k) "Sale" or "sell" includes any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition.

(*l*) "Oppressive child labor" means a condition of employment under which (1) any employee under the age of sixteen years is employed by an employer (other than a parent or a person standing in place of a parent employing his own child or a child in his custody under the age of sixteen years in an occupation other than manufacturing or mining or an occupation found by the Secretary of Labor to be particularly hazardous for the employment of children between the ages of sixteen and eighteen years or detrimental to their health or well-being) in any occupation, or (2) any employee between the ages of sixteen and eighteen years is employed by an employer in any occupation which the Secretary of Labor shall find and by order declare to be particularly hazardous for the employment of children between such ages or detrimental to their health or well-being; but oppressive child labor shall not be deemed to exist by virtue of the employment in any occupation of any person with respect to whom the employer shall have on file an unexpired certificate issued and held pursuant to regulations of the Secretary of Labor certifying that such person is above the oppressive child-labor age. The Secretary of Labor shall provide by regulation or by order that the employment of employees between the ages of fourteen and sixteen years in occupations other than manufacturing and mining shall not be deemed to constitute oppressive child labor if and to the extent that the Secretary of Labor determines that such employment is confined to periods which will not interfere with their schooling and to conditions which will not interfere with their health and well-being.

(m) "Wage" paid to any employee includes the reasonable cost, as determined by the Administrator, to the employer of furnishing such employee with board, lodging, or other facilities, if such board, lodging or other facilities are customarily furnished by such employer to his employees: *Provided*, That the cost of board, lodging, or other facilities shall not be included as a part of the wage paid to any employee to the extent it is excluded therefrom under the terms of a bona fide collective-bargaining agreement applicable to the particular employee: *Provided further*, That the Secretary is authorized to determine the fair value of such board, lodging, or other facilities for defined classes of employees and in defined areas, based on average cost to the employer or to groups of employers similarly situated, or average value to groups of employees, or other appropriate measures of fair value. Such evaluations, where applicable and pertinent, shall be used in lieu of actual measure of cost in determining the wage paid to any employee. In determining the wage an employer is required to pay a tipped employee, the amount paid such employee by the employee's employer shall be an amount equal to—

(1) the cash wage paid such employee which for purposes of such determination shall be not less than the cash wage required to be paid such an employee on August 20, 1996; and

(2) an additional amount on account of the tips received by such employee which amount is equal to the difference between the wage specified in paragraph (1) and the wage in effect under section 206(a)(1) of this title.

The additional amount on account of tips may not exceed the value of the tips actually received by an employee. The preceding 2 sentences shall not apply with respect to any tipped employee unless such employee has been informed by the employer of the provisions of this subsection, and all tips received by such employee have been retained by the employee, except that this subsection shall not be construed to prohibit the pooling of tips among employees who customarily and regularly receive tips.

(n) "Resale" shall not include the sale of goods to be used in residential or farm building construction, repair, or maintenance: *Provided*, That the sale is recognized as a bona fide retail sale in the industry.

(*o*) Hours Worked.—In determining for the purposes of sections 206 and 207 of this title the hours for which an employee is employed, there shall be excluded any time spent in changing clothes or washing at the beginning or end of each workday which was excluded from measured working time during the week involved by the express terms of or by custom or practice under a bona fide collective-bargaining agreement applicable to the particular employee.

(p) "American vessel" includes any vessel which is documented or numbered under the laws of the United States.

(q) "Secretary" means the Secretary of Labor.

(r)(1) "Enterprise" means the related activities performed (either through unified operation or common control) by any person or persons for a common business purpose, and includes all such activities whether performed in one or more establishments or by one or more cor-

porate or other organizational units including departments of an establishment operated through leasing arrangements, but shall not include the related activities performed for such enterprise by an independent contractor. Within the meaning of this subsection, a retail or service establishment which is under independent ownership shall not be deemed to be so operated or controlled as to be other than a separate and distinct enterprise by reason of any arrangement, which includes, but is not necessarily limited to, an agreement, (A) that it will sell, or sell only, certain goods specified by a particular manufacturer, distributor, or advertiser, or (B) that it will join with other such establishments in the same industry for the purpose of collective purchasing, or (C) that it will have the exclusive right to sell the goods or use the brand name of a manufacturer, distributor, or advertiser within a specified area, or by reason of the fact that it occupies premises leased to it by a person who also leases premises to other retail or service establishments.

(2) For purposes of paragraph (1), the activities performed by any person or persons—

(A) in connection with the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted children, a preschool, elementary or secondary school, or an institution of higher education (regardless of whether or not such hospital, institution, or school is operated for profit or not for profit), or

(B) in connection with the operation of a street, suburban or interurban electric railway, or local trolley or motorbus carrier, if the rates and services of such railway or carrier are subject to regulation by a State or local agency (regardless of whether or not such railway or carrier is public or private or operated for profit or not for profit), or

(C) in connection with the activities of a public agency,

shall be deemed to be activities performed for a business purpose.

(s)(1) "Enterprise engaged in commerce or in the production of goods for commerce" means an enterprise that—

(A)(i) has employees engaged in commerce or in the production of goods for commerce, or that has employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person; and

(ii) is an enterprise whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level that are separately stated);

(B) is engaged in the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted children, a preschool, elementary or secondary school, or an institution of higher education (regardless of whether or not such hospital, institution, or school is public or private or operated for profit or not for profit); or

(C) is an activity of a public agency.

(2) Any establishment that has as its only regular employees the owner thereof or the parent, spouse, child, or other member of the immediate family of such owner shall not be considered to be an enterprise engaged in commerce or in the production of goods for commerce or a part of such an enterprise. The sales of such an establishment shall not be included for the purpose of determining the annual gross volume of sales of any enterprise for the purpose of this subsection.

(t) "Tipped employee" means any employee engaged in an occupation in which he customarily and regularly receives more than $30 a month in tips.

(u) "Man-day" means any day during which an employee performs any agricultural labor for not less than one hour.

(v) "Elementary school" means a day or residential school which provides elementary education, as determined under State law.

(w) "Secondary school" means a day or residential school which provides secondary education, as determined under State law.

(x) "Public agency" means the Government of the United States; the government of a State or political subdivision thereof; any agency of the United States (including the United States Postal Service and Postal Regulatory Commission), a State, or a political subdivision of a State; or any interstate governmental agency.

(y) "Employee in fire protection activities" means an employee, including a firefighter, paramedic, emergency medical technician, rescue worker, ambulance personnel, or hazardous materials worker, who—

(1) is trained in fire suppression, has the legal authority and responsibility to engage in fire suppression, and is employed by a fire department of a municipality, county, fire district, or State; and

(2) is engaged in the prevention, control, and extinguishment of fires or response to emergency situations where life, property, or the environment is at risk.

(June 25, 1938, ch. 676, §3, 52 Stat. 1060; 1946 Reorg. Plan No. 2, §1(b), eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Oct. 26, 1949, ch. 736, §3, 63 Stat. 911; Pub. L. 87–30, §2, May 5, 1961, 75 Stat. 65; Pub. L. 89–601, title I, §§101–103, title II, §215(a), Sept. 23, 1966, 80 Stat. 830–832, 837; Pub. L. 92–318, title IX, §906(b)(2), (3), June 23, 1972, 86 Stat. 375; Pub. L. 93–259, §§6(a), 13(e), Apr. 8, 1974, 88 Stat. 58, 64; Pub. L. 95–151, §§3(a), (b), 9(a)–(c), Nov. 1, 1977, 91 Stat. 1249, 1251; Pub. L. 99–150, §§4(a), 5, Nov. 13, 1985, 99 Stat. 790; Pub. L. 101–157, §§3(a), (d), 5, Nov. 17, 1989, 103 Stat. 938, 939, 941; Pub. L. 104–1, title II, §203(d), Jan. 23, 1995, 109 Stat. 10; Pub. L. 104–188, [title II], §2105(b), Aug. 20, 1996, 110 Stat. 1929; Pub. L. 105–221, §2, Aug. 7, 1998, 112 Stat. 1248; Pub. L. 106–151, §1, Dec. 9, 1999, 113 Stat. 1731; Pub. L. 109–435, title VI, §604(f), Dec. 20, 2006, 120 Stat. 3242.)

REFERENCES IN TEXT

Section 1141j(g) of title 12, referred to in subsec. (f), was redesignated section 1141j(f) by Pub. L. 110–246, title I, §1610, June 18, 2008, 122 Stat. 1746.

AMENDMENTS

2006—Subsecs. (e)(2)(B), (x). Pub. L. 109–435 substituted "Postal Regulatory Commission" for "Postal Rate Commission".

1999—Subsec. (y). Pub. L. 106–151 added subsec. (y).

1998—Subsec. (e)(5). Pub. L. 105–221 added par. (5).

1996—Subsec. (m). Pub. L. 104–188 inserted "In determining the wage an employer is required to pay a tipped employee, the amount paid such employee by the employee's employer shall be an amount equal to—

"(1) the cash wage paid such employee which for purposes of such determination shall be not less than the cash wage required to be paid such an employee on August 20, 1996; and

"(2) an additional amount on account of the tips received by such employee which amount is equal to the difference between the wage specified in paragraph (1) and the wage in effect under section 206(a)(1) of this title.

The additional amount on account of tips may not exceed the value of the tips actually received by an employee.", and struck out former penultimate sentence which read as follows: "In determining the wage of a tipped employee, the amount paid such employee by his employer shall be deemed to be increased on account of tips by an amount determined by the employer, but not by an amount in excess of (1) 45 percent of the applicable minimum wage rate during the year beginning April 1, 1990, and (2) 50 percent of the applicable minimum wage rate after March 31, 1991, except that the amount of the increase on account of tips determined by the employer may not exceed the value of tips actually received by the employee."

Pub. L. 104–188 in last sentence substituted "preceding 2 sentences" for "previous sentence" and struck out "(1)" after "employee unless" and "(2)" after "subsection, and".

1995—Subsec. (e)(2)(A). Pub. L. 104–1 struck out "legislative or" before "judicial branch" in cl. (iii) and added cl. (vi).

1989—Subsec. (m). Pub. L. 101–157, §5, substituted "in excess of (1) 45 percent of the applicable minimum wage rate during the year beginning April 1, 1990, and (2) 50 percent of the applicable minimum wage rate after March 31, 1991," for "in excess of 40 per centum of the applicable minimum wage rate,".

Subsec. (r). Pub. L. 101–157, §3(d), designated first sentence as par. (1), made a separate sentence out of the existing proviso and redesignated cls. (1), (2), and (3) as (A), (B), and (C), respectively, designated second sentence as par. (2), in par. (2) as so designated, redesignated existing pars. (1), (2), and (3) as subpars. (A), (B), and (C), respectively, and, in subpar. (A) as so redesignated, substituted "school is operated" for "school is public or private or operated".

Subsec. (s). Pub. L. 101–157, §3(a), amended subsec. (s) generally, completely revising definition of "enterprise engaged in commerce or in the production of goods for commerce".

1985—Subsec. (e)(1). Pub. L. 99–150, §4(a)(1), substituted "paragraphs (2), (3), and (4)" for "paragraphs (2) and (3)".

Subsec. (e)(2)(C)(ii). Pub. L. 99–150, §5, struck out "or" at end of subcl. (III), struck out "who" in subcl. (IV) before "is an", substituted ", or" for period at end of subcl. (IV), and added subcl. (V).

Subsec. (e)(4). Pub. L. 99–150, §4(a)(2), added par. (4).

1977—Subsec. (m). Pub. L. 95–151, §3(b), substituted "45 per centum" for "50 per centum", effective Jan. 1, 1979, and "40 per centum" for "45 per centum", effective Jan. 1, 1980.

Subsec. (s). Pub. L. 95–151, §9(a)–(c), in par. (1) inserted exception for enterprises comprised exclusively of retail or service establishments and described in par. (2), added par. (2), redesignated former pars. (2) to (5) as (3) to (6), respectively, and in text following par. (6), as so redesignated, inserted provisions relating to coverage of retail or service establishments subject to section 206(a)(1) of this title on June 30, 1978, and provisions relating to violations of such coverage requirements.

Subsec. (t). Pub. L. 95–151, §3(a), substituted "$30" for "$20".

1974—Subsec. (d). Pub. L. 93–259, §6(a)(1), redefined "employer" to include a public agency and struck out text which excluded from such term the United States or any State or political subdivision of a State (except with respect to employees of a State, or a political subdivision thereof, employed (1) in a hospital, institution, or school referred to in last sentence of subsec. (r) of this section, or (2) in the operation of a railway or carrier referred to in such sentence).

Subsec. (e). Pub. L. 93–259, §6(a)(2), in revising definition of "employee", incorporated existing introductory text in provisions designated as par. (1), inserting exception provision; added par. (2); incorporated existing cl. (1) in provisions designated as par. (3); and struck out former cl. (2) excepting from "employee", "any individual who is employed by an employer engaged in agriculture if such individual (A) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (B) commutes daily from his permanent residence to the farm on which he is so employed, and (C) has been engaged in agriculture less than thirteen weeks during the preceding calendar year".

Subsec. (h). Pub. L. 93–259, §6(a)(3), substituted "other activity, or branch or group thereof" for "branch thereof, or group of industries".

Subsec. (m). Pub. L. 93–259, §13(e), substituted in provision respecting wage of tipped employee "the amount of the increase on account of tips determined by the employer may not exceed the value of tips actually received by the employee" for "in the case of an employee who (either himself or acting through his representative) shows to the satisfaction of the Secretary that the actual amount of tips received by him was less than the amount determined by the employer as the amount by which the wage paid him was deemed to be increased under this sentence, the amount paid such employee by his employer shall be deemed to have been increased by such lesser amount" and inserted "The previous sentence shall not apply with respect to any tipped employee unless (1) such employee has been informed by the employer of the provisions of this subsection, and (2) all tips received by such employee have been retained by the employee, except that this subsection shall not be construed to prohibit the pooling of tips among employees who customarily and regularly receive tips."

Subsec. (r)(3). Pub. L. 93–259, §6(a)(4), added par. (3).

Subsec. (s). Pub. L. 93–259, §6(a)(5), in first sentence substituted preceding par. (1) "or employees handling, selling, or otherwise working on goods or materials" for "including employees handling, selling, or otherwise working on goods" and added par. (5), and inserted third sentence deeming employees of an enterprise which is a public agency to be employees engaged in commerce, or in production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce.

Subsec. (x). Pub. L. 93–259, §6(a)(6), added subsec. (x).

1972—Subsecs. (r)(1), (s)(4). Pub. L. 92–318, §906(b)(2), (3), inserted reference to a preschool.

1966—Subsec. (d). Pub. L. 89–601, §102(b), expanded definition of employer to include a State or a political subdivision thereof with respect to employees in a hospital, institution, or school referred to in last sentence of subsec. (r) of this section, or in the operation of a railway or carrier referred to in such sentence.

Subsec. (e). Pub. L. 89–601, §103(a), excluded from definition of "employee," when that term is used in definition of "man-day," any agricultural employee who is the parent, spouse, child, or other member of his employer's immediate family and any agricultural hand harvest laborer, paid on a piece rate basis, who com-

mutes daily from his permanent residence to the farm on which he is so employed, and who has been employed in agriculture less than 13 weeks during the preceding calendar year.

Subsec. (m). Pub. L. 89–601, § 101(a), inserted provisions for determining the wage of a tipped employee.

Subsec. (n). Pub. L. 89–601, § 215(a), struck out provision which directed that definition of "resale" was not applicable when "resale" was used in subsection (s)(1) of this section.

Subsec. (r). Pub. L. 89–601, § 102(a), extended activities performed for a business purpose to include activities in the operation of hospitals, institutions for the sick, aged, or mentally ill or defective, schools for the handicapped, elementary and secondary schools, institutions of higher learning; or street, suburban, or interurban electric railway or local trolley or motorbus carriers if subject to regulation by a State or local agency regardless of whether public or private or whether operated for profit or not for profit.

Subsec. (s). Pub. L. 89–601, § 102(c), removed gross annual business level tests of $1,000,000 for retail and service enterprises, street, suburban, or interurban electric railways or local trolley or motorbus carriers, and brought within the coverage of the gross annual business test all enterprises having employees engaged in commerce in the production of goods for commerce, including employees handling, selling, or otherwise working on goods that have been moved in or produced for commerce, lowered the minimum gross annual volume test for covered enterprises from $1,000,000 to $500,000 for the period from Feb. 1, 1967, through Jan. 31, 1969, and to $250,000 for the period after Jan. 31, 1969, retained the $250,000 annual gross volume test for coverage of gasoline service establishments, and expanded coverage to include laundering or cleaning services, construction or reconstruction activities, or operation of hospitals, certain institutions for the care of the sick, aged, or mentally ill, certain special schools, and institutions of higher learning regardless of annual gross volume.

Subsec. (t). Pub. L. 89–601, § 101(b), added subsec. (t).

Subsec. (u). Pub. L. 89–601, § 103(b), added subsec. (u).

Subsecs. (v), (w). Pub. L. 89–601, § 102(d), added subsecs. (v) and (w).

1961—Subsec. (m). Pub. L. 87–30, § 2(a), provided for exclusion from wages under a collective-bargaining agreement the cost of board, lodging, or other facilities and authorized the Secretary to determine the fair value of board, lodging, or other facilities for defined classes of employees in defined areas to be used in lieu of actual cost.

Subsec. (n). Pub. L. 87–30, § 2(b), inserted ", except as used in subsection (s)(1) of this section,".

Subsecs. (p) to (s). Pub. L. 87–30, § 2(c), added subsecs. (p) to (s).

1949—Subsec. (b). Act Oct. 26, 1949, § 3(a), substituted "between" for "from" after "States or", and "and" for "to" before "any place".

Subsec. (j). Act Oct. 26, 1949, § 3(b), inserted "closely related" before "process" and substituted "directly essential" for "necessary" after "occupation".

Subsec. (*l*)(1). Act Oct. 26, 1949, § 3(c), included parental employment of a child under 16 years of age in an occupation found by the Secretary of Labor to be hazardous for children between the ages of 16 and 18 years, in definition of oppressive child labor.

Subsecs. (n), (*o*). Act Oct. 26, 1949, § 3(d), added subsecs. (n) and (*o*).

CONSTRUCTION OF 1999 AMENDMENT

Pub. L. 106–151, § 2, Dec. 9, 1999, 113 Stat. 1731, provided that: "The amendment made by section 1 [amending this section] shall not be construed to reduce or substitute for compensation standards: (1) contained in any existing or future agreement or memorandum of understanding reached through collective bargaining by a bona fide representative of employees in accordance with the laws of a State or political subdivision of a State; and (2) which result in compensation greater than the compensation available to employees under the overtime exemption under section 7(k) of the Fair Labor Standards Act of 1938 [29 U.S.C. 207(k)]."

EFFECTIVE DATE OF 1989 AMENDMENT

Section 3(e) of Pub. L. 101–157 provided that: "The amendments made by this section [amending this section and section 213 of this title] shall become effective on April 1, 1990."

Section 5 of Pub. L. 101–157 provided that the amendment made by that section is effective Apr. 1, 1990.

EFFECTIVE DATE OF 1985 AMENDMENT; PROMULGATION OF REGULATIONS

Section 6 of Pub. L. 99–150 provided that: "The amendments made by this Act [amending this section and sections 207 and 211 of this title and enacting provisions set out as notes under this section and sections 201, 207, 215, and 216 of this title] shall take effect April 15, 1986. The Secretary of Labor shall before such date promulgate such regulations as may be required to implement such amendments."

EFFECTIVE DATE OF 1977 AMENDMENT

Section 3(a) of Pub. L. 95–151 provided that the amendment made by that section is effective Jan. 1, 1978.

Section 3(b)(1) of Pub. L. 95–151 provided that the amendment made by that section, reducing the maximum percentage of the minimum wage used in determining tips as wages from 50 to 45 per centum, is effective Jan. 1, 1979.

Section 3(b)(2) of Pub. L. 95–151 provided that the amendment made by that section, reducing the maximum percentage of the minimum wage used in determining tips as wages from 45 to 40 per centum, is effective Jan. 1, 1980.

Section 15(a), (b) of Pub. L. 95–151 provided that:

"(a) Except as provided in sections 3, 14, and subsection (b) of this section, the amendments made by this Act [amending sections 206, 208, 213, and 216 of this title and enacting provisions set out as a note under section 204 of this title] shall take effect January 1, 1978.

"(b) The amendments made by sections 8, 9, 11, 12, and 13 [amending this section and sections 213 and 214 of this title] shall take effect on the date of the enactment of this Act [Nov. 1, 1977]."

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–259 effective May 1, 1974, see section 29(a) of Pub. L. 93–259, set out as a note under section 202 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 602 of Pub. L. 89–601 provided in part that: "Except as otherwise provided in this Act, the amendments made by this Act [amending this section and sections 206, 207, 213, 214, 216, 218, and 255 of this title] shall take effect on February 1, 1967."

EFFECTIVE DATE OF 1961 AMENDMENT

Section 14 of Pub. L. 87–30 provided that: "The amendments made by this Act [amending this section and sections 204 to 208, 212 to 214, 216, and 217 of this title] shall take effect upon the expiration of one hundred and twenty days after the date of its enactment [May 5, 1961], except as otherwise provided in such amendments and except that the authority to promulgate necessary rules, regulations, or orders with regard to amendments made by this Act, under the Fair Labor Standards Act of 1938 and amendments thereto [this chapter], including amendments made by this Act, may be exercised by the Secretary on and after the date of enactment of this Act [May 5, 1961]."

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment by act Oct. 26, 1949, effective ninety days after Oct. 26, 1949, see section 16(a) of act Oct. 26, 1949, set out as a note under section 202 of this title.

TRANSFER OF FUNCTIONS

In subsec. (*l*), "Secretary of Labor" substituted for "Chief of the Children's Bureau in the Department of Labor" and for "Chief of the Children's Bureau" pursuant to Reorg. Plan No. 2 of 1946, §1(b), eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095, set out in the Appendix to Title 5, Government Organization and Employees, which transferred functions of Children's Bureau and its Chief under sections 201 to 216 and 217 to 219 of this title to Secretary of Labor to be performed under his direction and control by such officers and employees of Department of Labor as he designates.

PRESERVATION OF COVERAGE

Section 3(b) of Pub. L. 101–157 provided that:

"(1) IN GENERAL.—Any enterprise that on March 31, 1990, was subject to section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) and that because of the amendment made by subsection (a) [amending this section] is not subject to such section shall—

"(A) pay its employees not less than the minimum wage in effect under such section on March 31, 1990;

"(B) pay its employees in accordance with section 7 of such Act (29 U.S.C. 207); and

"(C) remain subject to section 12 of such Act (29 U.S.C. 212).

"(2) VIOLATIONS.—A violation of paragraph (1) shall be considered a violation of section 6, 7, or 12 of the Fair Labor Standards Act of 1938 [29 U.S.C. 206, 207, 212], as the case may be."

VOLUNTEERS; PROMULGATION OF REGULATIONS

Section 4(b) of Pub. L. 99–150 provided that: "Not later than March 15, 1986, the Secretary of Labor shall issue regulations to carry out paragraph (4) of section 3(e) (as amended by subsection (a) of this section) [29 U.S.C. 203(e)(4)]."

PRACTICE OF PUBLIC AGENCY IN TREATING CERTAIN INDIVIDUALS AS VOLUNTEERS PRIOR TO APRIL 15, 1986; LIABILITY

Section 4(c) of Pub. L. 99–150 provided that: "If, before April 15, 1986, the practice of a public agency was to treat certain individuals as volunteers, such individuals shall until April 15, 1986, be considered, for purposes of the Fair Labor Standards Act of 1938 [this chapter], as volunteers and not as employees. No public agency which is a State, a political subdivision of a State, or an interstate governmental agency shall be liable for a violation of section 6 [29 U.S.C. 206] occurring before April 15, 1986, with respect to services deemed by that agency to have been performed for it by an individual on a voluntary basis."

STATUS OF BAGGERS AT COMMISSARY OF MILITARY DEPARTMENT

Pub. L. 95–485, title VIII, §819, Oct. 20, 1978, 92 Stat. 1626, provided that: "Notwithstanding any other provision of law, an individual who performs bagger or carryout service for patrons of a commissary of a military department may not be considered to be an employee for purposes of the Fair Labor Standards Act of 1938 [this chapter] by virtue of such service if the sole compensation of such individual for such service is derived from tips."

ADMINISTRATIVE ACTION BY SECRETARY OF LABOR WITH REGARD TO IMPLEMENTATION OF FAIR LABOR STANDARDS AMENDMENTS OF 1977

Section 15(c) of Pub. L. 95–151 provided that: "On and after the date of the enactment of this Act [Nov. 1, 1977], the Secretary of Labor shall take such administrative action as may be necessary for the implementation of the amendments made by this Act [See Short Title of 1977 Amendment note set out under section 201 of this title]."

RULES, REGULATIONS, AND ORDERS PROMULGATED WITH REGARD TO 1966 AMENDMENTS

Section 602 of Pub. L. 89–601 provided in part that: "On and after the date of the enactment of this Act [Sept. 23, 1966] the Secretary is authorized to promulgate necessary rules, regulations, or orders with regard to the amendments made by this Act [see Short Title of 1966 Amendment note set out under section 201 of this title]."

§ 204. Administration

(a) Creation of Wage and Hour Division in Department of Labor; Administrator

There is created in the Department of Labor a Wage and Hour Division which shall be under the direction of an Administrator, to be known as the Administrator of the Wage and Hour Division (in this chapter referred to as the "Administrator"). The Administrator shall be appointed by the President, by and with the advice and consent of the Senate.

(b) Appointment, selection, classification, and promotion of employees by Administrator

The Administrator may, subject to the civil-service laws, appoint such employees as he deems necessary to carry out his functions and duties under this chapter and shall fix their compensation in accordance with chapter 51 and subchapter III of chapter 53 of title 5. The Administrator may establish and utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may appear for and represent the Administrator in any litigation, but all such litigation shall be subject to the direction and control of the Attorney General. In the appointment, selection, classification, and promotion of officers and employees of the Administrator, no political test or qualification shall be permitted or given consideration, but all such appointments and promotions shall be given and made on the basis of merit and efficiency.

(c) Principal office of Administrator; jurisdiction

The principal office of the Administrator shall be in the District of Columbia, but he or his duly authorized representative may exercise any or all of his powers in any place.

(d) Biennial report to Congress; studies of exemptions to hour and wage provisions and means to prevent curtailment of employment opportunities

(1) The Secretary shall submit biennially in January a report to the Congress covering his activities for the preceding two years and including such information, data, and recommendations for further legislation in connection with the matters covered by this chapter as he may find advisable. Such report shall contain an evaluation and appraisal by the Secretary of the minimum wages and overtime coverage established by this chapter, together with his recommendations to the Congress. In making such evaluation and appraisal, the Secretary shall take into consideration any changes which may have occurred in the cost of living and in productivity and the level of wages in manufacturing, the ability of employers to absorb wage in-

Exhibit D

Exhibit D

Godfrey, et al. v. AB Trucking Damages Model Explanation

1. General

The class period began March 28, 2004 and ended March 15, 2011, but the payroll and employment records produced by defendant in discovery covered the time only between March 2004 and March 2008. The records from January 2008 to March 2008 had no identification numbers or names associated with the entries. The rest of the records were of limited use because entries were identified by anonymous Employee ID numbers (for example, D-1, D-2, D-3, etc.). Lavon Godfrey's name was used with her information. Additionally, there were 18 drivers who had names associated with Employee ID numbers in the records. These drivers were: TERRELL D COLLINS, IAN G MCCRIGHT, JOSE V ROMERO, DANNY E DANIELS, CHARLIE E EVANS, MAURICE D FAISON, TSEGAI A GEBREMARIAM, RICHARD P HERNANDEZ, TIMOTHY B JACKSON, ERNEST JOHNSON, JIMMY R JOHNSON, AMADOU KROMAH, THANH T LE, JEFFREY K LUPE, JUAN D SHEPPARD, ROBERT SMYTH, RAASAN I WALTON, and FREDERICK M WILLIAMS.

There are 4 alternate versions of the Damages Model based on different combinations of two different variables: wage rate used for unpaid time worked (the employee's regular rate of pay or the minimum wage), and the number of employees for purposes of Oakland Living Wage applicability (5 Oakland Port Scale Workers in addition to the number of employees reported on AB Trucking's payroll or 1 trainee in addition to the number of employees reported on AB Trucking's payroll). The different Oakland Living Wage alternatives result in a different number of periods of applicability of the Oakland Living Wage. With 5 Port Workers, the Oakland Living Wage applies to all stipulated periods except for one pay period (in which the combined number of employees is less than 20). With 1 Trainee, the Oakland Living Wage applies to only 6 pay periods in the stipulated period (in which the combined number of employees is 20 or more). The 4 versions are: A) Regular wages with 5 Oakland Port Scale workers; B) Regular wages with 1 trainee; C) Minimum wage with 5 Oakland Port Scale workers; and D) Minimum wage with 1 trainee.

2. Work Days and Hours

Pay periods were indicated on the payroll records as two week periods beginning on Monday of the first week and ending on Friday of the second week. Pay days were a week after the end of the pay period. The last pay day for an employee is assumed to be the last day of service.

The service time of an employee was generally determined by their service dates. The service dates for drivers were taken from the class list except for Lavon Godfrey, Gary Gilbert, and Tsegai Gebremariam. Godfrey and Gilbert were not included on the class list, and Gebremariam's service dates on the class list were incorrect as the start date was after the end date. Service dates for Godfrey were determined from her declaration, testimony, and employment records. Service dates for Gilbert were taken from his declaration and testimony. Since Gebremariam was a driver whose name was linked to an Employee ID in the timesheets, service dates were approximated based on when the Employee ID appeared. Drivers are generally assumed to have worked without interruption from the start date to the end date. Breaks in service were included for Ernest Johnson, Saga Llewellyn and Gina Williams. Ernest Johnson

was identified in the employment records, and there was a significant period in which his Employee ID did not appear. Saga Llewellyn testified that he had a 70 day break in service. Gina Williams testified that she had a break in service from around September 2007 to March 2010.

Work days are assumed to be 5 days per week unless there was a holiday on a week day. Holidays were generally indicated on New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving and Christmas Day. Drivers are assumed to have worked all work days except Lavon Godfrey, who worked 4 days a week during the time that she was attending school.

Employees are assumed to have worked 9 hours per day except for Gary Gilbert, who worked 8 hours per day.

A 10% reduction is applied to the violations that are based on work time in order to account for time that may have been taken off by drivers outside of holidays. The reduction is equivalent to a little more than 25 days per year, or approximately 2 days per month or 4 half days per month.

3. Wage Rates

The wage rates for drivers who could be identified were used for those drivers. A general approach was applied to the remaining drivers. Additionally, if an identified driver worked beyond the time period covered by the records, the general approach was applied to the rest of the driver's service time.

Drivers are assumed to have been paid $11 per hour at the start of employment, with a $1 raise every six months. Drivers who had service time starting the year before the beginning of the class period are assumed to have been making $12/hour at the start of the class period. Drivers who had service time starting more than a year before the beginning of the class period are assumed to have been making $13/hour at the start of the class period.

a. Regular Wage Rates – Trainees are assumed to be entitled to $11 per hour during unpaid trainee time.
b. Minimum Wage – Trainees are assumed to be entitled to the minimum wage during unpaid trainee time.

4. Unpaid Trainee Time

Unpaid trainee time is calculated for drivers who said that they worked as unpaid trainees and drivers whom the employment records indicated worked as trainees.

Gary Gilbert worked as an unpaid trainee for 8 weeks. Ike Cooper worked 3 months as an unpaid trainee. Other drivers who worked as trainees are assumed to have performed 3 weeks of unpaid trainee time prior to the start of service.

5. Driver Unpaid Hour Worked

When drivers were not given meal periods of 30 minutes or 1 hour and an hour was deducted from their pay, the amount due to the drivers for unpaid hours worked is calculated. In Period One, no meal period was given, so drivers had one unpaid hour per day. In Period Two, starting in May 2009, it is assumed that two 30 minute meal periods per week were given and three days a week no meal period of 30 minutes or 1 hour were given. Three days a week drivers had 1 hour of unpaid work per day. Two days a week drivers had one half hour of unpaid work per day. Plaintiffs calculated the number of unpaid hours worked per pay period by multiplying the number of days in the pay period by 3/5 and rounding to the nearest whole number to arrive at the hours of unpaid work for the days in which no meal period was given. For the days in which 20 minute meal periods were given, Plaintiffs multiplied the number of days in the pay period by 2/5 and rounded to the nearest whole number and multiplied by one half hour. Plaintiffs multiplied the number of unpaid hours worked by the hourly rate.

a. Regular Wage Rates – The driver's regular rate of pay is used. During the Oakland Living Wage Period, if the driver was making less than the Oakland Living Wage, the Oakland Living Wage Rate is used.
b. Minimum Wage – The CA Minimum Wage at the time of the violation is used. During the Oakland Living Wage Period, the Oakland Living Wage Rate is used.

6. Oakland Living Wage Difference

If a driver was making less than the Oakland Living Wage during the Oakland Living Wage period, the amount due to the driver for being underpaid for the hours worked is calculated. The difference between the rate paid and the Oakland Living Wage Rate is multiplied by 8 hours and multiplied by the number of days worked in that pay period.

a. 5 Scale Workers – Oakland Living Wage Rate applies to all pay periods in the stipulated time period except one, 2/7/2005 – 2/18/2005 (during which time the number of paychecks issued by AB Trucking, combined with 5 Oakland Port Scale workers, is less than 20).
b. 1 Trainee – Oakland Living Wage Rate applies to six pay periods in which the number of paychecks issued by AB Trucking, combined with one trainee, is at least 20: 10/17/2005 – 10/28/2005, 10/31/2005 – 11/11/2005, 11/14/2005 – 11/25/2005, 11/28/2005 – 12/9/2005, 1/9/2006 – 1/20/2006, and 1/23/2006 – 2/3/2006.

7. Oakland Living Wage Treble Damages

The amount that a driver was paid less than the Oakland Living Wage over the 8 underpaid hours (only drivers who were paid less than the Oakland Living Wage) and the 1 unpaid hour (all drivers who worked during the applicable period) is multiplied by three.

8. Liquidated damages

Liquidated damages is calculated as equal to the amount of unpaid wages (unpaid trainee time, the difference in wages for drivers who were paid less than the Oakland Living Wage Rate during the applicable period, and unpaid driver time).

9. Meal Period Premiums

In Period One, employees missed one meal period per day worked. The number of days is multiplied by the hourly wage rate. In Period Two, starting in May 2009, employees are assumed to have missed three meal periods per week. The number of days worked in the pay period is multiplied by 3/5 and rounded to the nearest whole number and multiplied by the hourly wage rate. For drivers the driver's regular rate of pay is used. During the Oakland Living Wage Period, if the driver's rate is lower than the Oakland Living Wage, the Oakland Living Wage rate is used.

a. Regular Wage Rates –For Trainees, the rate of $11 per hour is used.
b. Minimum Wage – For Trainees the minimum wage rate is used.

10. Rest Period Premiums

Employees missed at least one 10 minute rest period per day worked. The hourly wage rate is multiplied by the number of days worked. For drivers the driver's regular rate of pay is used. During the Oakland Living Wage Period, if the driver's rate is lower than the Oakland Living Wage, the Oakland Living Wage rate is used.

a. Regular Wage Rates –For Trainees, the rate of $11 per hour is used.
b. Minimum Wage – For Trainees the minimum wage rate is used.

11. Subtotal

The subtotal is the sum of the Unpaid Wages (unpaid trainee time, the difference in wages for drivers who were paid less than the Oakland Living Wage Rate during the applicable period, and unpaid driver time), treble damages for the Oakland Living Wage violation, liquidated damages on unpaid wages, premiums for meal periods missed, and premiums for rest periods missed.

12. Interest

Interest is applied to the subtotal. Interest is calculated at a rate of 10% per year starting at the pay date on which the amount should have been paid and continuing until the date of trial, February 14, 2012. The subtotal is multiplied by 10% and divided by 365 days to arrive at a per diem rate. The per diem rate is multiplied by the number of days between the pay date and the date of trial.

13. Total

The total is the sum of the Subtotal and Interest.

14. 10% Reduction

The amounts due for unpaid wages, meal period premiums, and rest period premiums are multiplied by 0.9 in order to reduce the amounts by 10% to account for time that may have been missed independent of holidays. Since the number of work days in a year add up to approximately 255 days, the 10% reduction assumes approximately 25 days may have been missed per year.

15. 226 Violation

Wage statement violations are calculated for employees who worked during the period of 3/28/2007 to 3/15/2011. One violation occurs every pay date during an employee's service time and trainee time during that period. Each employee is entitled to $50 for the first violation and $100 for every subsequent violation up to $4,000.

16. 203 Separation Pay

Separation of Employment pay is calculated for employees who had end dates during the period of 3/28/2005 to 3/15/2011. It is calculated as the employee's final rate of pay multiplied by 9 hours per day and 30 days, except for Gary Gilbert, whose 203 pay is calculated at 8 hours per day and 30 days. If the end date is within the Oakland Living Wage period and the driver was making less than the Oakland Living Wage, the Oakland Living Wage is used to calculate the amount due. 203 separation pay is calculated for Gina Williams for her layoff in 2007. There is no more than one calculation of 203 separation pay per employee.

17. Oakland Living Wage Penalty

A copy of records related to the Oakland Living Wage is required to be submitted to the Port of Oakland at least by March 31st, June 30th, September 30th and December 31st of each year. Failure to provide a copy of such records within five days of the due date will result in a penalty of $500 per day. The total penalty was divided equally among drivers who worked during the applicable period.

a. 5 Scale Workers – The penalty was calculated starting April 6, 2005 and continued until the date of trial, February 14, 2012. There were 17 Drivers in the period: SAEED A ABDO ALGAISHI, RAFAEL ESCOBAR, ROGER M MITCHELL, JOSE V ROMERO, IAN G MCCRIGHT, ERASMO S ANDRADE, GEOFFREY N SIMPSON, THON T KLOAK, DARYL S BOWDEN, DARNELL Y CARTER, KEVIN L JOHNSON, CESAR R SALSAMENDI, TERRELL D COLLINS, MONDELL T THOMPSON, RICHARD SMITH, GREGORY W SULLIVAN, and IVAN R CLARK.
b. 1 Trainee – The penalty was calculated starting January 6, 2006 and continued until the date of trial, February 14, 2012. There were 11 Drivers in the period: DARYL S BOWDEN, DARNELL Y CARTER, IVAN R CLARK, TERRELL D COLLINS, KEVIN L JOHNSON, JOSE V ROMERO, CESAR R

SALSAMENDI, GEOFFREY N SIMPSON, RICHARD SMITH, GREGORY W SULLIVAN, and MONDELL T THOMPSON.

18. Total Due

The total due is the sum of the 226 violation, the 203 violation, the Oakland Living Wage Penalty, and the amount due for wages and meal and rest period.

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PROOF OF SERVICE
(CCP §1013)

I am a citizen of the United States and resident of the State of California. I am employed in the County of Alameda, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years and not a party to the within action.

On April 13, 2012, I served the following documents in the manner described below:

DECLARATION OF LISL R. DUNCAN IN SUPPORT OF PLAINTIFFS' OPENING POST-TRIAL BRIEF

☐ (BY U.S. MAIL) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for mailing with the United States Parcel Service, and I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States Postal Service at Alameda, California.

☑ (BY OVERNIGHT MAIL) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for overnight delivery, and I caused such document(s) described herein to be deposited for delivery to a facility regularly maintained by United Parcel Service for overnight delivery.

☐ (BY PERSONAL DELIVERY) I caused such envelope to be delivered by hand to each addressee below.

☐ (BY MESSENGER SERVICE) by consigning the document(s) to an authorized courier and/or process server for hand delivery on this date.

☐ (BY ELECTRONIC SERVICE) By electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system from jkoffler@unioncounsel.net to the email addresses set forth below.

On the following part(ies) in this action:

Mr. Guy A. Bryant
Bryant & Brown
476 3rd Street
Oakland, CA 94607
(510) 836-7564 (fax)
guybryant@bryantbrownlaw.com

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 13, 2012, at Alameda, California.

Karen Scott

Karen Scott

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