



This is Samuel Deskin of Deskin Law Firm. Today we will be discussing whether Nurses are entitled to Overtime Pay, and Rest and Lunch Breaks in California.



Some nurses we have worked with have had misconceptions about:

- whether they are owed overtime,
- when it should start being paid, and
- whether they are entitled to breaks.



You work hard, so it's reasonable that you would want to get paid properly based on the time you work and you want to be able to take your breaks so you don't accidentally make a mistake.

The organization and people you work for may agree with these principles, but they also have a need to make a profit, which is important.

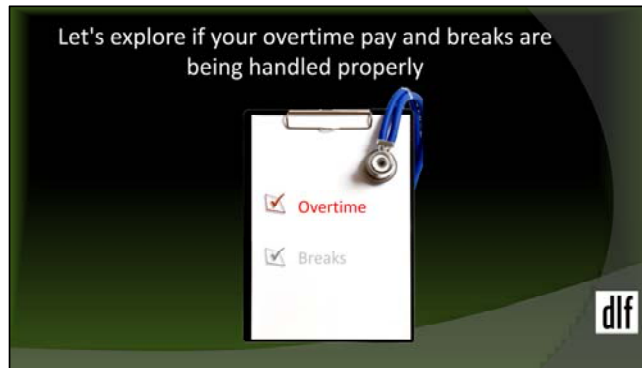
But in their zeal to make a profit, they may make a strategic decision to take their profit out of your rightfully earned compensation.



Some organizations do a simple calculation to determine how much they save by breaking the rules that concern overtime and breaks.

If the savings is large enough, they may take the risk that you may not bother to figure out whether you are being paid properly.

The only way to make sure you are being paid properly is to understand the rules and not be afraid to seek professional help to get them enforced.



To get an understanding of the rules, we will start with exploring overtime and then we will consider breaks.



Most nurses are entitled to overtime if you do work that is considered “nursing services,” overseeing and carrying out nursing care.

This is true no matter where you work, a hospital, home health care service, physician’s office, nursing care facility, or if you work for an employment service that hires you out.



Overtime also applies to registered nurses, nurses who travel, and per diem nurses.

Employers may have creative reasons why you should not get overtime, but more often than not, these nurses are entitled to overtime if they are providing nursing services.



Unions in and of themselves cannot force you to forego overtime although they may facilitate an election for an alternative workweek schedule. An alternative workweek schedule may alter the terms of when you get overtime.



There are some specific cases where nurses may not be entitled to overtime compensation. This is the exception and not the rule.



This exception applies to Certified Nurses who may be considered Professionals because they are certified by the State of California.

Certified Nurses who:

- ✓ spend more than half of their time doing work that they would not be able to do if they were not certified,
 - ✓ who customarily and regularly exercise discretion and independent judgment in performing these duties and
 - ✓ earn at least \$33,280
- may not get overtime.

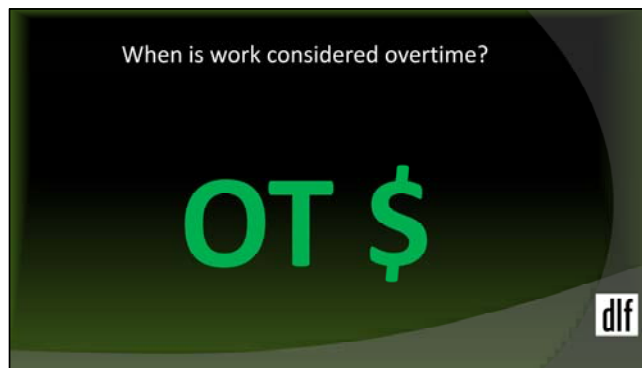


Nurses who act as managers may not get overtime either.

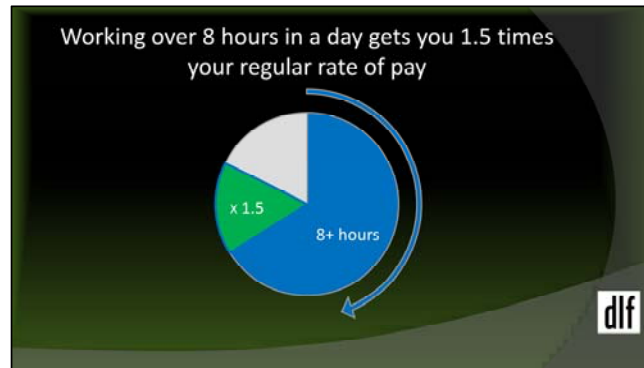
A nurse who is not spending most of his or her day providing nursing care and is instead spending more than half time:

- ✓ acting as a manager of the business,
 - ✓ supervising 2 or more employees, and who
 - ✓ customarily and regularly exercises discretion and independent judgment,
 - ✓ can hire and fire employees, and
 - ✓ gets paid more than \$33,280.
- may not get overtime.

This exception does not apply to most nurses who spend their days providing nursing care.

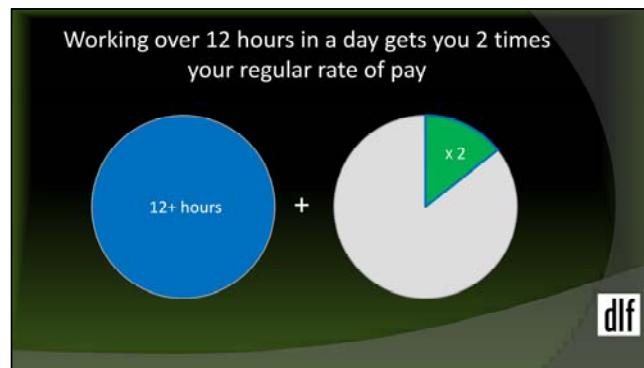


Now that you have a sense of whether you are eligible for overtime, you must consider the number of hours you work because overtime starts to kick in after a certain number of hours worked during a day or work week.



The overtime rate of 1.5 times your regular rate of pay applies if you work over 8 hours in a day.

Rest periods count toward the number of hours you work, but meal periods do not.



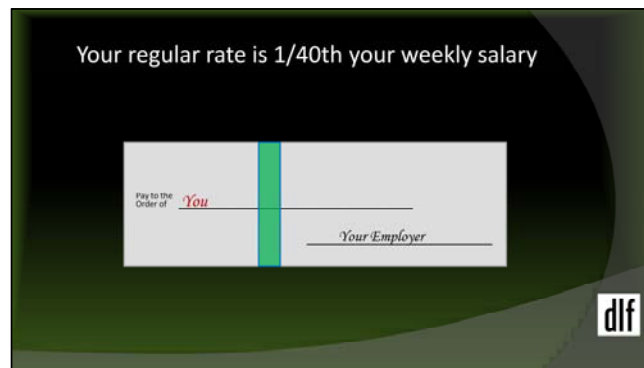
If you work over 12 hours in a day, the time you work over 12 hours is eligible for double time, as in 2 times your regular rate of pay.



There is an additional way to get overtime, by working over 40 hours in a week.

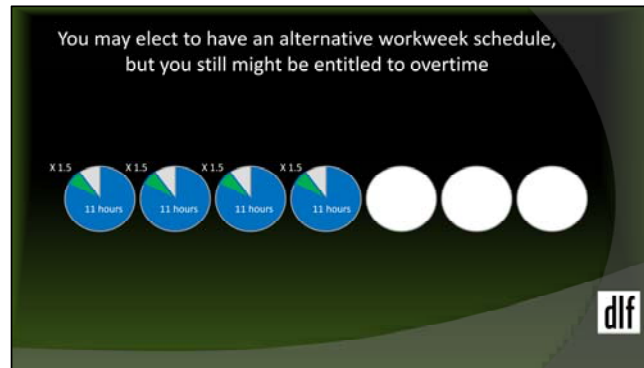
For example, if you worked 8 hours in a day over 6 days of a work week, you would have worked 48 hours. Even though you did not work more than 8 hours in any one day, you did work over 40 hours, so you would be entitled to overtime for those 8 hours.

You may also get overtime if you work 7 consecutive days in a workweek. You get overtime for the first 8 hours worked on the seventh day and double time after the first 8 hours on the seventh consecutive day.



Each of the previous examples have talked about your regular rate of pay, so what is your regular rate of pay?

Your regular rate of pay is 1/40th your weekly salary. So if you were to earn \$600 per week on a normal work week, if you divide your weekly salary by 40, your regular rate would be \$15.

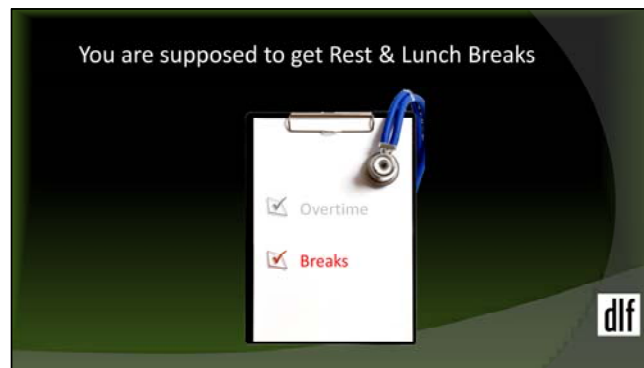


Employees may elect to have an alternative workweek schedule.

But if you work between 10 and 12 hours in a day or over 40 hours in a week, you should still be getting overtime even with an alternative workweek schedule.

For alternative workweek schedules, if you work more than 12 hours in a day, you should also be getting double time.

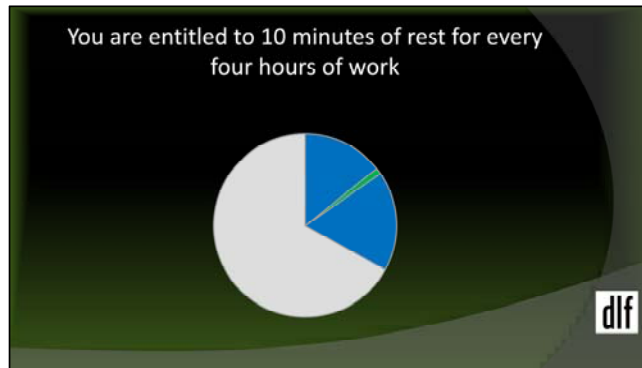
If you work more than 8 hours on days that are in addition to your regularly scheduled number of workdays, you should also be getting double time.



Now that you have a basic idea of how the overtime rules work in California, we will look at rest and lunch breaks.

Breaks are pretty simple.

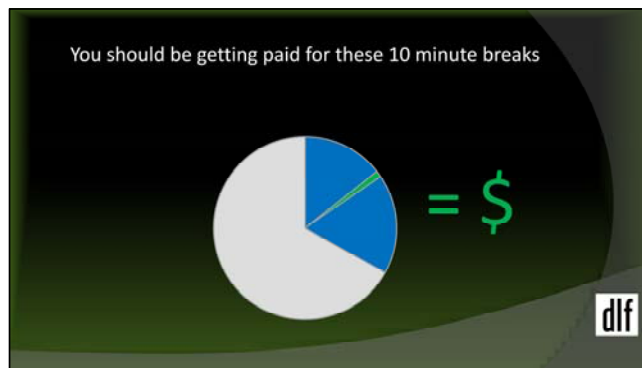
You are entitled to breaks, it is just a matter of when, for how long and under what conditions you get paid for each particular break.



If you work four hours or more in a day, you are entitled to a 10 minute break, so an 8-hour workday would entitle you to two 10 minute breaks.

Your employer cannot deny you these breaks. They cannot clock you out during your breaks. They cannot force you to miss breaks only to pretend that you had them.

You are entitled to your rest breaks.



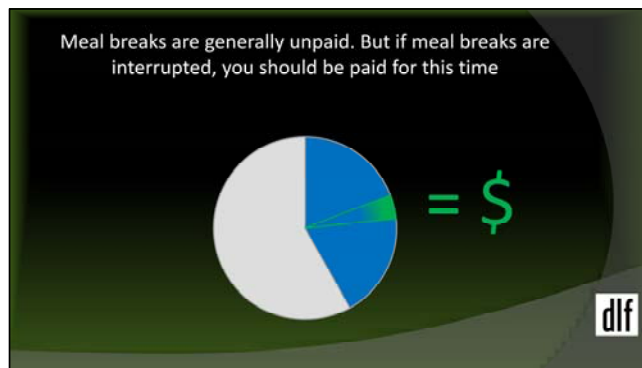
Even though you are not working during these breaks, you should be getting paid for them. Your employer cannot deduct the time you have used to take a break from your pay.



If you work 5 hours in a day, you must get a meal period of at least 30 minutes, but you will not be paid for that time.

If you are working 6 hours that day you and your employer can agree to waive your meal period, but you both must agree.

If you work 10 hours in a day, you must get two meal periods each of at least 30 minutes.



You must be relieved of all your duties during your meal periods. If you are not relieved of all your duties, the time must be considered as time you have worked and you must be paid for it.

You cannot be forced to work through your meal time, but because you work in the **health care industry**, if you work 10 hours or more you may volunteer to waive one of your two meal periods and you must be paid for the time that you work, including the overtime.



Now you understand the basics of employment law in the context of overtime and rest and meal breaks.

If you feel that your employer may not be paying you properly for overtime that you have worked or that you are not getting the breaks that you are entitled to, please seek the advice of an attorney to verify whether your suspicions are correct.



Deskin Law Firm is available to discuss your situation with you.

Feel free to visit our website at deskinlawfirm.com or call us at 800-709-8978.

