



10 wage questions every employer needs to answer

Alleged violations of the Fair Labor Standards Act (FLSA) are on the rise in federal courts, according to data collected by the Federal Judicial Center. FLSA cases rose from 1,282 in 2000 to 8,375 in 2016. Also there were about 21,000 cases with violations in 2016 filed with the Department of Labor for overtime and minimum wage, with \$200 million paid in back wages.

It is more important than ever for employers to be aware of their obligations and make sure that they are compliant. Our experience demonstrates that employers can minimize risk by identifying points of exposure and taking proactive steps to correct any issues they may have. Below is a list of questions that we have developed to assist in both awareness of the issues and in complying with the law so that your company does not become part of the growing number of FLSA cases.

1 Are exempt employees really exempt?

- Do they meet the executive, administrative, learned professional or information technology requirements for exempt status?
- Are there any improper deductions from exempt employees?
- Are there any special exemptions in your industry (i.e., agricultural, Motor Carrier Act, etc.)?
- Have you analyzed whether independent contractors are truly such under the FLSA and applicable state law?

2 Do timekeeping practices accurately capture all time non-exempt workers spend on their job-related activities?

3 Do you have a wage and hour policy that includes a safe harbor provision, discusses payment of overtime, working off the clock, etc.?

- Do you have policies in the handbook that violate the FLSA (i.e., “employees will not be paid for working unauthorized overtime”)?

4 Is preliminary and postliminary time properly paid (i.e., moving through security, cleaning tools or equipment, dressing for work)?

5 Are breaks and lunchtime properly being compensated (unpaid lunch must be at least 20 minutes uninterrupted)? Does payroll make automatic deductions?

6 Do non-exempt employees have smart phones?

- If yes, how does the company account for that time?

7 Do non-exempt employees perform tasks at home?

- If yes, how does the company account for that time?

8 Are and should non-exempt employees be at meetings, lectures, or training?

- Are they being compensated for this time?

9 Are proper records being kept?

10 Do overtime calculations properly include all necessary items of compensation, such as commissions, shift premiums and most bonuses?

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