

BUSINESS CASE • TRAINING
Wage & Hour Training ROI

Building a Good Faith Defense and Limiting Damages

In the compliance training world, hard ROI (Return on Investment) information is hard to come by. So many variables impact the analysis, and determining whether or not training has actually saved an employer money can take years due to litigation and training cycles.

But wage and hour training offers a solid and tangible ROI. Given the nature of wage and hour claims and the types of damages that are available, employers can quickly gain real financial benefits from training.

Training: A Key to Building a Good Faith Defense

Wage and hour laws aren't just complex; they're the fastest growing problem for US employers, with wage and hour class action claims, **outnumbering all other forms of employment class actions combined.**

Thankfully, employers who take the right preventative actions can build a strong affirmative defense to wage and hour claims under the Fair Labor Standards Act (FLSA).

Wage and hour training for employees and managers is a critical part of a prevention program, helping to cut damage awards in half, and preventing litigation from occurring in the first place.

Understanding Wage & Hour Liability & Damages

To see how training can create tangible ROI, employers need to understand the three main components of wage and hour liability:

1. **Back Pay.** If an employer pays an employee improperly, the employer is strictly liable for the underpayment. Period. It does not matter whether the underpayment resulted from intentional misconduct or an innocent error or omission.

Employees who have been underpaid can recover up to 2 years of back pay, unless a willful violation is established. With evidence of good faith efforts, which include training, an employer may successfully limit back pay awards to two years.

2. **Willful Violations.** A legal determination that an employer engaged in a willful violation of the law will extend a back pay award from 2 years to 3 years.

A violation of the FLSA will be deemed willful if the employer **either knew, or showed reckless disregard** for whether its payroll practices violated the FLSA.

Employers who demonstrate that they acted in good faith, and made a sincere effort to comply with the law, will have a much easier time proving a violation was not willful.

Employers who utilize a high-quality and effective wage and hour training program for managers and employees will be better positioned to establish a good faith defense.



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Appropriate training will be viewed as an honest and reasonable effort to insure that payroll practices and manager actions complied with applicable laws.

3. Liquidated Damages. Liquidated damages, if awarded, can double a back pay award. A two or three year liability instantly becomes a 4 to 6-year liability.

It is increasingly common for courts to automatically award liquidated damages if an employer is found to have engaged in willful misconduct under the FLSA. An employer may be able to avoid an award of liquidated damages if it can show that its actions were taken in good faith, and that the employer had “reasonable grounds for believing” its actions did not violate the FLSA. (See FLSA, 29 U.S.C. Section 260).

Again, training provides employers with solid evidence of good faith efforts to comply with the law. A solid training program demonstrates an employer’s commitment to achieving legal compliance--especially on the front line where many of the most costly mistakes occur.

Forward Looking Damages: The Case for Training Mid Litigation

It is also important to note that during litigation, damages continue to accrue forward in time until the employer demonstrates that it has corrected the FLSA problem.

This means that the monetary damages will continue to increase as a lawsuit slowly progresses, which can take years in many cases. For an employer who does not take prompt corrective action, liability can quickly exceed 4 or 5 years in tough cases or collective actions. An employer who implements training, even mid-litigation or audit, has taken a significant step forward in demonstrating that a particular problem or error has been corrected.

The net result? Training can actually stop damages from accruing the moment it’s rolled-out to employees and managers. In these instances, employers experience virtually immediate and significant ROI.

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866-297-0224
info@navexglobal.com
www.navexglobal.com

Take Steps Now To Build a Solid Good Faith Defense

Educating employees about their rights and obligations is critical to establishing a good faith defense to wage and hour liability. Training has a two-fold effect.

- Employees and managers who understand the basic rules are less likely to violate wage and hour laws inadvertently. Many cases involving massive liability could have been avoided with simple educational efforts.
- Wage and hour training is compelling evidence of good faith efforts to comply with the law. If and when mistakes happen, your organization will be positioned to establish a good faith defense, and dramatically reduce damage awards or the settlement value of a case.

Wage and hour training can easily save your organization millions of dollars. The ROI is real. Utilizing online training provides another layer of ROI by saving the time and expense of classroom education. Employers can reach a large, geographically dispersed workforce, seamlessly tracking and archiving data for each employee who takes training and acknowledges the organization’s policies. Now those are training dollars well spent.