

Human Resource Compliance Program

Wage & Hour Self-Audit Checklist

Federal and state wage and hour laws govern employers' payment of wages to their employees. Among important issues addressed by wage and hour laws are minimum wage, overtime compensation and hours worked.

For employers, improper handling of these issues represents one of the more serious sources of potential liability. This is true for two primary reasons. First, certain provisions of wage and hour law are often misunderstood and misapplied, leading to unintentional violations. Second, when an employer fails to comply with an aspect of wage and hour law, typically the violation affects numerous employees. Damages in wage and hour cases can be extremely high. The law provides for back pay awards of up to three (3) years in cases of willful violations.

As a service to our clients, we have created this checklist to help an employer determine whether it is in compliance with the wage and hour provisions that most frequently cause employers problems, resulting in liability.

Your goal should be to answer "Yes" to all of the questions. If you answer "No", you should consult counsel to assess your risk of liability and determine if any changes are needed or advisable.

Please note that this checklist is intended to be informational only, and is not intended to be nor should it be relied upon as legal advice. Rolf Goffman Martin Lang Co., LPA will not be responsible for any actions taken or arrangements structured based upon this checklist.

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1. Minimum Wage		Yes	No
a.	<p>Are all hourly employees paid at least minimum wage?</p> <p><i>2012 hourly minimum wage rates:</i></p> <p><i>Ohio</i> \$7.70 <i>Michigan</i> \$7.40 <i>Pennsylvania</i> \$7.25 <i>Indiana</i> \$7.25 <i>Kentucky</i> \$7.25</p>		
b.	If deductions are taken from non-exempt employees' wages for uniforms, tools, equipment or any other items, do we ensure that the deductions do not cause employees to fall below minimum wage?		
c.	If deductions are taken from employees' wages, do we have an express written agreement from the employee authorizing the deduction?		
d.	If we employ handicapped individuals at a subminimum wage, do we have permission from the appropriate state agency to do so?		

2. Overtime Compensation		Yes	No
a.	Do we have a policy or statement in the employee handbook which designates the beginning and end of the workweek for purposes of overtime compensation?		
b.	Do we have detailed, up-to-date job descriptions that <u>accurately</u> reflect the job duties performed by employees?		
c.	Do our job descriptions identify and articulate essential job functions?		
d.	Are employees classified as exempt and non-exempt for purposes of overtime compensation? ¹		
e.	Are all employees considered exempt paid on a salary or a fee basis?		
f.	Are all employees considered exempt paid at least \$455.00 per week?		
g.	Have we identified the specific category of exempt employee (<i>i.e.</i> , executive, learned professional, administrative, etc.) which applies to each employee we consider exempt?		
h.	For each employee considered exempt under the exemption for executive employees, does the employee's primary duty (<i>i.e.</i> , the principal, main, major or most important duty) involve managing the enterprise, or managing a customarily recognized department or		

¹ Some employers confuse the term "salaried" with "exempt." While all exempt employees must be paid on a salary or fee basis, not all salaried employees are exempt from overtime. Whether or not an employee is exempt from being paid overtime depends upon his or her training and job duties. A careful analysis of employees' job duties is necessary to determine whether employees are properly categorized as exempt.

2. Overtime Compensation		Yes	No
	subdivision of the enterprise?		
i.	For each employee considered exempt under the exemption for executive employees, does the employee customarily and regularly direct the work of at least two or more other full-time employees (or full-time equivalents)?		
j.	For each employee considered exempt under the exemption for executive employees, does the employee have the authority to hire or fire other employees, or are the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees given particular weight?		
k.	For each employee considered exempt under the exemption for learned professionals, does the employee's primary duty (<i>i.e.</i> , the principal, main, major or most important duty) involve performing work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment?		
l.	For each employee considered exempt under the exemption for learned professionals, is the employee's advanced knowledge in a field of science or learning?		
m.	For each employee considered exempt under the exemption for learned professionals, is the employee's advanced knowledge of a kind that is customarily acquired by a prolonged course of specialized intellectual instruction?		
n.	For each employee considered exempt under the exemption for administrative employees, is the employee's primary duty (<i>i.e.</i> , the principal, main, major or most important duty) the performance of office or non-manual work directly related to the management or general business operations of our business?		
o.	For each employee considered exempt under the exemption for administrative employees, does the employee's primary duty (<i>i.e.</i> , the principal, main, major or most important duty) involve the exercise of discretion and independent judgment with respect to matters of significance?		
p.	Do we ensure that exempt employees' compensation is not affected by the number of hours worked?		
q.	Do we ensure that exempt employees receive full compensation even if they miss a partial day for personal reasons?		
r.	Do we ensure that exempt employees are compensated if they are directed to stay home due to inclement weather?		
s.	Do we only suspend exempt employees without pay for serious misconduct in violation of workplace rules (<i>e.g.</i> , sexual harassment, violence, drug and alcohol policies – <i>not performance or attendance issues</i>) that are written and generally applicable to all employees?		
t.	If we suspend an exempt employee without pay for serious misconduct in violation of workplace rules, do we ensure that the suspension is for at least one full day and only in full-day increments?		

2. Overtime Compensation		Yes	No
u.	If we have adopted an “8 and 80” policy with respect to paying overtime compensation with any employees, do we have a prior written understanding with employees who are affected by this provision?		
v.	Do we pay employees an overtime rate of 1.5 times their “regular rate” for any hours they work in excess of 40 in a week?		
w.	If we have adopted an “8 and 80” policy with respect to any employees, do we pay an overtime rate of 1.5 times their “regular rate” for any hours they work in excess of eight (8) in a day or 80 in a two-week period?		
x.	In calculating employees’ “regular rate” for purposes of overtime pay, do we include all payments to the employees including shift differentials, premium pay, and other non-discretionary bonuses?		
y.	Do we have a policy addressing working overtime? Does our policy explain that employees cannot work overtime without authorization and that they will be disciplined for doing so (but still be paid)?		

3. Hours Worked		Yes	No
a.	Do we pay non-exempt employees for all hours worked?		
b.	Are non-exempt employees compensated if they work “off the clock” even if the work was not authorized?		
c.	Do we address unauthorized work (including unauthorized overtime) by non-exempt employees as a disciplinary issue, but still pay the employees for the hours worked?		
d.	Do we have rules relating to how time punches will be rounded and are the rules consistent at the beginning and ending of shifts? Do we ensure that our rounding rules do not unfairly impact employees?		
e.	Do we require non-exempt employees to punch out when they take unpaid meal breaks?		
f.	Do we ensure that non-exempt employees do not perform work while on unpaid meal breaks (<i>i.e.</i> , completely relieved of duties)?		
g.	If a non-exempt employee is interrupted during an unpaid meal break, do we ensure that he or she receives the rest of his or her break later in the shift? If not, do we compensate him or her for the interrupted meal break?		
h.	Are non-exempt employees’ unpaid breaks at least 30 minutes in length?		
i.	Do we have a procedure in place for non-exempt employees to be compensated when they are interrupted during their unpaid break? Are employees encouraged / required to follow that procedure?		

3. Hours Worked		Yes	No
j.	Are supervisors trained on the importance of ensuring that non-exempt employees are not interrupted during their unpaid meal breaks, or in the alternative, the importance of compensating non-exempt employees who are interrupted during their unpaid meal breaks?		
k.	If non-exempt employees are permitted to take sleep breaks, are they compensated for time spent sleeping? ²		
l.	Are non-exempt employees paid for time spent in mandatory training?		
m.	If non-exempt employees are contacted while off duty, are they compensated for time spent performing work duties while talking on the telephone, emailing or texting?		
n.	Do we require off-duty non-exempt employees to carry cell phones? Do we compensate them if they are required to perform duties?		
o.	Do we compensate non-exempt employees for all work performed in their homes (including mandatory training available on the internet)?		
p.	Do we have employees who must be on-call? If so, are employees generally free to go about their own business while on-call (e.g., free to move about a wide geographic area; not required to report to work within an extremely short time when called; not called frequently)?		
q.	Do we have a policy explaining how we handle short breaks and unpaid meal breaks?		
r.	Do we provide breaks to nursing/lactating mothers to express breast milk as needed? If so, do we provide a private location (not a bathroom) to do so where employees will not be observed or interrupted by co-workers? Do we allow nursing mothers to use paid breaks that are available before using unpaid breaks?		
s.	If we have non-exempt employees who travel from location to location (e.g., multiple facilities), are the employees compensated for their travel time?		

4. Record Keeping		Yes	No
a.	Do we retain at least three years of payroll records?		
b.	Do our records include the following? <ul style="list-style-type: none"> • Employees' full names and social security numbers; • Employees' address, including zip code; • Employees' birth date (if younger than 19); 		

² Special rules apply for employees who work 24 hour shifts. If you have questions regarding compensation of such employees for time spent sleeping, consult counsel.

4. Record Keeping		Yes	No
	<ul style="list-style-type: none"> • Employees' sex and occupation; • The time and day of week when employees' workweek begins; • The hours worked by each employee each day; • The total hours worked by each employee each workweek; • The basis upon which employees' wages are paid (e.g., "\$9 per hour" or "\$440 a week"); • Each employees' regular hourly pay rate (if applicable); • Each employees' daily or weekly straight-time earnings; • Each employee's total overtime earnings for each workweek (if applicable); • All additions to or deductions from employees' wages; • The total wages paid during each pay period; and • The date of all payments and the pay period covered by the payments. 		

5. Miscellaneous		Yes	No
a.	Do we have a procedure in place for employees to report concerns about our handling of wage and hour issues?		
b.	Do we have a policy prohibiting retaliation against employees for reporting concerns about our handling of wage and hour issues? Are supervisors trained on the policy?		
c.	Do we pay for all mandatory pre-employment medical examinations?		
d.	Do we pay for mandatory pre-employment criminal background checks?		
e.	If we have minor employees, do we retain a work certificate on file for each minor employee? Are we familiar with the restrictions on the days/hours minor employees can work?		
f.	If we have unpaid trainees, do we make clear at the outset that the trainee understands that he or she will not be compensated?		
g.	If we have unpaid trainees, do we ensure that the trainee is not actively involved in operations or displacing paid employees who otherwise would be working?		
h.	If we have unpaid trainees, is their activity more for their benefit and not primarily for our benefit? Do we ensure the unpaid trainees are closely observed?		
i.	Have we considered which individuals we work with are to be considered "independent contractors" (as opposed to employees) and have we verified that they satisfy all relevant tests?		