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AVOID WAGE AND HOUR VIOLATIONS

KEEPING THE DEPARTMENT OF LABOR OFF YOUR DOORSTEP

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Avoid Wage and Hour Violations

Keeping the Department of Labor off your doorstep

NANCY W. ANDERSON

Employers may face more scrutiny over pay practices in 2010, thanks to a new report claiming that wage-and-hour violations are running rampant in the workplace. Expressing concern, Secretary of Labor Hilda Solis has promised to step up enforcement and the U.S. Department of Labor (DOL) announced it would hire 250 additional investigators to snare violators.

The report surveyed more than 4,000 workers in three cities and concluded “employment and labor laws are regularly and systematically violated,” with 1.1 million workers having at least one pay-based violation per week. The study concluded that front-line workers lose more than \$56.4 million per week in underpaid wages. Claiming violations in virtually every major urban industry, the report found.

- :: 76 percent of the workers who had worked overtime were paid incorrectly.
- :: 26 percent were not paid minimum wage.
- :: 69 percent of workers had meal break violations.
- :: 20 percent of the workers reported complaints, with 43 percent reporting retaliation.


The reaction of management-side attorneys: Balderdash. In our experience, employers typically try hard to comply with the law and avoid costly litigation. Regardless, employers should be forewarned that the DOL sees a big target on their collective backs. The DOL can show up at a business with no warning, ask to see records and interview employees. The risk for not paying employees correctly is a possible DOL investigation and enforcement action, payment of wages, liquidated damages, fines, criminal penalties and attorneys’ fees.

With 2010 just around the corner, now is a good time for businesses to internally examine their pay practices. Here is a list of top 10 tips for avoiding the most common wage-and-hour mistakes:

- 1** Check overtime exemptions. A common mistake is assuming that employees are exempt from overtime requirements when, in fact, they are not. Before classifying any job as “exempt,” consider conducting a review of the job position and actual duties. Never assume that an employee is exempt from overtime requirements simply because he or she is paid a salary!
- 2** Never assume that compliance with federal law equals compliance with state law or vice versa. You must follow whichever is more favorable to the employee.
- 3** Check overtime pay calculations. These miscalculations can include failing to include all forms of qualifying compensation (e.g., bonuses, commissions) in the regular rate or failing to determine overtime weekly. On the flip side, some employers actually overpay by including vacation, sick leave or paid holidays in their overtime calculations.
- 4** Check that all “hours worked” are paid. Off-the-clock problems can arise with work outside the office (e.g., travel time, telecommute work) or activities the employer does not consider to be “work” (e.g., volunteer or training time, or pre/post-work activities). If the employer permits the work and it benefits the employer, the time may have to be paid.
- 5** Comp time. Although some states permit the use of comp time in place of overtime pay, federal law generally does not permit use of comp time by private employers.
- 6** Rest and meal breaks. Federal law does not require rest and meal breaks for employees, but many state laws do. Check your local laws. If you provide a rest break, it must be paid. Generally, for

a meal period to be unpaid, it must be at least 30 minutes and the employee must be completely relieved of duty.

- 7** 76 percent of the workers who had worked overtime were paid incorrectly.
- 8** Check deductions. Watch out for improper use of wage deductions. For example, many states do not permit pay deductions for product breakage unless it was due to the employee’s dishonest or willful act.
- 9** Double-check employee classification. Along with mistakes in exempt status, some employers misclassify temporary employees, part-time workers or independent contractors. Check to see if you have properly determined who are “employees.”
- 10** Check your record-keeping. Make sure you are keeping the right records, as the burden of proving you are in compliance will ultimately rest on you, the employer.

With some up-front analysis, your business can potentially avoid costly litigation and be ready if the DOL shows up on your doorstep. 



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