

FIVE KEY STRATEGIES FOR WAGE/HOUR COMPLIANCE

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Wage and hour issues are taking center stage again. The current recession has resulted in increased wage and hour claims filed by unemployed individuals seeking money. With turnover and hiring in flux, new employees assigned to duties requiring expertise in payroll and wage and hour compliance expertise must be provided with adequate training. Here are five strategies to reduce claims filed against your business:

- **Meal period compliance.** A significant number of claims involve meal period compliance. Employees in California are entitled to one uninterrupted 30-minute off-duty meal period if they are working more than five hours, and a second meal period if they work more than 10 hours on any work day. The starting and stopping times of these meal periods must be recorded. In addition, employers must pay an additional premium of one hour of pay if the meals are not provided as required by law. The issue of whether an employer has to assure that meal periods are taken, or merely make them available, is on review by the California Supreme Court. But at the very least you cannot interfere with an employee's right to enjoy a meal period.
- **Rest period compliance.** An employee is entitled to a rest period of at least 10 minutes "net rest" for every four hours of work ("or major fraction thereof"), which should be permitted to be taken, if "practicable," in the middle of this work period. These rest periods need not be recorded and are paid working time. The no-documentation requirement may seem to lighten the burden on employers, but disputes as to whether a rest period was permitted on specific occasions often arise. Thus, periodic

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signed acknowledgments should be obtained from employees confirming that breaks have been provided. The facts of each case become critical. For example, employees working with tight schedules or in remote locations without relief may bring a rest-period claim.

- **Overtime compensation.** Many wage and hour lawsuits involve alleged unpaid overtime. Improper documentation of hours worked (including unpaid on-duty meal periods that are recorded as “off duty”) often becomes the basis for claims for unpaid overtime. Independent contractors and salaried exempt employees who claim they were misclassified generally have not kept time records, making it more difficult to defend overtime claims. Some claims involve bad arithmetic or oversights. Effective Jan. 1, 2009, the minimum compensation for highly skilled computer employees exempt from overtime requirements increased from \$36.00 to \$37.94 per hour, with the minimum annual of salary of \$79,050. If employees otherwise qualifying for this exemption are earning less than this threshold, their compensation must be increased to preserve the exemption.
- **Hours worked.** You should carefully monitor how employees’ time is being recorded for on-duty standby, travel, training events and employer gatherings including employer-furnished meals. In California, “hours worked” is defined as time when employees are “suffered or permitted to work” or under the control of the employer. Strict policies should be implemented prohibiting “off the clock” work, and work performed outside the employer’s premises should be authorized by the employer and timely recorded as with all other hours worked for the week. And of course documentation should be closely monitored and authenticated by employees each pay period.
- **Other pay practices.** Employers who fail to pay wages in a timely manner may be subject to penalties. Different standards and types of penalties apply depending on whether the payment was late for a regular pay period or upon termination of employment. In addition to making timely payment, if employees are not provided an itemized statement required by law, additional penalties could result. Deductions from earned wages are permitted only in special circumstances and generally require a written authorization signed by the employee. All accrued but unused vacation must be paid with final wages upon termination.

Overall, do not assume that managers or administrators, even those with some background in wage and hour matters, are up to speed. A number of claims arise as a direct result of an employer's improper or incomplete resolution of incorrect payroll practices. As evident from case law and recent legislation, a release of liability signed by an employee may not be proper or enforceable in all situations.

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