

Wage and Hour Considerations

By now, you are probably aware of the surge of wage and overtime audits and lawsuits. To give you better idea of what is happening, the DOL collected over 115 million in back wages in 2022. Workers Owed Wages is a recovery program whereby DOL works to recover wages for those owed and holds it for up to 3 years while the employee is contacted. If they can not find the employee, the money is sent to US Treasury. In 2022 alone, over 9.1 million was moved through the WOW system. The average wage for each employee affected is \$1,393.

According to the U.S. Department of Labor (DOL), 80% of employers (small, medium, and large) are out of compliance with wage and overtime regulations. As well and unfortunately, the trend we are seeing today is that 7 out of 10 employment lawsuits relate to wage and overtime pay. Wage and overtime rules are governed by the Fair Labor Standards Act of 1938 (FLSA) and these laws are extremely complicated and compliance is, at a minimum, difficult. Given the increased regulatory enforcement efforts as well as the spike in private lawsuits ongoing today, if you have not conducted an audit of your company's pay practices in the last year or two, your company could be at risk. Consider the following areas of confusion:

FLSA MYTHS and REALITIES

MYTH: I pay my employees an annual salary. Therefore, these employees are NOT entitled to overtime if they work over 40 hours in a week.

REALITY: Department of Labor tells us they can figure out the hourly rate of pay from a salary and so can WE. This alone is not enough to make an employee exempt from entitlement to overtime.

MYTH: My managers (because of title alone) are not entitled to overtime.

REALITY: U.S. DOL pays no attention to Employee Titles. If they audit your pay practices, they interview employees to determine what work they perform. The work, not the title, is the basis for whether an employee is or is not entitled to overtime.

MYTH: For hourly employees who work over 40 hours in one week, I only have to pay them time and one half of their hourly rate for the additional hours worked.

REALITY: Not necessarily. Also calculated into hourly employee pay (and into overtime pay rate) are non-discretionary bonuses on-call pay, shift differentials, non-discretionary bonuses; contest prizes, pay increases, and retention bonuses.

MYTH: Hourly employee agrees in writing (or orally) that he/she waives the right to receive overtime pay.

REALITY: Such an agreement isn't only unenforceable, it could set up the employer for a charge that it "willfully" undertook to get around FLSA rules – and that could turn out to be very costly in punitive damages following a lawsuit.

MYTH: My employee works overtime without pre-authorization so I do not have to pay this employee for additional hours worked.

REALITY: YOU MUST PAY YOUR HOURLY EMPLOYEES FOR ALL TIME WORKED REGARDLESS.

Fair Labor Standards Act violations can carry penalties including back pay, interest, attorneys' fees, court costs and liquidated damages. The FLSA also allows for personal liability claims against individuals like corporate officers and supervisors. In order to protect against liability or at least prepare for the possibility of a governmental audit or employee lawsuit, **AUDIT YOUR PAY PRACTICES.**

If you are interested in discussing how The ETC Companies can assist with this audit, contact us at info@etctracking.com

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