



TIP #3: KNOW WHAT WAGE AND HOUR ISSUES ARE HOT BUTTON TOPICS Murphy Austin Adams Schoenfeld LLP

Within the past few years, there has been an increasing amount of litigation in California concerning wage and hour issues. Accordingly, it is essential in today's legal climate that employers remain informed of the best ways to avoid such lawsuits. With that being said, here are a few tips to assist you in avoiding the avalanche of wage and hour lawsuits.

Make Sure To Classify Your Employees As Employees.

The existence of the employer-employee relationship creates numerous legal obligations pertaining to wage and hour laws, anti-discrimination laws, state and federal OSHA regulations, the National Labor Relations Act, WARN and tort law (i.e. vicarious liability). Many of these legal obligations are inapplicable to true independent contractors. However, it is often difficult to know whether the individual is properly classified as "employee" or "independent contractor." If the "independent contractor" label is improperly applied, the employer is potentially liable for such things as:

- Unpaid employment taxes and penalties;
- Overtime and compensation for meal and/or rest breaks which were never offered/taken;
- Unpaid unemployment and disability insurance and penalties; and
- Increased workers' compensation coverage.

Determine Whether Your Employees Are Exempt Or Non-Exempt.

One of the most potentially complex areas in wage and hour law is determining whether employees should be classified as exempt or non-exempt. This is largely due to the fact that state and federal authorities continue to utilize vague and ambiguous standards when defining the exemption "tests." As such, many wage and hours cases result when an employee contends that their employer improperly classified them as exempt.

If you are unclear about the status of your employees, it is always a good idea to consult a legal professional before making your determination, so that you can avoid potential wage and hour liability such as:

- Unpaid overtime; and
- Compensation for meal and rest breaks which were never offered/taken.

Ensure Non-Exempt Employees Are Offered And Take Their Meal Breaks.

Although certain exceptions apply, as a general proposition, state law prohibits an employee from working over five hours without a meal period of at least thirty minutes. If employers violate this rule, they must compensate employees for the worked time (during which the meal break would have occurred) and also, pay an additional hour's pay for each work day the meal period was not provided. A recent California Supreme Court decision paved the way for employees to go back three years to seek pay for missed breaks.

There is some uncertainty regarding the employers' obligation to ensure that their employees actually take their meal breaks. Some state appellate courts have determined that an employer needs to both offer the meal break and then make sure that the employee is relieved of all duties during that time. However, a recent federal case suggests that the employer need only authorize the meal break. Moreover, for the employee to succeed in his/her lawsuit, he/she must prove that the employer forced him/her to forego the break. We recommend that employers take a conservative approach by making sure, if possible, that employees take their meal breaks.

Make Sure You Compensate Your Non-Exempt Employees For All Work Performed.

An employer is obligated to compensate non-exempt employees for all work that the employee is "suffered or permitted" to work. A common problem has arisen when an employee's shift has ended, or not yet begun, but the employee nonetheless assists fellow employees. If you are aware or suspect that your employees are engaged in such practices, you are suffering and permitting them to work and therefore must compensate them for this time. If you do not offer such compensation and allow the practice to continue, you are again potentially liable for overtime payments and additional meal and rest periods.

Be cautious however, because the mere adoption of employer rules prohibiting such work is insufficient in and of itself. Make sure that such rules are uniformly enforced and discipline rendered when necessary.



MURPHY AUSTIN
ADAMS SCHOENFELD LLP

304 S Street
Sacramento, CA 95811
916/446-2300
Facsimile: 916/503-4000
murphyaustin.com

Please be assured that we make every effort to make certain that the information contained in this article is current at the time the article was prepared. Because laws and legislation are constantly changing, please contact us if you are unsure whether this material is still current. Nothing contained herein is meant to be legal advice. Please contact us to answer any questions you may have.