



California Fashion Association

# FIHRA DIGEST

Fashion Industry Human Resource Association

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## Introduction

The **California Fashion Association** implements the **Fashion Industry Human Resource Association ('FIHRA')**: an organization for the Human Resource Managers of manufacturing, distribution, and retailing groups within the fashion, apparel, and textile industry.

**FIHRA** organizes Roundtable meetings featuring experts in Labor and Employment, with emphasis on the application of state and federal laws for apparel manufacturers and retailers. Attendees have access to the latest and most specific information on pending legislation.

We are pleased to introduce you to **FIHRA Digest**. **FIHRA Digest** is aimed at delivering you up-to-date information from our 'experts' in the field of human resources and labor relations.

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## Ask An Apparel Attorney



By Laura Worsinger, Esq.

Dear Apparel Attorney,

We employ several patternmakers. They have always been classified as exempt and paid on a salary basis. They do not receive overtime pay. We have considered converting them to hourly, non-exempt but because they themselves insist that we keep them as salaried exempt, we have not done so. Is this a problem? - Design Divas

Dear Design Divas,

These patternmakers may well end up being serious "troublemakers" if your determination as to their exempt or non-exempt status is based on how they "want" to be classified or how they have "always been" classified. As with fashion goods, when it comes to classification, "its fit that counts". In order to be classified as exempt an employee must fit into one of three categories: Executive, Administrative or Professional. There is an exemption for "creative" professionals but it is confined to positions that depend on creativity, imagination and talent, such as designers, artists and writers. Unfortunately government enforcers (federal Department of Labor and the California Division of Labor Standards Enforcement) do not consider patternmakers as sufficiently creative to qualify, regardless of what they want or how the industry has always treated such positions.

So what is the penalty for misclassification you ask? The employer could be liable going back up to four years for unpaid overtime, missed meal and rest periods, interest and attorney fees, not to mention a class action complaint brought on behalf of all employees classified as exempt. *Laura's Law: Whenever in doubt classify as non-exempt.*

Dear Apparel Attorney,

Our company produces and sells purses and other leather goods. A number of our competitors have been sued under California Proposition 65 for allegedly hazardous levels of lead in leather and vinyl footwear and fashion accessories. They have paid huge amounts in settlement. How can we avoid liability? - Handbag Heaven

Dear Handbag Heaven,

California Proposition 65 ("Prop 65"), passed by voters in 1986, has given rise to hundreds of lawsuits against retailers and manufacturers of products that alleged contain "hazardous substances," including lead, phthalates, cadmium, and acrylamides--whatever those are. The latest target of Prop 65 litigation is leather and vinyl. The claims are usually brought by so-called environmental groups (aka "Bounty Hunters") who over the last 20 years have obtained many millions of dollars in settlements. Damages, penalties and attorneys' fees have been paid in excess of \$35,000 for each type of product sold. To comply with the law, you must either ensure that consumer exposure to chemicals in

your products do not exceed the established safe harbor levels or label the products with a warning that they contain chemicals known to cause cancer, or birth defects or other reproductive harm. If you think that customers will continue to buy handbags with labels that warn the bags could cause harm to their unborn children you probably believe Diane Von Furstenberg when she claims that she "invented" the wrap dress.

Another option would be to stop doing business in California altogether. Short of that, any companies that manufacture or sell footwear, purses and other vinyl and leather accessories should take immediate steps to implement testing procedures to determine if their products meet new reformulation standards for lead in products sold in California. And if you do receive a "60 Day Notice of Violation" remove the allegedly offending products from the shelves pending investigation and contact counsel. *Laura's Law: The only things that go away when you ignore them are your teeth.*

For questions regarding any Labor and Employment issues, please contact:

**Laura Worsinger, Esq.**  
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## New DLSE Criminal Enforcement Unit: A GARMENT INDUSTRY CONCERN

By Alexandra Bodnar, Esq.

As you are probably aware, California's **Wage Theft Protection Act** took effect on January 1, 2012. Pursuant to that Act, codified at Labor Code Section 2810.5, penalties have increased for wage and hour recordkeeping violations and employers must now provide a notice to all non-exempt hires that includes:



- The employee's rate or rates of pay (including overtime rates), and whether the employee is paid hourly, by the shift, by the day, by the week, by salary, by piece, by commission, or otherwise.
- Any allowances claimed as part of the minimum wage (i.e., allowances for meals or lodging).
- The regular payday.
- The name of the employer, including any D/B/A names the employer uses.
- The physical address of the employer's main office or principal place of business, and a mailing address if it is different.
- The employer's telephone number
- The name, address, and telephone number of the employer's workers' compensation insurance carrier.
- Any other information that the Labor Commissioner deems necessary

The California Division of Labor Standards Enforcement (DLSE) has a sample notice on its website, and the notice contains quite a bit more information than Section 2810.5. The DLSE has taken the position that this additional information falls within the last bullet point above ("other information the Labor Commissioner deems necessary.")

The DLSE form has caused confusion among employers that has not been remedied by the DLSE's issuance of multiple versions of a document on the DLSE website intended to address those questions (the "Frequently Asked Questions" document).

The DLSE has just announced the formation of a criminal investigation unit to enforce criminal wage and hour violations pursuant to the Act. The criminal unit is likely to focus on industries like the garment industry that have a history of hiring immigrant labor to perform work for less than the workers are legally entitled to earn.

If you have any questions about compliance with the Wage Theft Protection Act, please contact:

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### **Reminder!**

**April 1st, 2012: CFA / FIHRA Orange County Chapter Meeting at FIDM Irvine**  
Click [here](#) for more information.

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