
FLSA COMPLIANCE AND EXPOSURE CHECKLIST

The Department of Labor Wage and Hour Division has announced that it plans to target the hospitality industry for FLSA compliance audits (the "Hotel and Motel Resort Pilot Initiative"). The risk of high-exposure wage claims is greater than ever. Now is the time to focus on compliance and prevention. Every employer should know (or quickly find out) the answers to these kind of questions:

Is Every Nonexempt Employee Paid The Required Minimum Wage?

- The current FLSA rate is \$7.25 per hour (but a number of jurisdictions require a higher rate).
- Review deductions or employee payments, repayments, or work-related purchases to ensure that they do not cut employees' pay to below the required minimum wage. For example, determine how the cost of required uniforms is being handled, and find out whether deductions or repayments being made for shortages are unlawfully reducing employees' wages.

Is Every Nonexempt Employee Paid The Required Overtime?

- Ensure that all bonuses, shift differentials, service charges and other payments are properly included in computing overtime or may lawfully be excluded from that calculation.
- Be certain that deductions or employee payments, repayments, or work-related purchases are not improperly cutting into overtime pay.
- Ensure that *all* overtime hours are identified and properly paid for such as work done at different locations or in different jobs. These hours must usually be combined for purposes of determining overtime pay due.
- Determine whether any formal *or informal* "comp time" arrangements exist. Most such systems do not comply with the FLSA's overtime requirements.

Are Nonexempt Employees Accurately Recording All Worktime?

- Pay special attention to whether employees are recording things like pre- and post-shift work; shift-change overlap; opening or closing activities; compensable training time; meeting time; compensable travel time; compensable "on-call" work; and time spent doing work at home.
- Ensure that employees are accurately recording meal time and other non-compensable break time and that they are being paid when they do not take that time off.

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- Systematically check to see whether time records might be inaccurate. For instance, do the records show repetitive starting or stopping times; do they appear to mirror only scheduled or "expected" hours; are there recurring corrections, or strike-outs; are there unexplained additions to or subtractions from employee worktimes?
 - Establish lawful policies designed to produce accurate time records; to see that first-line management understands and enforces those policies; to develop a culture in which employees are at ease about recording their time accurately; to have a system for auditing time records; and to have a system in place via which employees can report timekeeping problems or complaints.

☐ Can We Prove That All Our “Exempt” Employees Meet The Requirements?

- Be familiar with the criteria defining whom may be treated as exempt from the FLSA's minimum-wage and/or overtime requirements. "Salaried" employees are not necessarily exempt.
- These criteria apply on an employee-by-employee basis. Exemption decisions should not be made simply based on job titles or position descriptions.
- Keep in mind that, even if an employee is exempt under the FLSA, other jurisdictions might not recognize the same exemption or might impose different rules.

☐ Are Exempt Employees Paid Properly?

- An important criterion for the FLSA's executive, administrative, and professional exemptions is that relating to the "salary basis" of pay. Paying on a "salary basis" generally means that the employee must receive a fixed, predetermined amount of money (currently of not less than \$455 per week) for every workweek in which he or she performs any work, without regard to the number of days or hours worked, and without regard to the quality of his or her work.
- Salary deductions may generally be made only in specifically-defined situations. Ordinarily, salary deductions may *not* be made for part-days missed or for cash or inventory shortages, for example.

☐ Are We In Compliance With All Child-Labor Restrictions?

- There is an age-16 limit for general occupations. There is an age-18 limit for occupations declared "hazardous" by the U.S. Secretary of Labor. 14- and 15-year-olds may be employed in limited occupations, within strict hours and times of day limitations.
- Identify every employee who is 16 or 17, verify his or her age, and find out his or her exact duties. Identify every employee under 16, verify his or her age, and find out his or her exact duties and hours and times of work.

☐ Do We Have All Required Posters Displayed?

- Some courts have ruled that, because an employer had not displayed the required FLSA poster at a particular location, the statute of limitations did not begin to run until

the employee had actual notice of his rights. Ensure that required posters are properly displayed and visible to employees.

☐ **Are We Following State and Local Wage-Hour Requirements?**

- The FLSA does not preempt tougher state or local wage-hour provisions. These other laws might well include things like a higher minimum wage; daily overtime; minimum pay for reporting to work; or more-rigorous child-labor limitations.
- Other jurisdictions might also limit or prohibit wage deductions; set time limits for paying employees who resign or are fired; limit the ways bonus, incentive, or commission payments can be paid or forfeited; or require payment in cash. Moreover, other laws might not recognize all of the FLSA's exemptions.

☐ **Are We In Compliance?**

- The U.S. Labor Department can impose civil money penalties for willful or repeated violations of the FLSA's minimum-wage or overtime provisions; these are *in addition* to the other civil and criminal remedies.
- The other risks of noncompliance are at least as great: Back wages, up to an equal amount as "liquidated damages"; interest; injunctions; attorney's fees for private litigants; up to three years of liability; occasionally, liability for individual management members; and even criminal sanctions.
- Unions have also hit upon compliance shortcomings as being a leverage point in organizing efforts, in "corporate campaigns", or in collective-bargaining negotiations.
- For these and other important reasons, being sure you are in compliance with all applicable wage-hour laws is *CRITICAL*.
- Employers should implement policies and practices that both reduce the chances of future violations and enhance the ability to defend against any claims that do arise.
- These initiatives cannot be carried-out as effectively "under the gun", that is, in the midst of a wage-hour investigation, a class-action or collective-action lawsuit, or a union's corporate campaign or organizing attempts. By undertaking the effort now, you can do a thorough analysis and carefully decide what steps best balance your business needs and the interests of risk-reduction.
- A compliance program should include training and periodically re-training supervisory employees and employees handling compensation, as well as annual compliance audits and more-frequent spot checks at selected units, districts, regions.

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