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Title 22@ Social Security

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Division 1@ Employment Development Department

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Subdivision 1@ Director of Employment Development

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Division 2.5@ WITHHOLDING TAX ON WAGES

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Chapter 1@ GENERAL PROVISIONS

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Section 4309-1@ Wages

## **4309-1 Wages**

### **(a)**

In General. (1) The term "wages" means all remuneration for services performed by an employee for his or her employer unless specifically excepted under Section 13009 or 13031 of the code. (2) The name by which the remuneration for services is designated is immaterial. Thus, salaries, fees, bonuses, commissions, including those on sales or insurance premiums, pensions, and retired pay are wages within the meaning of the statute if paid as compensation for services performed by the employee for his or her employer. (3) The basis upon which the remuneration is paid is immaterial in determining whether the remuneration constitutes wages. Thus, it may be paid on the basis of piecework, or a percentage of profits; and may be paid hourly, daily, weekly, monthly, or annually. (4) Generally the medium in which remuneration is paid is also immaterial. It may be paid in cash or in something other than cash, as for example, stocks, bonds, or other forms of property. (See, however, Section 13009(h) of the code, relating to the exclusion from wages of remuneration paid in any medium other than cash for services not in the course of the employer's trade or business, and Section 13009(n)(1) of the code, relating to the exclusion from wages of tips paid in any medium other than cash.) If services are paid for in a medium other than cash, the fair market value of the thing taken in payment is the amount to be included as wages. If the services were rendered at a stipulated price, in the absence of evidence to the contrary,

such price will be presumed to be the fair value of the remuneration received. If a corporation transfers to its employees its own stock as remuneration for services rendered by the employee, the amount of such remuneration is the fair market value of the stock at the time of the transfer. (5) Remuneration for services, unless such remuneration is specifically excepted by the statute, constitutes wages even though at the time paid the relationship of employer and employee no longer exists between the person in whose employ the services were performed and the individual who performed them. EXAMPLE. A is employed by R during the month of January and is entitled to receive remuneration of \$100 for the services performed for R, the employer, during the month. A leaves the employ of R at the close of business on January 31. On February 15 (when A is no longer an employee of R), R pays A the remuneration of \$100 which was earned for the services performed in January. The \$100 is wages within the meaning of the statute.

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The basis upon which the remuneration is paid is immaterial in determining whether the remuneration constitutes wages. Thus, it may be paid on the basis of piecework, or a percentage of profits; and may be paid hourly, daily, weekly, monthly, or annually.

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Generally the medium in which remuneration is paid is also immaterial. It may be paid in cash or in something other than cash, as for example, stocks, bonds, or other forms of property. (See, however, Section 13009(h) of the code, relating to the exclusion from wages of remuneration paid in any medium other than cash for services not in the course of the employer's trade or business, and Section 13009(n)(1) of the code, relating to the exclusion from wages of tips paid in any medium other than cash.) If services are paid for in a medium other than cash, the fair market value of the thing taken in payment is the amount to be included as wages. If the services were rendered at a stipulated price, in the absence of evidence to the contrary, such price will be presumed to be the fair value of the remuneration received. If a corporation transfers to its employees its own stock as remuneration for services rendered by the employee, the amount of such remuneration is the fair market value of the stock at the time of the transfer.

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Remuneration for services, unless such remuneration is specifically excepted by the statute, constitutes wages even though at the time paid the relationship of employer and employee no longer exists between the person in whose employ the services were performed and the individual who performed them. EXAMPLE. A is employed by R during the month of January and is entitled to receive remuneration of \$100 for the services performed for R, the employer, during the month. A leaves the employ of R at the close of business on January 31. On February 15 (when A is no longer an employee of R), R pays A the remuneration of \$100 which was earned for the services performed in January. The \$100 is wages within the meaning of the statute.

**(b)**

Certain Specific Items. (1) Pensions, Annuities, and Other Deferred Income.

Pensions, annuities, and other deferred income as described in Section 3405 of the Internal Revenue Code are wages subject to withholding. See Section 13028 of the code and Sections 4328-1 and 4328.1-1 of these regulations for withholding requirements. Those payments of pensions or other benefits by the Federal Government under Title 38 of the United States Code which are excluded from gross income are not wages subject to withholding. (2) Traveling and Other Expenses. Amounts paid specifically--either as advances or reimbursements--for traveling or other bona fide ordinary and necessary expenses incurred or reasonably expected to be incurred in the business of the employer are not wages and are not subject to withholding. Traveling and other reimbursed expenses must be identified either by making a separate payment or by specifically indicating the separate amounts where both wages and expense allowances are combined in a single payment. (3) Vacation Allowances. Amounts of so-called "vacation allowances" paid to an employee constitute wages. Thus, the salary of an employee on vacation, paid notwithstanding his or her absence from work, constitutes wages. (4) Dismissal Payments. Any payments made by an employer to an employee on account of dismissal, that is, involuntary separation from the service of the employer, constitute wages regardless of whether the employer is legally bound by contract, statute, or otherwise to make such payments. Dismissal payments, as used in this subparagraph, include but are not limited to, severance pay, in-lieu-of-notice pay, supplemental unemployment, and termination pay. (5) Deductions by Employer from Remuneration of an Employee. Any amount deducted by an employer from the remuneration of an employee is considered to be a part of the employee's remuneration and is considered to be paid to the employee as remuneration at the time that the deduction is made unless specifically exempted under Section 13009 of the code or deferred under Section

402 or 457 of the Internal Revenue Code. It is immaterial that any act of Congress, or the law of any State, requires or permits such deductions and the payment of the amounts thereof to the United States, a State, a Territory, or the District of Columbia, or any political subdivision of any one or more of the foregoing. (6)

Payment by an Employer of Employee's Tax or Employee's Contribution Under a State Law. The term "wages" includes the amount paid by an employer on behalf of an employee (without deduction from the remuneration of, or other reimbursement from, the employee) on account of any payment required from an employee under a State unemployment compensation law, or on account of any tax imposed upon the employee by any taxing authority, including the taxes imposed by Sections 3101 and 3201 of the Internal Revenue Code. (7)

Remuneration for Services as Employee of Nonresident Alien Individual or Foreign Entity. The term "wages" includes remuneration for services performed by a resident of California for services performed either within or without California, or a nonresident of California for services performed in California, as an employee of a nonresident alien individual, foreign partnership, trust, association, or corporation, whether or not such alien individual or foreign entity is engaged in a trade or business within the United States. Any person paying wages on behalf of a nonresident alien individual, foreign partnership, trust, association, or corporation, not engaged in trade or business within the United States (including Puerto Rico as if a part of the United States), is subject to all the provisions of law and regulations applicable with respect to an employer. See Section 4305-1 of these regulations relating to the term "employer." (8) Amounts Paid Under Wage Continuation Plans.(A) In General. The term "wage continuation payment," as used in this subparagraph, means any payment to an employee which is made under a wage continuation plan for a period of absence from work on account of personal

injuries or sickness, to the extent such payment is attributable to contributions made by the employer which were not includable in the employee's gross income or is paid by the employer. Any such payment constitutes "wages" and withholding thereon is required unless the payment is specifically excepted under any of the subdivisions of Sections 931.5, 13009, or 13031 of the code. (B) Amounts Paid by Person Other Than the Employer for Whom Services Are Performed. Payments are considered made by the employer if a third party makes the payments as an agent of the employer. The determining factor as to whether a third party is an agent of the employer is whether the third party bears any insurance risk. If the third party bears no insurance risk and is reimbursed on a cost plus fee basis, the third party is an agent of the employer even if the third party is responsible for making determinations of the eligibility of individual employees of the employer for sick pay payments. If the third party is paid an insurance premium and not reimbursed on a cost plus fee basis, the third party is not an agent of the employer, but the third party is a payer of third party sick pay for purposes of a voluntary withholding from sick pay under section 13028.6 of the code and the regulation thereunder. If a third party payer and an employer enter into an agency agreement whereby the employer designates the payer to be the employer's agent for purposes of fulfilling the requirements of 13050(a) of the code, that agency agreement does not make the third party an agent of the employer for purposes of this paragraph. No tax shall be withheld with respect to wage continuation payments made under a workers' compensation law or from the State Disability Insurance fund. (See Section 13009(g) of the code.) (C) Cross References. See section 13050 of the code and the regulations in this part for rules with respect to the records which must be maintained in connection with wage continuation payments and for rules with respect to the statements which must be furnished in connection with wage

continuation payments. (9) Value of Meals and Lodging. The value of any meals or lodging furnished to an employee by his employer is not subject to withholding if the value of the meals or lodging is excludable from the gross income of the employee under Section 119 of the Internal Revenue Code. (10) Facilities or Privileges. Ordinarily, facilities or privileges (such as entertainment, medical services, or so-called "courtesy" discounts on purchases), furnished or offered by an employer to his or her employees generally, are not considered as wages subject to withholding if such facilities or privileges are of relatively small value and are offered or furnished by the employer merely as a means of promoting the health, good will, contentment, or for efficiency of his or her employees. (11) Tips or Gratuities. For provisions relating to the treatment of tips received by an employee as wages, see Sections 4309-3 and 4327-1 of these regulations.

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Pensions, Annuities, and Other Deferred Income. Pensions, annuities, and other deferred income as described in Section 3405 of the Internal Revenue Code are wages subject to withholding. See Section 13028 of the code and Sections 4328-1 and 4328.1-1 of these regulations for withholding requirements. Those payments of pensions or other benefits by the Federal Government under Title 38 of the United States Code which are excluded from gross income are not wages subject to withholding.

**(2)**

Traveling and Other Expenses. Amounts paid specifically--either as advances or reimbursements--for traveling or other bona fide ordinary and necessary expenses incurred or reasonably expected to be incurred in the business of the employer are not wages and are not subject to withholding. Traveling and other reimbursed expenses must be identified either by making a separate payment or by specifically indicating the

separate amounts where both wages and expense allowances are combined in a single payment.

**(3)**

Vacation Allowances. Amounts of so-called "vacation allowances" paid to an employee constitute wages. Thus, the salary of an employee on vacation, paid notwithstanding his or her absence from work, constitutes wages.

**(4)**

Dismissal Payments. Any payments made by an employer to an employee on account of dismissal, that is, involuntary separation from the service of the employer, constitute wages regardless of whether the employer is legally bound by contract, statute, or otherwise to make such payments. Dismissal payments, as used in this subparagraph, include but are not limited to, severance pay, in-lieu-of-notice pay, supplemental unemployment, and termination pay.

**(5)**

Deductions by Employer from Remuneration of an Employee. Any amount deducted by an employer from the remuneration of an employee is considered to be a part of the employee's remuneration and is considered to be paid to the employee as remuneration at the time that the deduction is made unless specifically exempted under Section 13009 of the code or deferred under Section 402 or 457 of the Internal Revenue Code. It is immaterial that any act of Congress, or the law of any State, requires or permits such deductions and the payment of the amounts thereof to the United States, a State, a Territory, or the District of Columbia, or any political subdivision of any one or more of the foregoing.

**(6)**

Payment by an Employer of Employee's Tax or Employee's Contribution Under a State Law. The term "wages" includes the amount paid by an employer on behalf of an



employee (without deduction from the remuneration of, or other reimbursement from, the employee) on account of any payment required from an employee under a State unemployment compensation law, or on account of any tax imposed upon the employee by any taxing authority, including the taxes imposed by Sections 3101 and 3201 of the Internal Revenue Code.

**(7)**

Remuneration for Services as Employee of Nonresident Alien Individual or Foreign Entity. The term "wages" includes remuneration for services performed by a resident of California for services performed either within or without California, or a nonresident of California for services performed in California, as an employee of a nonresident alien individual, foreign partnership, trust, association, or corporation, whether or not such alien individual or foreign entity is engaged in a trade or business within the United States. Any person paying wages on behalf of a nonresident alien individual, foreign partnership, trust, association, or corporation, not engaged in trade or business within the United States (including Puerto Rico as if a part of the United States), is subject to all the provisions of law and regulations applicable with respect to an employer. See Section 4305-1 of these regulations relating to the term "employer."

**(8)**

Amounts Paid Under Wage Continuation Plans.(A) In General. The term "wage continuation payment," as used in this subparagraph, means any payment to an employee which is made under a wage continuation plan for a period of absence from work on account of personal injuries or sickness, to the extent such payment is attributable to contributions made by the employer which were not includable in the employee's gross income or is paid by the employer. Any such payment constitutes "wages" and withholding thereon is required unless the payment is specifically excepted under any of the subdivisions of Sections 931.5, 13009, or 13031 of the code.

(B) Amounts Paid by Person Other Than the Employer for Whom Services Are Performed. Payments are considered made by the employer if a third party makes the payments as an agent of the employer. The determining factor as to whether a third party is an agent of the employer is whether the third party bears any insurance risk. If the third party bears no insurance risk and is reimbursed on a cost plus fee basis, the third party is an agent of the employer even if the third party is responsible for making determinations of the eligibility of individual employees of the employer for sick pay payments. If the third party is paid an insurance premium and not reimbursed on a cost plus fee basis, the third party is not an agent of the employer, but the third party is a payer of third party sick pay for purposes of a voluntary withholding from sick pay under section 13028.6 of the code and the regulation thereunder. If a third party payer and an employer enter into an agency agreement whereby the employer designates the payer to be the employer's agent for purposes of fulfilling the requirements of 13050(a) of the code, that agency agreement does not make the third party an agent of the employer for purposes of this paragraph. No tax shall be withheld with respect to wage continuation payments made under a workers' compensation law or from the State Disability Insurance fund. (See Section 13009(g) of the code.) (C) Cross References. See section 13050 of the code and the regulations in this part for rules with respect to the records which must be maintained in connection with wage continuation payments and for rules with respect to the statements which must be furnished in connection with wage continuation payments.

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In General. The term "wage continuation payment," as used in this subparagraph, means any payment to an employee which is made under a wage continuation plan for a period of absence from work on account of personal injuries or sickness, to the extent such payment is attributable to contributions made by the employer which were not includable in the

employee's gross income or is paid by the employer. Any such payment constitutes "wages" and withholding thereon is required unless the payment is specifically excepted under any of the subdivisions of Sections 931.5, 13009, or 13031 of the code.

**(B)**

Amounts Paid by Person Other Than the Employer for Whom Services Are Performed.

Payments are considered made by the employer if a third party makes the payments as an agent of the employer. The determining factor as to whether a third party is an agent of the employer is whether the third party bears any insurance risk. If the third party bears no insurance risk and is reimbursed on a cost plus fee basis, the third party is an agent of the employer even if the third party is responsible for making determinations of the eligibility of individual employees of the employer for sick pay payments. If the third party is paid an insurance premium and not reimbursed on a cost plus fee basis, the third party is not an agent of the employer, but the third party is a payer of third party sick pay for purposes of a voluntary withholding from sick pay under section 13028.6 of the code and the regulation thereunder. If a third party payer and an employer enter into an agency agreement whereby the employer designates the payer to be the employer's agent for purposes of fulfilling the requirements of 13050(a) of the code, that agency agreement does not make the third party an agent of the employer for purposes of this paragraph. No tax shall be withheld with respect to wage continuation payments made under a workers' compensation law or from the State Disability Insurance fund. (See Section 13009(g) of the code.)

**(C)**

Cross References. See section 13050 of the code and the regulations in this part for rules with respect to the records which must be maintained in connection with wage continuation payments and for rules with respect to the statements which must be furnished in connection with wage continuation payments.

**(9)**

Value of Meals and Lodging. The value of any meals or lodging furnished to an employee by his employer is not subject to withholding if the value of the meals or lodging is excludable from the gross income of the employee under Section 119 of the Internal Revenue Code.

**(10)**

Facilities or Privileges. Ordinarily, facilities or privileges (such as entertainment, medical services, or so-called "courtesy" discounts on purchases), furnished or offered by an employer to his or her employees generally, are not considered as wages subject to withholding if such facilities or privileges are of relatively small value and are offered or furnished by the employer merely as a means of promoting the health, good will, contentment, or for efficiency of his or her employees.

**(11)**

Tips or Gratuities. For provisions relating to the treatment of tips received by an employee as wages, see Sections 4309-3 and 4327-1 of these regulations.