



Q & A: Is Your Organization in Compliance with the Fair Labor Standards Act?

Q. Is your organization in compliance with the Fair Labor Standards Act (FLSA) and state wage and hour laws?

A. If you cannot confidently answer YES to this question then there is cause for concern. In addition to lawsuits filed by plaintiff attorneys seeking to recover unpaid overtime wages, liquidated damages and attorneys' fees, employers must also be concerned that The U.S. Department of Labor's Wage and Hour Division recently hired 250 new field investigators and announced its intention to increase enforcement.

Q. You may be asking what is the FLSA and how do I comply with it?

A. Simply put, The FLSA requires the payment of a minimum hourly wage as well as overtime pay to non-exempt employees who work in excess of 40 hours during a work week. The FLSA does, however, exempt certain categories of employees from its minimum wage and overtime requirements, primarily through "white-collar" exemptions that include employees working in an executive, administrative, professional or outside sales capacity.

Employers often designate certain staff as "salaried," and as a result mistakenly believe they are not overtime eligible. This can be a costly error because the determination of whether an exemption applies or not must be based on the standards set forth by the FLSA. In addition, the burden of proof is on the employer to prove that an exemption applies, and job titles and form of payment are not determinative. In other words, paying a salary or paying on a commission basis does not mean that overtime is not owed. For an exemption to apply, an employee's specific job duties and compensation must meet the requirements of the Department of Labor's regulation.

Q. How do I reduce the legal/financial risk to my organization?

A. 1. Assess your current pay practices

Conduct a comprehensive review of all written policies and programs as well as established practices related to pay. Evaluate whether employees paid by the hour are receiving pay for waiting time, on-call time, rest periods, meal periods and travel.

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2. Conduct an FLSA analysis

Identify employees who are paid a salary, paid by commission and/or currently treated as "exempt," and determine whether they satisfy all the requirements for an exemption under the FLSA.

3. Audit your overtime rate calculations

The overtime rate must include all compensation for time worked except discretionary bonuses. Consequently, employers should analyze the overtime rate to confirm that pay types such as commissions, bonuses and shift differentials are included in the calculation.

The Compensation Practice Group at PROXUS has helped many companies like yours reduce regulatory compliance risks and effectively manage their wage and salary programs. For more information please contact Jeff Green, Principal, at 215-654-9140 ext. 102 or jgreen@proxushr.com. For more information on PROXUS, visit us online at www.proxushr.com.

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4/29/10