



October 2013

Wage and Hour Regulations

Pay Right or Pay the Price

The number of companies exposed to wage and hour audits by Federal and State examiners increases each year, and the results, very often, are expensive settlements or even more expensive litigation.

Aside from government initiated audits, there are an endless number of attorneys who will represent individuals or initiate class action law suits to recover high amounts of back pay, along with lawyer's fees. More and more employees, in all levels of job classifications, are aware of the possibility of getting piles of money for years of back wages, benefits and penalties if their employer improperly classified and/or paid them. Huge economic penalties from Department of Labor (DOL) settlements and litigations have been widespread, involving service and hospitality employees, drivers, sales people, low level managers, exotic dancers, trainers, nurses, and field managers among others. The following is a list of some of the frequently encountered violations which have resulted in huge payouts from employers:

1. **Misclassifying employees as “independent contractors.”** The law dictates specific criteria, which must be met for a person to be a “contractor” as opposed to an employee. An incorrect designation can result in not only back pay and overtime, but also in a determination that statutory taxes, (such as social security, unemployment and worker's compensation payments), as well as employer benefits (medical, pension, etc.) were improperly withheld.
2. **Classifying non-exempt employees as exempt.** Too often, employers fail to recognize that specific criteria must be met for an employee to be properly classified as exempt and, accordingly, not entitled to overtime. Misclassification of employees has resulted in enormous exposure and payouts by companies of every size.
3. **Time keeping violations.** Failure to keep accurate, contemporary records of working time can also result in huge back pay awards. Paying employees “off the clock”, or not designating all time worked as paid time (deducting for breaks not

taken, allowing employees to work while not recording the time, designating certain activities as non-working time incorrectly) often results in substantial unpaid overtime wages being awarded. Where employers fail to produce reliable time records, the credible testimony of employees will generally prevail in determining what wages are owed.

4. **Improper allocation of tips and wage. Overtime calculations which incorrectly apply tip credits.** The service and hospitality industries, in which tips play a substantial role in compensation, have been inundated with litigation as plaintiff's attorneys discover that most employers in this industry fail to correctly navigate the difficult and complex regulations. Improper tip sharing, distribution of tips, and overtime calculations are the types of violations that result in back pay, and affect the local pizzeria as well as luxury restaurants and hotels.

Employers are urged to have a knowledgeable professional perform a wage and hour audit to identify and correct policies and practices that could expose their company to liability.

Portnoy, Messinger, Pearl & Associates, Inc.'s (PMP) HR consultants have the knowledge and experience to assist you. We can answer your compliance questions and help you conduct a self-audit and address potential problem areas. PMP's wage and hour professionals would meet with you and, if you choose, your accountant, to discuss your specific workforce needs.

Upcoming Wage & Hour Workshops

Don't let wage and hour claims sink your business! Join Portnoy, Messinger, Pearl & Associates, Inc. on October 24, 2013 for an interactive workshop on wage and hour compliance designed to guide business owners, company decision-makers and HR personnel through complex wage and hour regulations.

On November 21, 2013, those in the hospitality industry can join PMP for a panel discussion that will cover your unique workplace needs under wage and hour regulations, including tipped employees' minimum wage, wage deductions and advances, etc.

Visit www.pmpHR.com/Workshops for more details.



Alan B. Pearl, General Counsel of PMP, represents management in all aspects of labor and employment matters in the private and public sector, including regulatory compliance under the FLSA.