



EASA 2018 Convention — Milwaukee, WI

A Primer on Wage-Hour Laws and Compliance Tips

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Wage-Hour Compliance is Important

- Who is covered by Federal Wage-Hour Laws?
 - Most businesses in interstate commerce
 - \$500,000 annual revenue or more
- Growing threat – State and Local Laws:
 - As reaction to the minimum wage protests
 - Proposed \$11 to \$15 per hour minimum wages
 - Often no minimum enterprise level
 - Paid mandatory leave laws

Federal Fair Labor Standards Act Basics

- FLSA:
 - Minimum wage at Federal level still \$7.25
 - OT after 40 in a 24/7 workweek for non-exempts
 - Child labor restrictions
 - Details the exempt requirements
 - Generally, contract labor is excluded from coverage

Federal Fair Labor Standards Act Basics

- FLSA Becomes Political:
 - For Exempts, DOL proposed more than doubling the minimum wage. Was rescinded.
 - Attack on Contract Workers with Pressure to make Them Employees. May be reversed.
 - Fiduciary Rule – tough time being enforced, but may still surface.
 - State and Local actions, largely pushed by union protests, as mentioned above.
 - FMLA expanded, but still not paid at Federal level

Wage-Hour Hot Issues

- Failing to Track Lunch Breaks Accurately:
 - Main focus of investigators over last few years
 - Computerized time records make it easier to detect
 - Four hits on time clock – in, out at lunch, back from lunch, out at end of shift
 - Must be at least a half-hour continuous
 - No phone or cash register coverage
 - Restroom and smoke breaks do not count

Wage-Hour Hot Issues

- Docking Non-Exempts for Various Expenses:
 - Basic idea is to not push a non-exempt under the minimum wage
 - Usually done for cash register shortfalls or missing tools.
 - Sometimes done for damaged tools
 - Vandalism/carelessness issues

Wage-Hour Hot Issues

- Base Wage Includes Bonus and Shift Differentials:
 - OT calculation is not actually 1.5 times the hourly rate of non-exempt employee
 - It is 1.5 times the average hourly wage of employee including anything related to work performance.
 - Christmas bonuses, for instance, may be excluded

Wage-Hour Hot Issues

- Knowing When Pay Starts – Dressing and Clean Up:
 - Employees who arrive at their workstations early may be entitled to pay for that time
 - If work requires special equipment or clothing, then the time to don the clothing or remove it will be considered paid time

Wage-Hour Hot Issues

- Non-Exempt Travel Time Compensation:
 - Non-exempt Employees are entitled to be paid for their travel time.
 - This is often negotiated with the employee and pay is not required for off-hours at the remote job site – eating, sleeping, etc.
 - If local sites, consider having employee start at a job site rather than the shop. Then, travel time only incurred in transit and not at the ends.

Wage-Hour Hot Issues

- Non-Exempt Training Time Pay:
 - Non-exempt employees are entitled to be paid for training that is required. This includes from the prior slide travel to and from the training.
 - If training is optional, it needs to be really optional, or in a Wage-Hour audit, this will be viewed negatively by the investigator.

Wage-Hour Hot Issues

- Having “Salaried” Non-Exempt Employees:
 - Non-exempt employees should always clock in and out.
 - Many employers have mostly office employees on a fixed schedule and do not require clock-in and clock-out. During an audit, these employees often claim that they were not paid OT or worked through lunch.
 - Note new office manager exempt classification.

Wage-Hour Hot Issues

- Independent Contractor vs. Employee:
 - Many small companies try to have many employees as independent contractors.
 - This can be a very costly mistake and costs can include OT, but more importantly, catch-up withholding for the IRS and perhaps state income tax.
 - Various tests applied: Control, regular hours, level of employee, employee investment, risk of loss, and percentage of weekly work from one employer.

Wage-Hour Hot Issues

- Misclassification of Non-Exempt Employees:
 - Do not have to pay OT or track hours for exempt employees.
 - Another costly mistake often detected during Wage-Hour audits.
 - Must fit under exemptions: Executive, Manager, Professional, Control of one function, outside sales.
 - Technicians are not professionals

Wage-Hour Hot Issues

- Misclassification of Non-Exempt Employees, Continued:
 - Managers generally subject to some limit on non-exempt work and managing at least 2 full-time employees
 - Must be on salary at the minimum exempt level
 - Outside sales must be truly “Outside”
 - Computer geeks must be paid at exempt level and be doing senior or supervisory work.

Wage-Hour Hot Issues - Bonus

- Liquidated Damages:
 - Even the most careful employers often pay something due to a Wage-Hour audit.
 - In addition, the investigator may assess “Liquidated Damages” equal to 100% of the amount determined.
 - Used to be only after a first-time audit unless extreme conduct.

Wage-Hour Questions

- My next session, 9:45 to 10:45, is dedicated just to answering questions on this presentation. Please join me after the break.



**Thank you for attending
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