



## **‘Plumbing’ the Line between Wage Orders**

In 1916 the Industrial Welfare Commission (“IWC”) began issuing its first industry and occupational wage orders that eventually fixed for each industry minimum wages, maximum hours of work, and conditions of labor. Occasionally, more than one wage order will apply, though frequently, only one wage order applies to a business as determined by the main purpose of the business. Although the IWC was defunded and disbanded in 2004, its 17 wage orders are still in effect and enforced.

In *Bains v. Department of Industrial Relations* (Cal. Ct. App., Feb. 16, 2016) 16 Cal. Daily Op. Serv. 1713, two Sutter County prune growers argued that Order 14 (pertaining to “harvesting”) applied exclusively to their employees, while the employees argued that Order 14 and Order 13 (pertaining to “processing for market”) applied. The overtime provisions were more generous to employees under Order 13. For example, under Order 14 employees only received overtime for work in excess of 10 hours, while under Order 13, employees received overtime for work in excess of 8 hours. The Appellate Court held both Orders apply at different times. Specifically, the court found the harvesting ends (Order 14), and the processing begins (Order 13) after the prunes were transported from the orchards to the fixed drying sheds. Put simply, employees involved in harvesting the prunes were subject to Order 14 and earned overtime later than employees involved in processing the prunes, who were subject to Order 13 and earned overtime earlier.

Selecting the appropriate wage order(s) is important. Employers who get it wrong and apply the wrong wage order to their employees may not pay their employees correctly. This mistake could subject them to significant penalties and back pay when caught, and may even make them responsible for the employees’ attorney fees to recoup the unpaid or underpaid wages. Additionally, employers have a posting obligation, and must post the applicable wage order(s) in the workplace. As a result, employers should verify that they are using the appropriate wage order, particularly if their business conducts a variety of operations.

### ***DID YOU KNOW...***

Sometimes a worker may be considered the employee of more than one person or entity at the same time in what is called a joint employment relationship. In this situation, each of the “employers” is individually and jointly responsible for compliance with employment laws with respect to the



worker. The federal Wage and Hour Division recently released guidance on joint employment relationships, which may be accessed using the following link:

<http://www.dol.gov/whd/regs/compliance/whdfs35.htm>



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