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Avoid Overtime Mistakes

Overtime has become a hot-button topic for employers and employees alike, ever since the Fair Labor Standards Act, FLSA, became effective August 23, 2004. Steven Siegel, a freelance writer for Workforce, points out that whether you have five or five thousand employees, there are identifiable common mistakes, easily remedied.

1. **Believing salaried employees are automatically exempt from overtime.** Check to be sure the employee exemptions are executive, administrative, professional, computer-employee or outside sales. A salary or job title does not mean the employee qualifies for the specific exemptions provided by the statute. If challenged by the Dept. of Labor or courts, the employer has the burden of proof.
2. **Misclassifying assistant managers.** To qualify for the executive exemption, an assistant manager must be paid on a salary basis at a rate of at least \$455 per week and have the primary duties of a) management of a recognized enterprise, department or subdivision b) customarily and regularly direct the work of two or more other full-time employees or the equivalent c) have the authority to hire or fire, or make suggestions and recommendations as to hiring, firing, advancing, promotions or other status changes. Some assistant managers may qualify; others will not.
3. **Automatically deducting for meal breaks.** Many employers automatically dock their hourly employees for a 30 or 60 minute meal break each day. If sued by an employee or audited by the Department of Labor, it is much easier to have daily records showing your hourly employees clocked out and back in for their lunch breaks. It is imperative that during this break the employee is completely relieved from duty and is not performing any work. If for some reason and employee works through a meal break, allow him to be sent home early one day in the same pay period to avoid generating any overtime.
4. **Not paying for overtime that has not been approved in advance.** The FLSA does not distinguish between approved and non-approved overtime. If the employee works the overtime, *the employer is required to pay time and one-half the regular rate for that overtime.* The company does have recourse: an employee who violates a company policy by working non-approved overtime can be disciplined or terminated for that policy violation.
5. **Allowing employees to "waive" their right to overtime.** A common small business mistake is believing that an employee can waive his right to time and one-half pay for all overtime hours. Despite good intentions, any deal with an employee which avoids paying overtime *is void and will not be a defense.* For example, an employer may own two different companies and may pay an employee out of two different payroll accounts to avoid overtime. Both the companies and individuals will be held liable.

Take the time to pay employees correctly. Losing a lawsuit can be expensive. The FLSA has a penalty provision allowing plaintiffs in some circumstances to recover twice their actual back wages and to recover their attorneys' fees.

Telemedicine Advances

Telemedicine allows MDs to be in two places at the same time via mobile cameras. First used in education, master teachers used a TV studio as a classroom, and students interacted by telephone connections. Recently, technology developed medical applications with surgical mini-cameras and patient-visiting robots. For example, 35 hospitals are using mobile robots with 15" screens and cameras (at \$120,000 e.a. or \$4000 monthly rent) to allow doctors to visit, talk, and advise patients from an off-site control station (\$5,000/unit).

Joseph C. Kvedar at Partners Healthcare in Boston says their dermatology clinic links to Nantucket Island each week where video cameras help examine skin problems. Advanced nursing services are installing video phones for home-bound patients; some are equipped with stethoscopes and devices to read heart rates and blood pressures. Proponents of telemedicine say that technology will continue enhance, not replace, personal visits. The Washington Post