

The 12 Days of California Labor and Employment Series – Day 10 “Wage Theft Updates for 2024”

4 min read

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In the spirit of the season, we are using our annual “12 days of the holidays” blog series to address new California laws and their impact on California employers. On the tenth day of the holidays, my labor and employment attorney gave to me ten lords a-leaping and AB 636 and AB 594.

Employers know all too well the importance of accurately paying employees. Even a small mistake can be costly. In 2011, California’s “Wage Theft Prevention Act” was enacted, which required most employers in California to provide a notice of basic wage and hour information to non-exempt employees at the time of hire and within seven days of any changes.

Over the years, the Wage Theft Prevention Act has been amended in various ways, including requiring employers to advise workers of their right to accrue and take sick leave without fear of retaliation and to file a complaint to remedy a violation of that right as well as to require employers of temporary workers to provide additional business location and contact information because this workforce is seen as uniquely vulnerable to workplace violations.



Additional amendments to the Wage Theft Prevention Act take effect on **January 1, 2024**.

AB 636

AB 636 expands the Wage Theft Prevention Act notice requirements to include information regarding any federal or state emergency or disaster declarations that may affect an employee’s health and safety. There is also a part of AB 636 that deals with agricultural workers on a federal H-2A agricultural visa.

As of January 1, 2024, the notice requirements to employees at the time of hiring will include the following:

- The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable
- Allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances
- The regular payday designated by the employer under the requirements of this code
- The name of the employer, including any “doing business as” names used by the employer
- The physical address of the employer’s main office or principal place of business and a mailing address, if different
- The telephone number of the employer
- The name, address, and telephone number of the employer’s workers’ compensation insurance carrier
- Affirmation that an employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates
- **(Added as of 1/1/2024)** The existence of a federal or state emergency or disaster declaration applicable to the county or counties where the employee is to be employed and that was issued within 30 days before the employee’s first day of employment may affect their health and safety during their employment
- Any other information the Labor Commissioner deems material and necessary.

AB 636 also delineates that the Labor Commissioner shall prepare templates for the required notices that comply with the newly added requirements. **Starting on March 1, 2024**, the template developed shall be posted on the Labor Commissioner’s internet website.

As it relates to federal H-2A agricultural visa employees, AB 636 dictates that in addition to the notice requirements mentioned above, an employer must provide a separate and distinct section containing nonduplicative information describing, in Spanish, an agricultural employee’s additional rights and protections under California law and regulations.

This notice must be provided on the day the employee begins work in the state or on the first day the employee starts work for another H-2A employer.

The notice must contain information, including but not limited to:

- The information required under the Wage Theft Prevention Act
- Meal and rest period details
- Transportation travel time compensation
- Toilets
- requirements regarding the availability of potable water and handwashing facilities
- requirements relating to hot weather working conditions and the availability of shade
- pesticide exposure protections
- training and necessary equipment and lighting for night work

The additional notice requirement for agricultural workers takes effect as of **March 15, 2024**.

AB 594

As it stands now, the Labor Commissioner enforces the Labor Code and the payment of wages to ensure compliance. Nothing currently limits the authority of the district attorney of any county or prosecuting attorney of any city to prosecute actions, either civil or criminal, for violations or to enforce those provisions independently and without specific direction of the Division of Labor Standards Enforcement.

As of January 1, 2024, AB 594 authorizes a public prosecutor, through January 1, 2029, to prosecute an action in their geographic location, either civil or criminal, for a violation of specified provisions of the Labor Code as it relates to wage and hour or misclassification issues or to enforce those provisions independently. A public prosecutor may include:

- the Attorney General,
- A district attorney,
- a city attorney,
- a county counsel, or
- any other city or county prosecutor.

Statutory Provisions

1. If and when a prosecutor takes action, any recovery will be given to the affected workers first. AB 594 also requires that any civil penalties recovered be paid to the General Fund unless otherwise specified.
2. The public prosecutor could also seek injunctive relief to prevent continued violations.
3. More importantly, any individual agreement purporting to limit representative actions or mandate private arbitration between an employee and employer shall not affect the authority of the public prosecutor or the Labor Commissioner to enforce this law.
4. Lastly, AB 594 dictates that any subsequent appeal of the denial of any motion or other court filing to impose such restrictions on a public prosecutor, a division, or the Department of Justice shall not stay any trial court proceedings, notwithstanding specified law.

Next Steps for Employers

1. Employers need to update their Wage Theft Prevention Notice for compliance.
2. In addition, employers with federal H-2A agricultural visa employees must create an additional document to ensure full compliance with AB 636. The failure to provide legally compliant notices exposes an employer to Private Attorneys General Act (PAGA) penalties and/or PAGA litigation.

Regarding AB 594, it is unknown how each geographical area will utilize the law, if at all, to prosecute employers for wage and hour issues. Will the prosecutors have the time or resources available to take action? Does the Federal Arbitration Act preempt AB 594? These questions and how AB 594 shakes out will be monitored as it goes into effect in 2024.

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