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HUMAN RESOURCES GUIDE

Five Common Wage & Hour Mistakes That Could Cost Your Company Millions

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This article lists five of the most common wage and hour mistakes that could create substantial liability for California employers.

1. Meal and Rest Periods

Non-exempt employees who are scheduled to work more than five hours are required to take one uninterrupted duty-free meal period of at least 30 minutes. However, if employees work six hours or less, they can voluntarily waive this meal period. If they work more than 10 hours, they are generally required to take a second meal period as well. Employees should be relieved of all active responsibilities and restrictions during meal periods, and do not have to be compensated for that time. Employees should be required to sign out and sign back in on their time records for these meal periods. Employers should schedule these meal periods as close to middle of the employee's shift as practicable. Meal periods should be taken away from the employee's work area. Employers must provide non-exempt employees with one 10-minute rest period for each 4-hour period of work or major fraction thereof. These rest periods should be provided as close to the middle of the employees' 4-hour work period as practicable. Rest periods are counted and paid as time worked. Employers should have employees regularly sign verification forms confirming that they complied with the meal and rest period regulations. Failure to comply with these regulations could lead to liability of one hour's pay for each violation, plus waiting time penalties (up to 30 days' pay), interest and attorneys' fees.

2. Pay Stubs

Employers must include the following information on employees' pay stubs: gross wages earned; total hours worked (except exempt employees); if applicable, number of piece-rate units earned and piece-rate; all deductions (if written authorization by employee, may be aggregated); net wages earned; inclusive dates of pay period (start and end dates); name of employee and the last four digits of his/her Social Security Number; name and address of legal entity that is employer; and all applicable hourly rates in effect and corresponding number of hours worked at each hourly rate. Failure to comply with these regulations, even for minor technical violations, could lead to liability of \$100 penalty per pay period per employee (up to \$4,000 per employee), plus interest and attorneys' fees.

3. Time Cards

Employers must maintain accurate records, in ink or other indelible form, of the hours worked by non-exempt employees. The records must include the beginning and end of each work day, and the beginning and end of the meal period(s). Employers should be wary of time cards that indicate the employee started and stopped at the exact same time each day. An employer's failure to track time

worked and meal periods on time cards could be used as evidence against the employer in any related claims.

4. Vacation Pay

In California, employees accruing vacation pay do so on an ongoing basis. Vacation pay does not suddenly appear on a given day such as January 1 or an anniversary date. Employers may not require employees to have "use it or lose it" vacation policies. However, employers may impose a reasonable "accrual cap" for vacation pay. Employers should carefully define how vacation is earned and paid. All earned vacation must be paid out at the time of termination at the employee's then current rate. Failure to comply with these regulations could lead to liability of unpaid vacation, plus waiting time penalties, interest and attorneys' fees.



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5. Exempt Classifications

Laws regarding which employees are exempt from minimum wage and overtime laws are quite complex. The employee's job title does not define whether the employee is exempt. The most common exemptions are the professional, administrative and executive exemptions. One must first determine which Industrial Welfare Commission Wage Order applies, and then analyze whether the employee's duties and pay satisfy the requirements for any of the exemptions. The employer must also ensure that its pay practices do not jeopardize the exemption, such as improper deductions from the exempt employee's salary. Employers who improperly classify non-exempt employees as exempt may face liability for failure to pay proper minimum wages, overtime, and off-the-clock work, as well as meal and rest periods, waiting time penalties, interest, and attorneys' fees. The IRS and EDD may also assess additional fines and penalties.

Conclusion

The potential liability facing employers that commit these violations, even if minor, could be monumental, particularly due to the recent flood of class action lawsuits in this area. Accordingly, we strongly recommend that all California employers engage experienced labor counsel to audit their wage and hour practices.

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