8 MOST COMMON FLSA MISTAKES AND HOW TO AVOID THEM

Franchising World November 2012

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THE FEDERAL FAIR LABOR Standards Act or FLSA applies to virtually all employers and governs minimum wage, overtime and other wage and hour issues. Given the many requirements under the Act, it's no wonder that it's often misunderstood. Below are eight common FLSA mistakes and what your franchise business can do to help avoid them:

1. Improperly classifying as exempt. Nonexempt employees must be paid for all hours worked and they are entitled to minimum wage and overtime pay. However, the FLSA permits certain exemptions from these minimum wage and overtime requirements. The FLSA exemptions are narrowly defined and apply only to certain executive, administrative, professional, outside sales and employees in computerrelated occupations. Note: an individual's job title does not determine exempt status; the employee's actual job duties, as well as his or her salary must be considered. Visit the Department of Labor website at www.dol.gov for more information on the salary and duties test for each exemption.

2. Failing to pay for all time spent working. Non-exempt employees must be paid for all hours worked. Hours worked include, but is not limited to: traditional work time; short rest breaks (five to 20 minutes) if offered; time spent travelling on business; on-call time (when the employee is required to remain on company premises, or so close he or she cannot use the time effectively for his or her own purposes); and training time (unless the training is outside normal hours, is voluntary, is not job related, and no other work is performed). Employers should also keep in mind that time spent working while away from the office, such as checking and responding to email while at home, must be paid.

3. Permitting "off the clock" work. Employers are not permitted to ask or require a non-exempt employee to work "off the clock." If an employee starts early or stays late, the time must be paid, even if an employee works overtime without prior authorization. Supervisors should be trained on the FLSA's requirements and that they are prohibited from requiring or allowing non-exempt employees to work off the clock.

4. Failing to properly calculate "regular rate of pay." To calculate overtime, your business must first determine an employee's regular rate of pay. Determining the regular rate of pay generally involves that the business must take into consideration the following: salary; hourly rate of pay; reasonable cost of employer provided room and board; tips; commissions; piece rate pay; nondiscretionary bonuses; on-call pay; and shift differentials.

5. Making improper deductions (nonexempt employees). Employers are not permitted to make pay deductions if it brings a non-exempt employee's pay below the minimum wage. Deductions that may not reduce a non-exempt employee's pay below the required minimum wage include those made for required uniforms, shortages in cash registers, tools used in the employee's work, or damages or theft to company property. This is an area that is often governed by state law. In addition to taking federal law into consideration, employers must be familiar with and adhere to their state requirements before making any form of deduction.

6. Making improper deductions (exempt employees). In general, exempt employees must receive their full salary for any workweek in which they perform any work. Generally, the only instances in which employers may deduct from an exempt employee's pay include: (1) absences of one or more full work day for personal reasons other than sickness or disability; (2) to offset any amount of pay an employee receives for jury or witness fees or for temporary military duty pay; (3) for penalties imposed in good faith for infractions of safety rules of major significance; (4) for unpaid disciplinary suspensions of one day or more imposed in good faith for serious workplace misconduct; or (5) in the employee's first or last week of employment if the employee does not work the full week.

7. Neglecting recordkeeping requirements. The FLSA requires that certain records relating to hours worked and wages earned for non-exempt employees be retained for at least three years. This includes: total hours worked each work day and each workweek; total daily or weekly straight-time earnings; total overtime pay for the workweek; deductions from or additions to wages; total wages paid each pay period; and the date of payment and pay period covered. In addition, records that explain the basis for wage calculations (e.g., time cards, piece work tickets and work schedules) must be retained for two years.

8. Failing to adhere to state requirements. Many states have their own wage and hour laws that may differ from the FLSA (e.g., state minimum wage rates may be higher than the federal minimum wage). Generally, where federal and state law conflict, the law that more generously benefits the employee must be followed. Be sure to check your state law before classifying employees as exempt, determining hours worked, calculating overtime, making a deduction or taking any other pay-related action.

While the above referenced mistakes are common, they can be prevented by ensuring that all employees are classified appropriately, non-exempt employees are paid for all hours worked, and deductions are made in accordance with applicable law.

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