



More Tips On Labor Costs And The FLSA

Insights

4.28.12

Readers of our [earlier post](#) have asked whether there are additional ways to control or even reduce labor costs consistently with the federal Fair Labor Standards Act. There are, and we will again divide our discussion between mistaken beliefs and possible opportunities.

Avoid Expensive Misconceptions

There are other recurring points of "conventional wisdom" that can drive up wage costs.

One is the erroneous view that an employer must pay the same hourly rate for compensable travel time or training time that it pays for the employee's normal or principal work. But the fact is that nothing in the FLSA prevents an employer from paying a different *and lower* hourly rate (of not less than the minimum wage) for different kinds of worktime. How the employer figures overtime compensation in those situations is beyond this post's scope, but it can be done without great difficulty.

Another example is the proposition that employees must be paid overtime compensation for working beyond their scheduled stopping times. This is not the case under the FLSA, which (with a few specialized exceptions) only requires overtime pay for hours worked in excess of 40 in a workweek. It is of course possible that a union contract, an employer's policy, an employment contract, or a state daily-overtime law might call for a different answer.

Consider Additional Alternatives

The FLSA does not say that non-exempt employees must be paid at an hourly rate or in any other particular way. It simply requires that, whatever the pay plan is, the employer must still comply with the FLSA's minimum-wage, overtime, and timekeeping requirements. This leaves a lot of room for a variety of approaches, such as:

- ◇ A salary-plus-overtime arrangement, which can take different forms depending upon what number of hours worked the salary is paid to compensate;
- ◇ A day-rate plan, which is based upon an employee's receiving a fixed amount for each workday in which he or she performs any work, without regard to the number of hours worked in the workday;
- ◇ A piece-rate or job-rate plan, under which employees receive a fixed amount for each piece or item produced or job completed; or

◇ A commission plan, which calls for employees to receive sales-based compensation.

Naturally, an employer should be careful in designing, implementing, and administering any pay plan to ensure that the plan actually produces FLSA-compliant wages. For instance, the employer still must compute and pay the necessary FLSA overtime premium under a day-rate, piece-rate, job-rate, or commission method.

And, as we said last time, employers must be certain that whatever they decide to do is *also* permitted under all applicable state and local laws, under special "prevailing wage" requirements, and so on.