

Wage and Hour Law in a Blackberry World

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By some estimates 70% of employers are out of compliance with state or federal wage and hours laws. This figure isn't surprising when one considers the complexity of the laws and the potential for error in classification of employees or in record keeping. At the same time, the federal and state governments are looking for ways to boost their coffers during this budget crises and have stepped up enforcement of these claims, and employees' attorneys looking for work have begun targeting wage and hour compliance as an easier place to make a living than discrimination law suits. In light of these issues, employers are advised to keep abreast of new laws and to audit their internal practices for compliance.

New Record Keeping Requirement

As of October 26, 2009, New York Labor Law 195(1) requires New York employers to provide written notice to all newly-hired employees of their rate of pay and regular pay day. For non-exempt employees, those entitled to overtime, the law requires that they be provided with their regular hourly and overtime rates of pay. For exempt employees, the employer must provide the classification under which the employee is exempt. The employee must acknowledge receiving the document in writing. The Department of Labor (DOL) has a form available on its website for employers to use. Employers who do not use the DOL form are at risk of having their paperwork deemed insufficient.

Increase in Wage and Hour Overtime Litigation Due to Technology

Employers have always faced issues when deciding when to compensate employees for time spent on-call while away from work. Recent technology, such as cell phones and blackberries, has, however, increased the issues surrounding such on-call time. Class actions against AT&T, T-Mobile, and CB Richard Ellis, Inc. among others have highlighted the dangers of non-exempt employee use of company issued technological devices after hours. T-Mobile recently settled a multi-million dollar class action against them for an undisclosed amount relating to their technical services employees. Both AT&T and CB Richard Ellis continue to litigate claims that they failed to pay employees for off-duty blackberry and cell phone use in their support and maintenance departments.

In general, if a non-exempt employee is required to respond to e-mails, text messages or phone calls outside of work, the employee should be paid for this time. Employers should train managers and supervisors not to require after hours use of such devices unless necessary, and employees should be expected to record any time they spend using such devices outside of work. To ensure compliance, employers should periodically audit employee time entry to make sure that such after hours work is being recorded.

Employers who do not pay employees for such time may find themselves involved in costly litigation. Claims brought under the FLSA entitle the employee to not only actual damages, but to penalties and attorneys' fees as well.

Of course, these are only two of the wage and hours issues confronting employers in these difficult times. Employers with questions are advised to consult with their legal counsel to ensure compliance and avoid litigation.