

WHY EMPLOYERS SHOULD CONDUCT A WAGE AND HOUR AUDIT

Dramatic increase in cases

In recent years overtime lawsuits have become rampant, with wage and hour suits increasing 228% from 2001 to 2007. This is especially true in Florida. In the Middle District of Florida (the federal court system covering much of central and north Florida), federal wage lawsuits increased by 1200 percent from 2000 to 2005. In 2005, 44% of all federal wage lawsuits nationwide were filed in Florida.

Employers are paying over \$1 billion dollars per year to resolve these Fair Labor Standards Act (FLSA) claims. As a result of publicized wage and hour settlements and aggressive law firm advertising, the number of lawsuits against employers seems to grow exponentially. Plaintiffs firms are shifting their focus from discrimination cases to wage and hour cases, perhaps believing that this area of federal law is the pot of gold at the end of the legal rainbow.

The risks of noncompliance with the FLSA are severe. Employers who are adjudged guilty of an FLSA violation may be assessed not only the unpaid wages, but also liquidated or double damages equal to the wages due. The FLSA also permits the successful employee to recover his or her attorney's fees. Therefore, even a small liability can quickly grow into a huge monetary exposure.

To make matters worse, the trend now is for plaintiffs' firms to attempt to bring these cases as "collective actions" and target a whole class of similarly situated individuals who are or were employed by the same employer. The employer's costs to defend and exposure go up exponentially with these collective actions.

Proactive approach is critical

The FLSA allows for a three year window within which an employee may file an action. However, if employers can show they acted in good faith in trying to be compliant with the FLSA, the timeframe for filing an action could be reduced from three years to two years. An employer's good faith efforts to comply with the FLSA may also reduce the employer's liability for liquidated (double) damages.

To reduce exposure to these lawsuits, employers must identify any areas where there is a risk of noncompliance with applicable wage and hour laws, and then proactively take steps to bring the organization into compliance. Conducting a wage and hour compliance audit is the best method of reducing the risk of lawsuits under the FLSA.

How Ford & Harrison can help

At Ford & Harrison, we practice labor and employment law exclusively. With 18 offices nationwide, including five in Florida, we are well-positioned to handle matters regardless of location. As experts in employment law, we are ideally suited to help you determine whether your company is at risk for a federal wage and hour lawsuit. We have experienced attorneys who can quickly and efficiently audit your wage and hour practices and help you to identify and assess the specific areas of risk to which your company may be exposed under the FLSA.

Our wage and hour audits assist you in identifying a long list of potential FLSA violations including:

- Misclassifying employees as non-exempt
- Misclassifying employee as independent contractors
- Improper use of unpaid "volunteers"
- Failure to comply with the salary tests for exempt employees
- Improper docking of exempt employees' salaries
- Improper docking of non-exempt employees' wages
- Insufficient timekeeping systems
- Improper record keeping
- Not counting commissions, shift differentials or bonuses toward overtime
- Improper use of "comp time"
- Not counting work performed at home as time worked
- Not counting attendance at educational and training programs as time worked
- Illegal tip pools
- Not counting certain travel time as time worked
- Failing to properly compensate employees for on-call, standby and waiting time
- And more....

Fees for our audits are based on number of employees. When conducting an audit, we do not charge extra for travel within Florida. At the conclusion of our audit, we will provide you with a report detailing any areas of non-compliance and a proposed action plan for bringing your company or organization into compliance.

If you are interested in arranging an audit or discussing further, please let me know and I will be in touch.