

# 3 Powerful Checklists To Comply With Mandatory Government Compliance And Avoid Lawsuits That Can Destroy Your Business

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## BUSINESS PRACTICE

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## Employee vs Independent Contractors Checklist



This handy little checklist is a guide to help you determine whether an individual is an Independent Contractor. Generally, the more “yes” answers you have to the questions below, the more likely it is that the individual is an Independent Contractor. As always, please consult with your legal counsel before making any final decisions.

1. Is the individual working on a discrete project that is limited in time (versus work that is ongoing and integral to the company’s normal business functions)? \_\_\_Yes \_\_\_ No
2. Does the work involve special skill and training not currently possessed by company employees? \_\_\_Yes \_\_\_No
3. Does the work involve skills and training which the individual already possesses (versus to skills for which the individual will need to receive training from the company)? \_\_\_Yes \_\_\_No
4. Does the individual pay for his/her own business expenses? \_\_\_Yes \_\_\_No
5. Does the individual pay for his/her own travel? \_\_\_Yes \_\_\_No
6. Is the individual responsible for his/her own federal and state taxes? \_\_\_Yes \_\_\_No
7. Is the individual being paid a set price per project or on a straight commission basis (versus on a set schedule in the form of a salary, regular wage, or piece-rate)? \_\_\_Yes \_\_\_No

8. Does the individual provide the company with invoices for fees (versus timesheets)? \_\_\_Yes \_\_\_No
9. Does the individual offer his/her services to entities other than the company? \_\_\_Yes \_\_\_No
10. Is the individual free to accept projects from other entities? \_\_\_Yes \_\_\_No
11. Does the individual have a distinct occupation? \_\_\_Yes \_\_\_No
12. Is the individual self-employed? \_\_\_Yes \_\_\_No
13. Will the individual be performing services for the company as part of his/her own independently-established business? \_\_\_Yes \_\_\_No
14. Are the manner and means for achieving the specified results left to the individual's discretion? \_\_\_Yes \_\_\_No
15. Are the individual's hours, places, and order and sequencing of the work be left to his/her discretion? \_\_\_Yes \_\_\_No
16. Is the individual free of extensive supervision, especially in regards to the means and manner of performance? \_\_\_Yes \_\_\_No
17. Is the work performed at a location separate from the company premises? \_\_\_Yes \_\_\_No
18. Does the individual have a significant investment in the facilities or equipment which will be used in performing the work? (i.e., does he/she provide the necessary tools, equipment, and material for the performance of the work?) \_\_\_Yes \_\_\_No
19. Is the individual permitted to select, direct, and pay anyone who will assist in achieving the desired results? \_\_\_Yes \_\_\_No
20. Is dismissal of the individual premised on some type of failure to comply with an agreement, such as a failure to perform work (versus to the individual being subject to "dismissal at any time for any reason")? \_\_\_Yes \_\_\_No
21. Is there an understood consequence to the individual for quitting prior to the completion of the project? \_\_\_Yes \_\_\_No
22. Is the individual free to reject additional projects from the company? \_\_\_Yes \_\_\_No

This checklist provides general guidelines to help you assess whether you are venturing into creating an employee relationship instead of an Independent Contract arrangement.

A misclassification can cost you thousands of dollars in penalties, back wages, taxes, and other costs and expenses. We can help. [Contact us](#) or visit us at [www.landersonlaw.com/employmentlaw](http://www.landersonlaw.com/employmentlaw).

# Checklist For Wage and Hour Compliance

## 1. Meal and Rest Breaks

An employer cannot employ someone for a work period of more than five hours without providing an unpaid, off-duty meal period of at least 30 minutes. The first meal period must be provided no later than the end of the employee's fifth hour of work.

If the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

A second meal period of not less than thirty minutes is required if an employee works more than ten hours per day, 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 employee only if the first meal period was not waived.

Employers must authorize and permit uninterrupted rest periods for all nonexempt employees whose total daily work time is at least 3.5 hours. These mandatory rest breaks must be offered at the rate of 10 minutes for every four hours worked, or "major fraction" thereof. Anything over two hours is considered by the courts to be a "major fraction" of four.

As a general rule, and insofar as practicable, the rest period must be in the middle of the four-hour work period. Though this is the general rule, there is no absolute obligation to permit a rest period before a meal period.

## 2. Time Keeping Standards

To comply with its legal obligations to maintain accurate time records and to ensure that employees are paid for all hours worked, employers are required to accurately record all hours worked by employees during each workday. Employers may use any timekeeping method they choose. For example, they may use a time clock, have a timekeeper keep track of employee's work hours, or tell their workers to write their own times on the records. Any timekeeping plan is acceptable as long as it is complete and accurate.

## 3. Mandatory Items Required On California Employee Pay Stubs & Wage Statements (Similar regulations may apply in other states and jurisdictions)

### Payment Period

Pay stubs and wage statements must include the dates of the beginning and the end of the pay period. Labor Code § 226(e)(2)(B).

### Gross Wages

California pay stubs and wage statements must include the gross (total) wages earned by the employee. *Soto v. Motel 6 Operating, L.P.*, 4 Cal. App. 5th 385, 391 (2016). This amount is before the employer makes any deductions.



## **Itemized Deductions**

The pay stub and itemized wage statement must include a separate listing of all deductions made from the gross wages.

## **Net Wages**

The pay stub and itemized wage statement must state net wages earned. *Soto v. Motel 6 Operating, L.P.*, 4 Cal. App. 5th 385, 391 (2016). Net Wages, also known as take-home pay, are gross-pay after subtracting deductions.

## **Total Hours**

California pay stubs and wage statements must state the employee's total hours worked for the pay period. *Morgan v. United Retail, Inc.*, 186 Cal. App. 4th 1136, 1142 (2010). Salaried, or exempt, employees are exempt from this requirement. Further, certain employees exempt minimum wage and overtime pay are exempt from this requirement.

## **Applicable Hourly Rates**

California pay stubs and wage statements must include all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Labor Code § 226(e)(2)(B). For temp employees, the statement must include the rate of pay and total hours worked for each temporary service assignment.

## **Employer's Name & Address**

The employer's legal name and address must be stated on the wage statement or page stub. If the employer is a farm labor contractor, the name and address of the legal entity that secured the services of the employer must be stated.

## **Employees' Name & Employee Number or SSN**

California pay stubs and wage statements must include the employee's full name and the last four digits of the employee's social security number or an employee identification number.

## **Accrued Paid Sick Leave**

The employer must provide written notice, either on the wage statement or separate writing given to the employee on payday, setting forth the amount of paid sick leave available, or amount of paid time off leave. Employers providing unlimited paid sick leave or unlimited paid time off may satisfy this requirement by indicating "unlimited" on the wage statement or employee notice. Labor Code § 246.

## **4. Personnel Records**

California and most other state's law provides that current and former employees (or a representative) have the right to inspect and receive a copy of the personnel files and records that relate to the employee's performance or to any grievance concerning the employee. Inspections must be allowed at reasonable times and intervals, but not later than 30 calendar days from the date the employer receives a written request.

Upon a written request from a current or former employee or a representative, the employer shall provide a copy of the personnel records, at a charge not to exceed the actual cost of reproduction, not less than 30 calendar days from the date the employer receives the request.

## 5. Overtime Laws

California and federal law requires that employers pay overtime, ***whether authorized or not***, at the rate of one and one-half times the employee's

regular rate of pay for all hours worked in excess of eight hours in any workday, and for the first eight hours of work on the seventh consecutive day of work in a workweek, and double the employee's regular rate of pay for all hours worked in excess of 12 in any workday and for all hours worked in excess of eight on the seventh consecutive day of work in a workweek.

An employer may dictate the employee's work schedule and hours. Additionally, under most circumstances, the employer may discipline an employee, up to and including termination, if the employee refuses to work scheduled overtime.

### WAGE AND HOUR ISSUES

Is the employee exempt? Whether the employee is exempt is a complicated legal question you should consult with an attorney about.

#### MEAL BREAKS

30 minute uninterrupted meal break 1st 5 hours of shift.

2nd meal break due after 10 hours of work.

\*Note: Employees working less than 6 hours may waive meal break by mutual consent.

#### OVERTIME

Due after 8 hours in a shift or 40 hours in a week.

#### DOUBLE TIME

Due after 12 hours on a shift.

Due if 4 consecutive weeks without a day off.

#### PREVAILING WAGES

Special rates of pay for private employees working on government contracts.

#### REST BREAKS

10 minutes every 4 hours.

#### LABOR CODE PENALTIES

There are too many to list. Penalties often exceed the amount of unpaid wages.

#### PAY IS DUE

- Every 15 days
- At the time of termination.
- 72 hours after an employee quits.

If you need assistance with any wage and hour issue [Contact us](#) or call us at 508-687-2058

# Americans with Disabilities (ADA) Small Business Compliance Checklist

Is Your Website In Compliance with the ADA? It's Required by Law and You Can Be Sued Without Notice. These Lawsuits Can Wipe A Small Business Out.

## Website Accessibility



The Americans with Disabilities Act (ADA) has been in effect since 1990. It is part of the Civil Rights scheme of laws that are designed to ensure equal opportunity for persons with identified disabilities.

The specific sections that apply to businesses are Title I concerning any business that has 15 or more employees. Those businesses are required to provide reasonable accommodation for disabled employees within the workplace and;

Title III which applies to "any" business that offers its good and services to the public regardless of the number of employees it has, even if its operated by one person. If a business offers its goods and services to the public then it must comply under the "public accommodations" section of the ADA

### **Under Title, I of the ADA employers must make sure persons with disabilities:**

- have an equal opportunity to apply for jobs and to work in jobs for which they are qualified;
- have an equal opportunity to be promoted once they are working;
- have equal access to benefits and privileges of employment that are offered to other employees, such as employer-provided health insurance or training; and
- are not harassed because of their disability.

### **Hiring Dos and Don'ts Under the ADA:**

## Dos

The ADA does not allow you to ask questions about disability or use medical examinations until after you make a conditional job offer.

- Ask only about non-medical job qualifications
- Ask about whether a candidate has the right education, training, and skills for the position.
- Ask the job candidate if he/she can satisfy the job's requirements or essential functions (describe them to the applicant)
- Ask how much time off the applicant took in a previous job (but not why), the reason he/she left a previous job, and any past discipline.

## Don'ts

- Questions about an applicant's physical or mental impairment or how s/he became disabled (for example questions about why the applicant uses a wheelchair.)
- Questions about an applicant's use of medication;
- Questions about an applicant's prior workers' compensation history.

**Under Title III of the ADA, a small business must make sure barriers, that are "readily achievable" are removed to make sure a person with a qualified disability has access to the business facility.**

The ADA is a "strict liability" law. What this means is if a business can remove any access barriers to persons with disabilities that are within reason and not so expensive that it would cause the business to fail or be unable to continue to operate, then it must make those changes.

## Basics of Title III ADA Compliance Requirements.

- Is your facility open to the public \_\_\_\_ Yes \_\_\_\_ No. If it is not open to the public, then the ADA does not apply.
- Are your bathrooms accessible to persons with disabilities (grab bars, door knobs, mirrors, no pipe exposure under the sinks, proper signage, etc?) \_\_\_\_ Yes \_\_\_\_ No
- Does the business parking lot have the required number of ADA parking spaces? \_\_\_\_ Yes \_\_\_\_ No
- Is the businesses entrance accessible (lack of impediments to wheelchairs, doors open properly). \_\_\_\_ Yes \_\_\_\_ No
- Does the business have designated compliant seating for the disabled at countertops and tables that mingle in with non-disabled customers? \_\_\_\_ Yes \_\_\_\_ No
- Does the business's payment counter comply with the ADA so persons with disabilities can make payments at a checkout counter in a wheelchair? \_\_\_\_ Yes \_\_\_\_ No
- If the business has a website, is it accessible and accommodates persons with sight or hearing impediments? \_\_\_\_ Yes \_\_\_\_ No.

Unless your business can answer "Yes" to the Title III questions likely it does not comply with the ADA and you should consult a qualified attorney or ADA consultant to assist in getting your business into compliance. Our office specializes in ADA compliance. We can help. [Contact us](#) or visit our website at <http://www.landersonlaw.com/ADAaccess>





If your business has a website and you offer goods and services to the public it is mandatory that your website be accessible to blind, deaf and other disabled persons.

You can be sued without notice. Contact us for a Free ADA Website Audit  
[www.landersonlaw.com/ADAaccess](http://www.landersonlaw.com/ADAaccess) or call for Free Consultation 508-697-2058