

CE Course: Labor Legislation Review and Analysis

By: Kristen Stephens, RDH, MSDH

Introduction

An increase in labor violations effecting dental hygienists has led to the need for an improved awareness and knowledge of labor laws directly related to their practice. While employers are required to abide by the laws that regulate their practice and the employment of staff, it is ultimately the responsibility of the employee to advocate for their rights in regard to labor laws. Failure to advocate for fair and legal labor practice can lead to an increase in illegal labor practices among employers.

A common issue in dental practices that affects the dental hygienist is the classification of dental hygienists as independent contractors.¹ To be considered an independent contractor one must perform services that are outside of the usual business proceedings in the given establishment.² Since a dental hygienist provides patients with dental services within the dental office, he or she may not legally be considered an independent contractor, exempt from employee protection laws. Additionally, the dental hygienist is required by the Dental Practice Act to maintain direct supervision by the dentist when administering local anesthesia, nitrous oxide sedation, and performing soft tissue curettage.³ The dental hygienist is unable to perform these duties free from the control and direction of the performance of his or her work by the employer which is another requirement needed to be considered an exempt, independent contractor.² As with all labor laws, there are exceptions and labor code sections are not all “black and white,” for instance the ability of the RDHAP to be an independent contractor.

Classifying the dental hygienist as an independent contractor can affect wages including, but not limited

to, benefits required by law, fluctuation of hourly rate, overtime rates, breaks, and pay for *all* hours worked. The classification of the dental hygienist as a non-exempt employee entitles the hygienist to the basic rights of an employee as stated in the California Labor Laws and the Wage Theft Protection Act of 2011 which aims to protect the rights of non-exempt employees.

History of the Law

To safeguard the rights of employees from the loss of needed income, the states of New York, New Mexico, Maryland and Illinois passed legislation to solidify laws and regulations related to wage.⁴ In a similar fashion, California instated the Wage Theft Protection Act of 2011, Assembly Bill 469. The Wage Theft Protection Act both amended and added to existing labor code sections.

Purpose of the Law

In an effort to estimate the magnitude of labor law violations in Los Angeles, Milkman et al. conducted a study involving 1,815 Los Angeles County workers.⁵ This survey uncovered numerous labor law violations that ultimately led to a \$2,070 decrease in the yearly salary of each low-wage employee recruited in this study.⁵ Based on the results of this survey, researchers estimated the total loss for low-wage workers reached \$26.2 million dollars per week.⁵ Although numerous violations were noted, the most common included minimum wage violations (54.8%), rest break violations (21.7%), overtime violations (15.3%), and off-the-clock violations (7.2%).⁵ Two recommendations emerged, based on this study, which included updating legal standards and strengthening government reinforcement of existing and future laws.⁵

The purpose of the Wage Theft Protection Act of 2011 is to protect employees from the loss of wages as described in the study above. This act requires that employers provide their employees with a written notice detailing wages and payroll at the time of hire. This helps the employers and employees come to an agreement on a specific employment contract that will protect the rights of the employee and employer as well as adding transparency and clarity to terms of hire for both parties.

Impact of the Law

An employment contract, under the stipulations of the Wage Theft Protection Act of 2011 must include the “rates of pay, designated pay day, the employer’s intent to claim allowances as part of the minimum wage, and the basis of wage payment (whether paying by hour, shift, day, week, piece, etc.), including any applicable rates for overtime.”⁶ If changes are to be made, the employer must give the employee seven calendar days’ notice.⁷ Under the provisions of this act, a dental hygienist with a contract stating that he or she will work Monday through Thursday from 8:00 a.m. to 5:00 p.m. cannot be asked to leave or clock out to forfeit pay if a patient cancels their appointment, as the contract states you are entitled to the wage designated by that contract for that time period.

Additionally, an employer who chooses to pay the dental hygienist a different rate for mandatory attendance at staff meetings or other events, must specify this in the employment contract. Other daily activities performed by the dental hygienist, such as cleaning up or setting up the operatory, morning huddles, working into the designated lunch hour or end of day due to patient care or satisfying job requirements, etc., all require compensation regardless of the basis of wage payment designated in the employment contract.^{1,7} Under the provisions of the Wage Theft Protection Act of 2011, employers who are in violation of the laws provided are responsible for “restitution to the employee in addition to a civil penalty for failure to pay minimum wages.”⁶

According to the California Employment Development Department, dental hygienists in California were compensated with a median wage of \$97,527 annually, or

\$46.89 hourly in 2017.⁸ Considering the findings in the previously discussed study conducted by Milkman et al., the financial impact of money loss due to overtime violations, and off-the-clock violations can be significant.⁵ A full-time dental hygienist who is shorted pay for thirty minutes a day while setting up their operatory in the morning and/or cleaning up at the end of day would result in an approximate annual loss of \$5,626.80 based on the median dental hygiene salary in California. This could mean a potential loss of \$28,134 over a five-year period of time.

The Wage Theft Protection Act of 2011 entitles the dental hygienist to an employment contract binding both the employer and employee to a specific wage agreement. This agreement will offer clarity for the dental hygienist regarding wages and present a time for negotiation, if necessary, preventing the financial loss described above. Based on their negotiations, the dental hygienist and the employer will have to decide if they should come to an agreement with the terms of the contract before establishing a working relationship. If the dental hygienist works under conditions with which they are not in agreement or continues to work after the employer makes changes to the contract (with the required notice), the courts may view this as the dental hygienist agreeing to the terms provided. Therefore, the dental hygienist should refrain from working until agreement is reached. Although this can make the hiring and negotiating process slightly tedious, the dental hygienist can assure his/her protection should a violation occur. In light of recent events and publications informing dental hygienists of their rights as employees, some dental hygienists have become advocates for fair labor practices effecting their profession and are proactive in securing a contract as stated in the Wage Theft Protection Act of 2011.

Probable Union Opinion and Impact Regarding the Law

Although there is no union for dental hygienists, membership in the California Dental Hygienists Association (CDHA) is rising. CDHA’s mission includes advocating for the profession of dental hygiene, quality care for patients, prevention, dental hygiene education, licensure

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and research.⁹ In order to better inform dental hygienists about labor laws effecting the profession and their practice, CDHA has held continuing education courses and workshops revolving around this topic. Additionally, in order to give its' members the tools necessary to advocate for fair labor practices, information is posted on their website, including contact information for state and federal agencies with the authority to interpret and enforce labor laws. CDHA is proactive in assisting dental hygienists with matters, as the existence of illegal labor practices and the willingness of dental hygienists to work under these conditions can have a negative long-term effect on the profession.

Probable Employer Opinion and Impact Regarding the Law

Most employers of dental hygienists are dentists, and many have and still try to classify the dental hygienist incorrectly as an independent contractor, an effort to skirt the protections of the Wage Theft Protection Act of 2011. Refusal of the dental hygienist to work as an independent contractor and insistence on being employed as a non-exempt employee, as the law requires, has financial implications for the dentist. Per the example listed above, a dentist who neglects to pay the dental hygienist for thirty minutes of work per day is subject to a \$28,134 loss over a five-year period of time on top of civil penalties if the dental hygienist files a claim. Additionally, a contract stating the dental hygienist's wages and hours of practice, prohibits the dentist from telling the dental hygienist to clock out upon the cancellation of a patient ensuring that he or she be paid for the hours of work set forth in the initial agreement.

Similar to dental hygienists, dentists do not have a union, but many are members of the California Dental Association (CDA). The CDA has issued news bulletins regarding labor laws and offers continuing education courses in this subject in an effort to better inform dentists of the labor laws to which they are bound.² Members also have access to employee manual samples that can be used to assist the dentist in developing employment contracts for all of their employees.¹⁰

Impact and Effectiveness of the Law

Although there is no data specifically measuring the effectiveness of the Wage Theft Protection Act of 2011, many dental hygienists are now advocating for their rights as stated in this act. While instituted January 1, 2012, it took many years

AUTHOR'S PERSPECTIVE AND RECOMMENDATIONS

“As an educator, I always look forward to talking to my former students about their experiences as new RDHs. While it's encouraging to hear their successes and excitement as they obtain positions in offices throughout California, unfortunately, with the good, sometimes comes the bad and the ugly truth about some of the offices in which they are seeking employment. A few students have reported labor, OSHA, and infection control violations that have caused them to walk out in the middle of a shift in order to maintain the work ethic they were taught to embrace. While my colleagues and I are proud of the hard decisions some of them have had to make, we are also disappointed that these dental environments still exist, even if they are few and far between. We are often contacted by students with questions regarding labor laws, such as working as an independent contractor. As an educator, and a dental hygienist who has experienced working in conditions in which labor laws were violated, I wanted to address these violations in order to give new graduates and seasoned professionals the information they need in order to address illegal labor practices.

Moving forward, the California Dental Hygiene Political Action Committee (CalHyPAC) and the CDHA Government Relations Council (GRC) coordinate advocating for the advancement of the profession. Their involvement in legislative efforts effecting the practice of the dental hygienist is essential in securing a future of fair labor conditions. CDHA has provided excellent resources regarding labor laws for their members.”

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for the stipulations of this bill to reach the dental hygiene community. Those that have embraced their rights as stipulated by this act and basic labor laws have made great strides in educating their employers and securing fair employment conditions.

Conclusion

Since more dental hygienists have become activists for fair employment rights, it might be timely for the profession to conduct research assessing the knowledge, attitudes, and practices of dental professionals related to the labor laws discussed in previous sections. Assessing the magnitude of compliance versus noncompliance might be useful in developing interventions to help noncompliant dental professionals work better within the law. Additionally, the assessment of knowledge and attitudes might help identify gaps in educational materials available related to labor laws and uncover the barriers which exist related to compliance and advocacy.

Although there are many labor laws important to the practice of dental hygiene, the Wage Theft Protection Act of 2011 is able to address many of the issues dental hygienists face in private practice. An increased knowledge base of labor laws and the courage to advocate for fair labor conditions is the first step in securing future standards of employment. The employment contract required by the Wage Theft Protection Act of 2011 offers a way for dental hygienists and their employers to enter into a working relationship based on state compliance, fairness, and transparency.

About the Author

Kristen Stephens, RDH, MSDH is a full-time educator at West Coast University in Anaheim, California where she teaches Oral Pathology and Basic and Applied Pharmacology. She obtained her Master of Science degree in Dental Hygiene from Idaho State University and is currently a doctoral degree student in Educational Leadership at Concordia University, Irvine. Kristen is Past President of



the Long Beach Dental Hygienists' Society and current Trustee. This year, she is also serving on the Student Relations Council for CDHA.

References

1. California Dental Hygienists' Association. (2017). *Labor laws and your employee rights*. Retrieved from <http://cdha.org/labor-laws.html#pay-reductions-due-to-the-schedule>
2. California Dental Association. (2018b). *New court decision makes independent contractor criteria stricter*. Retrieved from <https://www.cda.org/NewsEvents/Details/tabid/146/ArticleID/4350/New-court-decision-makes-independent-contractor-criteria-stricter.aspx>
3. Dental Board of California. (2016). *California business and professional code*. Retrieved from <http://www.dbc.ca.gov/lawsregs/laws.shtml>
4. United States: California Wage Theft Prevention Act Takes Effect January 1, 2012. (n.d.). Retrieved June 16, 2018, from Nexus Uni at <https://www.cui.edu/library/research-databases>
5. Milkman, R., Gonzalez, A. L., Narro, V., Bernhardt, A., Theodore, N., Heckathorn, D., ... Spiller, M. (2010). *Wage theft and workplace violations in Los Angeles: The failure of employment and labor law for low-wage workers*. Los Angeles, CA: UCLA Institute for Research on Labor and Employment.
6. California Department of Industrial Relations. (2016). *Wage Theft Protection Act of 2011 – Notice to employees*. Retrieved from <https://www.dir.ca.gov/dlse/FAQs-NoticeToEmployee.html>
7. Wage Theft Prevention Act of 2011, 2011 Cal AB 469. (n.d.). Retrieved June 16, 2018, from Nexus Uni at <https://www.cui.edu/library/research-databases>
8. California Employment Development Department. (2018). *Detailed guide for dental hygienist in King County*. Retrieved from <http://www.labormarketinfo.edd.ca.gov/OccGuides/Detail.aspx?Soccode=292021&geography=0604000031>
9. California Dental Hygienists' Association. (n.d.) *About CDHA*. Retrieved from <http://cdha.org/about-cdha>
10. California Dental Association. (2018a). *CDA's sample employee manual updated with new and revised policies*. Retrieved from <https://www.cda.org/news-events/cdas-sample>



Home Study Correspondence Course

“Labor Legislation Review and Analysis”

Circle the correct answer for questions 1-10

- The ultimate responsibility to advocate for labor rights in dental office situations rests with:
 - The Department of Consumer Affairs
 - The employer
 - The employee
 - The professional associations
- Failure to advocate for legal labor practices can lead to an increase in illegal labor practices among employers.
 - True
 - False
- Classification of dental hygienists as independent contractors versus the traditional non-exempt employees can affect both wages and benefits.
 - True
 - False
- The purpose of the 2011-2012 California Wage Theft Protection Act is:
 - To strengthen existing labor laws
 - To enhance professional associations and unions
 - To protect basic rights of employees
 - Both a and c
- A study of over 1,500 Los Angeles employees revealed minimum wage violations to be the most common. The next largest labor law violation is:
 - Rest break violations
 - Overtime violations
 - Equipment violations
 - Employee education violations
- The California Wage Theft Protection Act requires employers to provide a detailed notice of wage and payroll related information at the time of hire.
 - True
 - False
- If changes are to be made in wage and payroll information, an employer must give an employee advance notice of:
 - Seven days
 - Ten days
 - Twenty days
 - Thirty days
- Employment contracts must specify if a different rate of pay will be given for “off the clock” activities such as staff meetings, set-up and clean-up.
 - True
 - False
- According to the California Employment Development Department in 2017, the median hourly wage for dental hygienists was:
 - \$33
 - \$40
 - \$47
 - \$57
- An employment contract that covers more specific details offers clarity and transparency for both employer and employee and the opportunity for mutual agreement before starting a working relationship.
 - True
 - False

The following information is needed to process your CE certificate. Please allow 4 - 6 weeks to receive your certificate. Please print clearly:

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