



A SPECIAL REPORT FOR COMPANIES WITH DISTRIBUTED LABOR

10 STEPS TO PREVENTING LABOR LAWSUITS: Facing Regulatory Compliance in Today's Distributed Labor Environment

Don't become the defendant in a wage and hour lawsuit. Records from the Federal Judicial Caseload Statistics indicate that total labor law litigation in federal courts between 2010 and 2011 increased by 4.74 percent and of that, cases related to the Federal Fair Labor Standards Act (FLSA) went up by 15.24 percent in the same time period. (Source: www.uscourts.gov). The easiest and most direct way to avoid becoming one of these statistics is to ensure that you and your managers are not only trained and thoroughly conversant with the applicable laws, but also responsible for full compliance.

Make sure that your employees are properly classified under FLSA. Become conversant and compliant with your state labor regulations, as well as those in all of the states in which you do business.

Here are 10 steps you can take to prevent labor lawsuits:

1. KEEP ACCURATE RECORDS

FLSA sets guidelines for record keeping. Follow them.

That sounds deceptively simple, but it's the short version of the step that will go a long way toward keeping you out of trouble. You will need accurate and current data in order to be effective. Using a time and labor management system makes this easier to do.

“Good data, and by that I mean accurate and easily accessible records, is the name of the game,” says Frank Ruffalo, CEO of EPAY Systems. “It can make the difference between winning and losing a labor lawsuit.”

Be especially careful about maintaining weekly pay records, even if the pay period is longer (bi-weekly, semi-monthly or monthly). It's not unusual for a wage and hour claim to revolve around overtime payment, making current and accurate records especially valuable.



“The Federal courts
have seen a 325%
increase in wage
and hour claims
since 2001.

Source: Federal Judicial
Caseload Statistics,
www.uscourts.gov

EPAY Systems provides cutting-edge time and labor management systems that keep employers in control and in compliance with labor laws and union rules, while reducing labor costs by an average of 5%. Our uniquely flexible, web-based Blueforce™ system can adapt to the most complex labor environments . . . even yours. How can we help you?



For the same reason, track edits to time records, as well as documentation of the employee's approval when the change was made.

If you use an outside vendor to maintain employee time records, make sure you know how they are stored, in what format and what the procedures are for quickly retrieving them.

Other records that might be useful include: security swipe histories (when employees swipe in or out of a building or parking structure) and phone and computer-use records.

FLSA requires that companies display an official poster of FLSA requirements. See the FLSA website for more information: <http://www.dol.gov/whd/flsa/>.

2. STAY CURRENT WITH RELEVANT LEGISLATION

Laws regulating employee pay vary by state and are subject to change. Your employees' job descriptions and your company compensation structure also may shift over time and your policies and procedures need to change with them.

Differences sometimes do exist between federal and state minimum wage requirements, so it is doubly important to be conversant with these. For example, the federal minimum wage is \$7.25/hour, but in California, state law sets it at \$8.00. If you do business in California, you must comply with state law.

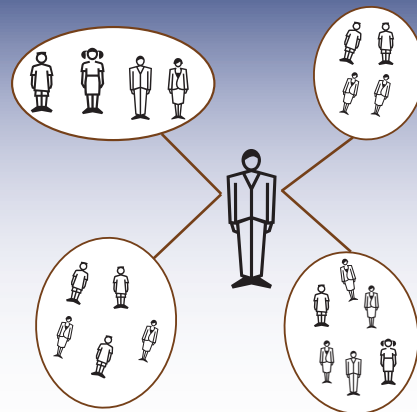
3. PERFORM REGULAR JOB FUNCTION AND PAYROLL PROCESSING AUDITS

Regular reviews of job functions and pay practices allow Human

Resources professionals to guarantee that necessary changes are made quickly – one giant step toward helping protect your company from labor lawsuits. During the audit, check that all employees are properly classified and that each has been correctly compensated for all hours worked, including overtime.

When considering a time and labor management system, look for one that has built-in compliance audit features, particularly those that can handle any complex pay environments particular to your industry. These may include:

- a. **Reason Codes:** Allow you to add a comment when changing time cards and time sheets
- b. **Audit Report:** Tracks and highlights time card changes resulting in net time changes
- c. **Hours Variance Report:** Reports time card changes resulting in net time changes altered by someone other than the employee
- d. **Submission/Approval Rejection Notification:** Notifies managers of timesheet status changes
- e. **Predefined Roles:** Users can only perform specific functions; meets Sarbanes-Oxley compliance requirements
- f. **Creation and Modification Timestamps on All Records:** Shows who created or modified a record and when
- g. **Timesheets Status History:** Reports who changed timesheet status and when
- h. **Payroll by Pay Group:** Allows payroll managers to identify



Distributed labor makes for complex labor management. EPAY Systems can help!

“The comprehensive auditing capabilities of our time and attendance management system will allow us to dramatically improve the organization’s compliance-related exposure,” says Richard Kindorf, Senior Vice President of ABM, a facility management service provider with employees in multiple environments and work sites. “In addition, the system’s robust suite of reporting tools has given us the ability to tightly manage our significant labor spending across our multitude of job classifications.”

*Richard Kindorf,
Senior Vice President
ABM*



all employees' pay status and ensures complete payroll for each employee

- i. **Payroll Register Report:** Shows payroll status for all employees and validates payroll totals
- j. **Shift Exception Limits:** Allows for grace limits on in/out punching and lunch time; ensures managers know who is late and who is not complying with work schedules and lunch period limits
- k. **Minimum Wage Validation on Exports:** Ensures no accidental minimum wage violations by allowing automatic pay rate resets to minimum federal wage rates
- l. **Employee Portal:** Allows employees to review time cards, time sheets, schedules, accrual requests and balances and pay stubs
- m. **Employee Time Sheets on Time Clocks:** Helps avoid payroll errors by allowing employees to view their time sheets on time clocks
- n. **Track Accrual:** Allows managers to log and review employees' time off and other accrual balances

4. DETERMINE PROPER EMPLOYEE CLASSIFICATION

FLSA defines minimum wage, overtime, record keeping and child labor. To comply with this law, employees must be appropriately classified as exempt from overtime or non-exempt (hourly employees entitled to overtime). For more detailed information, go to <http://www.dol.gov/whd/flsa/>. This website has everything from

basic information to fact sheets, posters and reference guides.

5. HIRE AN EXPERT

If you have questions or aren't sure that you are complying, don't guess; get help from an attorney who specializes in FLSA law or an experienced Human Resources professional. For more information on human resource specialties, contact <http://humanresources.org/>. Human Resources professionals can also help with auditing records.

6. TRAIN MANAGERS

Managers are your front line in compliance. Training them is a good investment in time and resources. They are responsible for accurate timekeeping records and should understand that all questions about FLSA and company policy should go to Human Resources or upper management.

7. TAKE ALL COMPLAINTS SERIOUSLY

Ask yourself these questions: do your employees know the company complaint process? Do they understand how it works? Is it confidential? Do you have a clear, non-retaliation policy? Not only is it crucial that employees know and understand the processes and policies, but it is imperative that employers keep comprehensive records of all complaints, investigations and responses. FLSA protects any employee who complains or has a grievance and the employer should have that documented as part of company policy. If disciplinary action is necessary, it should be applied consistently and fairly.



Changes in the workforce make it imperative that managers accurately classify exempt and non-exempt employees. This is made all the more difficult because often wage and hour laws do not accurately reflect new developments, such as non-standard shifts and odd management structures. For instance, how do you classify an assistant manager who is in charge of a job site? Exempt? Non-exempt? Accurately categorizing exempt and non-exempt employees can mean the difference between being compliant or not.

8. DEVELOP STRONG POLICIES

Developing strong policies and training employees at all levels sends a clear message that adherence is important to the company. The non-retaliation principle is a perfect example. Emphasizing its significance to exempt and non-exempt employees alike sets the tone throughout the organization. Establishing and following through with penalties for non-compliance underscores the strength of your commitment to the procedures. Make sure each employee not only has a copy of company policies, but signs an acknowledgement of receipt.

9. EDUCATE EMPLOYEES ON COMPANY POLICIES AND PROCEDURES

New employee orientation should include:

- a. *How to complete time cards and use time clocks*
- b. *Information about meals, rest or break periods and whether or not they are paid*
- c. *Overtime calculations and other wage and hour payments, such as shift differentials, training and travel time*
- d. *Penalties for failing to follow policies*

10. UNDERSTAND PROPER APPLICATION OF WAGE AND HOUR LAWS

Overtime calculations vary with states, but FLSA mandates that overtime be paid at a rate of 1.5 times regular pay after 40 hours have been worked in a week. In California, however, state law requires non-exempt employees be paid overtime after working eight hours in one day. Know the laws in the states in which your company does business.

FLSA requires that employers pay non-exempt employees for travel and training time, workday preparations, meal breaks (under 20 minutes), rest periods (under 20 minutes), standby or on-call time, among other things.

For more information, check with <http://www.dol.gov/whd/flsa>. The American Payroll Association also is a good source of payroll related information: <http://www.americanpayroll.org>. Each year The American Payroll Association publishes Payroll Source, a state-by-state listing of compensation related requirements. It can be purchased at <http://www.americanpayroll.org/product/14/73>.



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Chief Executive Officer
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