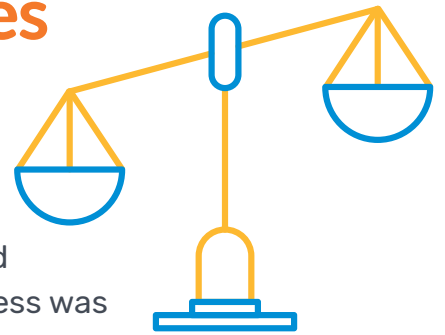


On the Wrong Side of the Law: Two Common Employer Mistakes

In an effort to keep their companies lean and profitable, small business owners sometimes discover they have inadvertently broken employment laws. These mistakes can be costly, leading to lawsuits filed by employees or fines levied by the government – the opposite of the goal the small business was trying to achieve.



Two common ways small operations run afoul of employment laws are:

Misclassifying employees as exempt.

Typically, “exempt” employees are paid a salary and do not receive overtime pay if they work more than 40 hours per week. While it may be tempting to classify every employee as exempt, the classification may not align with the government’s definition of an exempt employee. If that is the case, the company would be required to pay overtime to some salaried workers under certain circumstances.

To be classified as exempt, employees must meet both a functional requirement and be paid no less than \$23,660 per year as defined by the Fair Labor Standards Act. Employees who don’t meet both the salary and functional requirements should be classified as nonexempt.

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Employees who are misclassified and have not received overtime pay can file suit with the U.S. Department of Labor. The DOL investigates misclassification complaints and also can fine or sue the company if it finds violations.

Aside from the FLSA/federal regulations, many states have their own wage and hour laws. Some of those are more stringent than the FLSA's. Small businesses must adhere to both the federal and applicable state regulations.

Not paying employees for breaks.

The trucking, motion picture and some other industries designate specific break periods for workers, but the federal government does not require companies to offer meal or work breaks to employees.

However, if a small business does decide to provide employees with short rest or snack breaks – those that last between five and 20 minutes – the breaks are considered hours worked. For nonexempt employees, short breaks therefore must both be compensated and, for overtime calculations, be factored into the total number of hours worked during the work week. Exempt workers are not entitled to be paid beyond their salaries for short breaks; likewise, they cannot have their pay docked if they choose to take breaks.

Under the FLSA, employers do not have to compensate any employees for meal breaks that last at least 30 minutes. Nonexempt employees who “work through lunch” must be paid for the time worked. Because nonexempt employees potentially could purposely skip meal breaks as a way to work more than 40 hours per week and thus gain overtime pay, many organizations require employees to take these breaks. Nonexempt employees who do not comply with the policy could be subject to discipline – but the employer still would have to pay the employees for the time worked over meal periods.

As with employee classification, many states have break requirements that businesses in those states must follow.

What if your business has broken the law?

If you discover your company has unintentionally broken one of these employment laws, reclassify misclassified employees and adjust payroll so nonexempt employees are set up to be paid overtime in the future.

You also may determine the company owes nonexempt employees back pay for previously worked break periods or overtime hours. If this is the case, make the payments quickly. It is far better to communicate the error with employees proactively than to have the violation discovered because a worker files a lawsuit or a state or federal agency decides to audit your business.

Wage and hour laws are knotty and sometimes confusing. You aren't running a small business because you want to spend time tracking the employment laws affecting the company – but not following them can put you out of business. If needed, get help from a qualified adviser who can help you navigate these and other complex employment laws.



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