

15 Compensation Mistakes That Can Provide You The Opportunity To Make Friends With The Federal Department Of Labor Or State Officials

Paying employees is not as simple as it appears. Complex federal and state laws and regulations govern compensation practices. Making even one of the following mistakes can cost you a lot—in money, time and bad publicity. Go to www.dol.gov for good information regarding federal Fair Labor Standards Act (FLSA) requirements.

1. **What Do You Mean I Have To Pass A Test?** *Or, Tales From Exempt Employees Who Aren't.* Many organizations have some employees misclassified as exempt who are really nonexempt and must be paid overtime. Remember, the Department of Labor has very specific tests that must be met before an employee may be classified as exempt.
2. **We'll Just Pay Her A Salary, That Way There's No Overtime.** *Or, Return Of Exempt Employees Who Aren't.* The FLSA exemption tests include specific job duties and requirements. Simply paying someone on a salary basis vs. an hourly wage doesn't make her exempt from overtime.
3. **That's Not Really Work Time.** *Failing To Pay Nonexempt Employees For "Hours Worked."* Starting early, working late, working through lunch, or doing work at home would all be "hours worked" and considered paid time. Employees can't "volunteer" to work a little extra or to work "off the clock." Don't forget about travel time and training which can also be compensable under certain circumstances.
4. **Oh, It's Close Enough.** *Not Correctly Tracking Overtime.* Do you have an accurate system in place? Is it reliable? Consistent? Do you "round" appropriately?
5. **Take Next Friday Off.** *Using "Comp Time" Improperly.* Private sector employers need to be especially careful regarding "comp time." Basically, in those settings, compensatory time only exists within the workweek. Comp time can't be given instead of overtime. The public sector works under some different rules.
6. **You're Going To Make Payroll Do What?** *Not Considering Bonuses / Incentives When Calculating Overtime.* Many types of bonuses, incentives, and commissions must be included in base pay for purposes of overtime calculation.
7. **If It Looks Like A Duck.** *Treating Exempt Employees Like Nonexempts.* An employee's exempt status can be lost in a number of ways, such as through improper pay docking, paying an employee based on the number of hours worked (vs. a salary), etc.
8. **But He Seemed So Much Older.** *Failing To Understand Child Labor Rules.* If you've got employees under 18 you'd better make certain you're aware of federal and state requirements regarding the hours of work and the type of work they can perform.
9. **Does Anybody Really Know What Time It Is?** *Late Checks.* State law strictly governs when current and terminated employees must be paid. You don't want to know what happens if you don't pay on time.

10. **You Break It, You Buy It. Docking Employees' Wages For Debts Owed, Broken Or Lost Equipment, Shortages, Etc.** State law severely restricts such deductions and often only permits those authorized by the employee or as required by law.
11. **You Want Me To Pay Them For Taking a Break? Improperly Paying For Breaks.** Being unaware of state rest and lunch break requirements can create painful consequences. Remember, also that the federal FLSA requires that breaks of short duration be paid, while uninterrupted, duty free lunches are generally not compensable. Some states also impose different break rules for minors.
12. **Monthly Staff Meeting Is At 7:00 AM. Not Paying For Training Or Meetings.** Generally meetings and training must be counted as hours worked. However, such time is not compensable if: attendance is outside the employee's regular working hours, attendance is really voluntary, the course or meeting is not directly related to the employee's job, and the employee does not perform any productive work while attending. The time is not voluntary if an employee thinks that failure to attend could impact his job or working conditions.
13. **We Said, "No Overtime."** *Not Paying An Employee For Unauthorized Overtime.* You said it. You wrote it in the policy manual. "No overtime unless previously authorized." But your employee worked extra hours anyway. He violated the rules. You certainly don't need to pay him the overtime, right? Wrong. Management has a duty to ensure that work is not performed if it doesn't want it be performed. Therefore an employee must be paid for overtime worked even if it wasn't authorized and the company had a policy prohibiting it. The situation should be handled through disciplinary action, not failure to pay the employee.
14. **They'll Figure It Out. Failing To Train Managers On The Basics.** Very few managers and supervisors know much about wage and hour law. How could they? And yet they are often the ones who implement the rules or explain them to employees. Regular training regarding the fundamentals, the most common problems, and the importance of following the rules is essential.
15. **More Quicksand And Snakepits. State and Local Laws.** Many states and even some localities have stricter wage and hour requirements than those imposed by the federal FLSA. If you think you've figured out the FLSA (does anyone figure out the FLSA??) you may have only just begun.

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