



Stretching The Limits On Flexible Work Arrangements

Insights

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Are we seeing the end of 40-hour work weeks by employees? While some workers may be accustomed to toiling around the clock in an effort to climb the corporate ladder, a recent study shows that more and more employers are encouraging improvements in work-life balance by offering flextime, alternative worksites, and optional overtime in hopes of retaining employees who may be lured away by less intensive hour requirements or more lucrative job opportunities.

By The Numbers

According to the 2012 National Study of Employers conducted by the Society for Human Resource Management and the nonprofit Families and Work Institute, 77% of companies who were surveyed said that they now permit or encourage flextime, up from 66% from 2005. Nearly two-thirds reported that they allow employees to work occasionally from home, which is a significant increase from 34% prior to the recession seven years ago. Employees are also finding it more acceptable to turn down overtime hours. Now, 44% of employers surveyed said they give their workers a say in whether or when they will put in extra hours, which is an increase of 28% since 2005.

Many employers are adopting creative work schedules to encourage employees to stay put now that the job market is opening up. But in doing so, they may not be paying sufficient attention to the compliance implications of wage payment laws that may affect these arrangements. There are potential pitfalls under both federal wage and hour laws and the requirements and limitations of local and state laws that demand close attention, which means it may be time to make sure your human resources department is managing employee working hours the right way.

Don't Bend The Rules

Most wage-payment laws were not designed to be flexible or adaptable, or to facilitate the practical concerns of modern-day employers. Nevertheless, these requirements remain in force, and you should ensure that alternative-scheduling plans comply with what at times may seem antiquated, or even nonsensical, legal requirements.

You can reduce the likelihood of unintentional violations by understanding a few key concepts and being proactive.

Recordkeeping

If employees are allowed to work flexible or unusual hours, it may be necessary to implement a more precise recordkeeping system to track the time worked. If not, small timekeeping errors may

gradually accumulate, leading to hundreds of thousands of dollars in liability, penalties, and attorneys' fees if you are forced to defend wage-payment claims on a class basis.

Supervisors must properly train and monitor employees in connection with accurate timekeeping practices both for those who work inside the office or plant, and those who work at home or telecommute. Discipline those who violate these important rules.

Overtime Work and Pay

Just because overtime work may be optional for some flextime employees, it's still crucial to account for all overtime hours worked and properly compute overtime pay for employees who are not exempt from the overtime pay provisions of federal and state laws.

Classifications

Most flextime litigation has to do with misclassification of workers who are thought to be exempt from the overtime pay provisions of federal or state law.

As a general proposition, all employees are presumed to be *non-exempt* from the overtime pay provisions of the FLSA, unless you can show that a specific exemption applies. In other words, employees are entitled to overtime pay for all overtime hours. Research shows that a significant number of employees – for example those who perform safety duties – are treated as exempt when they usually do not fall within any specific exemption category under the FLSA. Although it may be possible to defend such exemption strategies, you must be sure all employees are properly classified in order to avoid this common wage payment problem.

First, See If It Fits

When implementing a flexible work schedule, it's a good idea to pilot the program. Analyze the pros and cons after a few laps around the track, obtain employee feedback, and make any necessary adjustments before setting the ongoing plan in place. At the outset of the pilot program, remind employees that if the plan proves unsuccessful, the company will return to prior work scheduling arrangements.

With the number of wage-payment claims soaring in recent years, these matters can be time consuming and expensive to defend, even if you've done little that is found to be out of compliance. Generally, these cases boil down to little more than the mechanics of how your employees should have been paid.

To avoid costly litigation, take time to understand your obligations under the FLSA and other applicable wage payment laws, and make compliance a priority. Good-faith efforts go a long way toward improving the odds of a smooth trip when traveling down the path of wage and hour compliance.

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