



Managing Wage & Hour Risk

Wage and hour suits continue to be a prominent source of employment practices claims throughout the nation. The prolific nature of these suits can be attributed to the complexity of wage & hour laws, differences between state, federal, and local laws as well as difficulty in defending these suits. As plaintiffs' counsel continue to see a high success ratio and with these being fee-shifting cases, where the defendant has to pay the plaintiff's counsel's attorney fees if the plaintiff wins, there continues to be a substantial incentive for filing wage and hour suits.

Types of Wage & Hour Claims

- 1. Misclassifying Employees** – The Fair Labor Standards Act (FLSA) determines who is entitled to overtime pay (non-exempt) and who is not (exempt). Employees misclassified as exempt can sue for the misclassification and allege failure to pay overtime wages.
- 2. Overtime Wages** – Non-Exempt employees are entitled to overtime pay. Common sources of claims include failure to pay overtime, miscalculation of overtime pay or failure to pay at the correct rate.
- 3. Extra Time Off** – Rather than pay overtime monetarily, employers have tried providing additional time off. This practice is generally prohibited by wage and hour laws and not an acceptable replacement to paying for hours worked.
- 4. Lunch/Meal Breaks** – Although federal law doesn't require rest and meal periods, some state laws do. Employers should be cognizant of how both federal and state or local laws are applicable to their business.
- 5. Independent Contractors** – Suits often arise when workers who are classified as independent contractors are found by the Department of Labor to be employees and therefore entitled to all benefits employees are given.

Risk Management Tips

1. Implement policies requiring approval of overtime hours before they are worked.
2. Ensure your wage and hour policies are consistent with both federal and state or local law.
3. Ensure all employees are properly classified and their job descriptions and duties remains consistent with that classification.
4. Check state laws regarding rest and meal periods.
5. Consult with a labor or employment attorney to confirm your policies and procedures are compliant with state or local laws regarding rest and meal periods, and update these policies as new rules come into play.
6. Ensure your employment practices liability insurance policy includes a limit for defense of wage & hour claims.

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