



Issue Brief #1

Is the Risk Worth It? Complying with the Fair Labor Standards Act (FLSA)

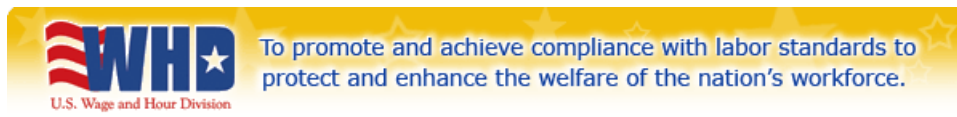
Get educated or risk getting sued!

Of all the employment-related legal risks companies confront on a daily basis, perhaps the greatest centers on wage violations protected under the Fair Labor Standards Act (FLSA). In fact, the US Department of Labor estimates that 7 in 10 companies are failing to comply with wage and hour regulations. In 2005, there were 4,039 federal wage and hour suits filed, 10 percent more than in 2004. And in 2006, such claims jumped another 4 percent.

Employers can run afoul of the FLSA in several ways: for example, misclassification of employees (exempt versus non-exempt, independent contractor versus employee), inaccurate time recording / reporting, and not paying off the clock work hours. Such FLSA violations can result in multi-million dollar settlements. A recent case: In late October Coral Gables, Florida-based specialty contractor MasTec agreed to pay \$12.6 million to settle unpaid overtime claims of current and former service technicians in 10 states around the country.

Because FLSA-related claims are generally excluded from employment-practices liability insurance policies, employers often are left with little-to-no protection. As a result, due diligence of payroll practices and protocols, as well as proactive education and training, are keys to mitigating exposure.

What exactly is the FLSA?



Enacted in 1938, the FLSA (also called the Wages and Hours Bill) protects a vast majority of workers from exploitation by establishing minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector

and in Federal, State, and local governments. In the United States, more than 130 million workers are protected under the FLSA.

Are you in the clear? Some points to consider.

The regulatory details of the FLSA can be overwhelming; below are a few questions to consider -- questions to ask yourself to see if you may need to implement changes in your company's pay-related policies and procedures.

1. Have you misclassified employees as independent contractors? Do you know what constitutes "control" of a worker?

2. Have you properly classified employees as exempt?

Common mistakes include:

- Assuming salary = exempt
- Misunderstanding the exemption categories: Executive, Administrative, Professional, Outside Sales
- Misunderstanding the duties tests
- Misunderstanding the term "salary"

3. Have you failed to pay for all hours worked?

Common mistakes include:

- Distinguishing between "suffered" or "permitted" work
- Limiting the number of hours worked
- Making improper deductions
- Not paying for waiting time
- Not paying for on-call time
- Violations of meal and rest periods
- Not paying for training time
- Not paying for travel time, sleep time

4. Are you properly calculating overtime (OT) wages?

Common mistakes include:

- Misunderstanding the workweek
- Misunderstanding the regular rate of pay
- Not counting all hours by one employee in a week, even if s / he has two jobs
- Miscalculation of the regular rate of pay in various compensation situations
- Misunderstanding comp time

Be proactive, and educate yourself -- Steps to prevent or minimize damages from FLSA lawsuits

Once you are sued, it is almost impossible to defend against the FLSA, as the burden of proof rests exclusively upon the employer. Moreover, an employee who sues can be eligible to recover up to two times the amount of back wages owed if successful in court.

As your payroll / leasing company partner, Payday Resources can help you implement proper policies and practices to avoid unnecessary lawsuits and fines related to wage violations. Among other things, we can help you establish a good faith defense ahead of time by:

- A. Performing an audit of its pay practices, focusing on the three main targets of FLSA litigation:
 - (1) off-the-clock-work
 - (2) calculation of overtime pay
 - (3) “exempt” job classifications
- B. Adopting and maintaining appropriate policies and procedures to ensure staying in compliance with wage and hour laws
- C. Being prepared to correct any compliance problems uncovered by an audit, and contacting DOL or other state agencies for help in paying any back wages found to be owed and in obtaining enforceable waivers from employees
- D. Keeping good employee records
- E. Making sure to have published employment policies
- F. Complying with published policies

Want to learn more? Take steps to ensure FLSA compliance?

Please Contact Us

*Davia King
HR Assistant
Payday Resources
801.404.5241*