

LITIGATION TREND

Wage & Hour Lawsuits Surge – Are You Protected?

NEW DATA shows that wage and hour lawsuits filed in federal courts continue to spike, and labor attorneys predict the trend will not abate anytime soon.

Federal Judicial Center data indicates that the number of wage and hour lawsuits filed against employers in federal courts in the year ended March 31 jumped 4.7%. This is the seventh straight year of increases in federal court wage and hour lawsuits, and part of a 237% boom in such cases in the last 10 years – and 438% since 2000.

But these are just federal court figures and the overall lawsuit numbers are likely much higher, according to the employment law firm of Seyfarth Shaw LLP.

In fact, California employers are especially susceptible due to the state's complex labor code posing unique risks for employers, particularly because the law is more generous to workers.

Common claims include misclassification of employees, alleged uncompensated "work"

performed off the clock, and miscalculation of overtime pay for non-exempt workers.

"California employers are especially susceptible due to the state's complex labor code."

Protecting your business

To protect your business from being sued for wage and hour infractions:

1. Post and deliver the required notices and orders. There are many orders that are industry-specific and you will need to be sure you select the correct one.

Keep a checklist that each required item has been posted or delivered to the applicable employee. This can refute any later claims of non-delivery.

2. Know which wage order applies. You can find information on the wage orders for 17 industries at the Industrial Welfare Commission's website: www.dir.ca.gov/iwc/iwc.html

3. Require employees to take their breaks and meal periods. California law requires employees to be given a paid 10-minute break every three and one-half hours and a 30-minute lunch break after five hours. Meanwhile, the lunch break can only be skipped if the employee works less than six hours that day.

4. Properly classify employees as exempt or nonexempt. In California, an exempt employee must have a fixed salary that is at least twice the minimum wage; for many specified, highly skilled jobs, it must be much higher than this.

5. Calculate overtime correctly. In some cases, an employee is paid by salary or piecework, and may receive bonuses and commissions. These must be considered in correctly calculating overtime pay.

6. Accrue authorized vacation time. Employers who offer vacation must accrue unused vacation and pay for it when an employee departs.

See 'Records' on page 2

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Why Wage and Hour Litigation Is Growing

- The Fair Labor Standards Act, written to protect workers during the industrial age more than 70 years ago, is difficult to implement today.
- Ambiguous, ill-defined language of the FLSA.
- Various state laws provide additional sources of litigation.
- Employees are savvier about suing their employers for errors in exempt status classification, overtime pay and meal and rest breaks, as well as off-the-clock allegations.
- Large settlements and court awards in collective and class-action lawsuits have made for easy pickings by plaintiffs' attorneys.



EMPLOYEE BENEFITS

Survey Reveals Most Prized Summer Perks

A STUDY HAS found that the most coveted summertime benefits for employees are flexible schedules and being able to leave work early on Fridays.

The survey was developed by OfficeTeam, a staffing service firm. The findings of the study are a great way to keep employees motivated and show them how much you appreciate their hard work, particularly if they helped you weather the recession.

“Employees appreciate flexibility in their jobs because it gives them greater control and enables them to handle other commitments without sacrificing their work performance,” says Robert Hosking, executive director of OfficeTeam.

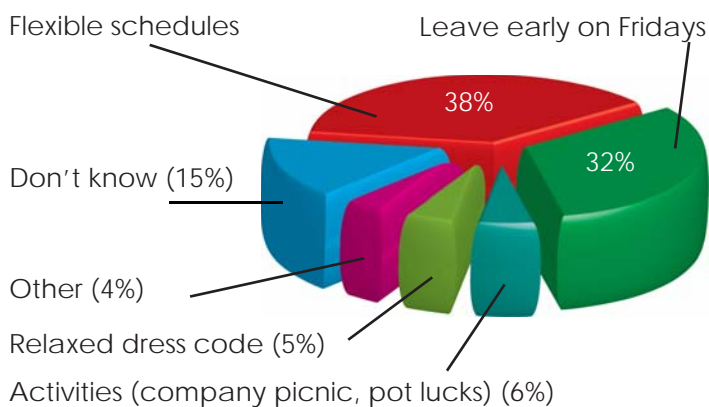
For example, flexible scheduling is an inexpensive way to keep employees motivated. To ensure customer service doesn't suffer, you can stagger workers' schedules to maximize the total number of hours employees are available to assist customers.

Even if companies aren't able to implement flexible schedules, allowing employees to occasionally leave early on Fridays can have a positive effect on morale. Many workers schedule weekend trips during the summer and appreciate a head start on their travels. ❖



DOWN TIME: *Keep your staff happy with more flexible hours during summer, like cutting hours on an occasional Friday.*

Which Summer Benefits Do Employees Prefer?



Continued from page 1

Keep Meticulous Records of Employees' Hours, Wages

7. Pay final wages on time. When an employee is terminated or quits, their wages are due immediately at the time and place of termination.

No deductions other than payroll can be taken unless the employee agrees at that time.

If an employee quits with at least 72 hours' notice, wages must be paid on the last day of work. However, if the employee quits with less than 72 hours' notice, wages are due within 72 hours after notice is given.

8. Review employee job functions and pay rates annually. Job duties and compensation can change over time, and employees who were exempt from overtime pay requirements may no longer be exempt at a later date.

9. Keep excellent records of everything related to wages and hours. The best employee records are electronic ones that show each employee's hire date, termination date, and dates of absence, and that show changes in job, supervisor, work location, state of employment, work schedule and pay rate.

10. Have employment practices liability insurance in place. This will often protect companies against the costs and liabilities associated with these types of lawsuits. It provides coverage for claims arising out of the employment relationship and typically obligates an insurer to pay all related losses. ❖

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BUSINESS LEGISLATION

Bill Would Make Employers Responsible for Temps

IF YOU use temporary workers in your operation, you need to be aware of a measure making its way through the Legislature that would shift a disproportionate amount of liability onto your business.

The measure, AB 1897, authored by Assemblyman Roger Hernandez, a West Covina Democrat, has a number of provisions that would have a detrimental effect on employers that use temporary labor.

The measure would force employers to pay wages, taxes and workers' compensation on workers if a contracting agency fails to, even if the employer has already paid the temp agency or labor contractor for the workers.

The measure would also change enforcement by putting the onus on employers to provide documentation on temp workers to various labor-related state agencies, instead of the temp firms that are the employer of record.

The bill would allow inspectors from the labor commissioner, Cal/OSHA and the Employment Development Department to request proof of compliance from either the temp firm or the employer that is using the temporary workers that wages are being paid correctly, that taxes and withholdings are being remitted and that there is a valid workers' comp policy covering the temp workers.



The California Chamber of Commerce says this unfairly shifts the responsibility to employers if the temporary agency fails to pay the workers.

Also, it says the wording of the bill would require employers to produce to regulators personnel records that they do not control or have in their possession. And employers are not legally able to require the temp agency to hand over those documents.

Additionally, the chamber says that requiring an employer to produce the personnel records of the contractor jeopardizes the confidentiality of the temporary workers, opening them up to the specter of litigation between employers and the temp firms they use.

Under the measure, an employer would share all legal responsibility and liability – including employer contributions, worker contributions, personal income tax and workers' compensation – with an individual or company that supplies workers.

For example, if a temp agency doesn't pay its workers, the responsibility would fall on the temporary employer.

Hernandez says that he introduced the bill to target temp agencies and labor contractors that try to skirt the law and businesses that use them to avoid liability for workers they don't want on their payrolls.

There have been documented cases of employees not getting paid, and not being covered after being injured at a job site, because the temp agency or labor contractor failed to secure workers' comp coverage. The employees are left in the lurch, as employers don't feel they should be responsible for the failings of the temp agency they already paid.

But the problem is that the bill could cast a pall over the labor contracting industry and sweep up legitimate contracting arrangements and temp agencies that play by the rules.

The California Grocers Association contended in written testimony to the Assembly Labor Committee that the overly broad definitions in the bill "create tension of the right of control", a key test in determining whether a worker is an employee or an independent contractor.

"This bill essentially eliminates independent contractors because it says that both the provider of the services as well as the ultimate employer is legally responsible," it said. ❖

Heads up! Hefty Minimum Wage Hike Takes Effect in July

AS AN EMPLOYER in California you need to be prepared for the upcoming minimum wage increase that will take effect on July 1.

The minimum wage will jump to \$9 an hour after the Legislature last year passed a bill that will increase the state's minimum wage by 25% over a two-year period.

The next scheduled minimum wage increase, as required by the legislation, will take effect on Jan. 1, 2016, when the rate will increase to \$10 an hour.

With the minimum wage increasing so quickly in a short period of time, you will need to budget accordingly and ensure that you comply with the law. The minimum wage increase is the first in five years in the Golden State. ❖



WORKERS' COMP

Agency Proposes Increase to Audit Threshold

THE WORKERS' Compensation Insurance Rating Bureau is considering raising the premium threshold for the annual physical audits of employers' payrolls conducted to ensure they are correctly reporting their employee counts.

Currently the trigger is \$10,000 in annual premium, but the Rating Bureau's Classification and Rating Committee has recommended that the threshold be raised to \$13,000 in light of recent premium increases and because the level has remained the same since 2007.

If the Rating Bureau recommends the change and the state insurance commissioner approves it, the adjustment would take effect for policies incepting on or after Jan. 1, 2015. That would be good news for many smaller employers in the state, especially those that have been on the cusp of the \$10,000 premium mark.

Premium audits explained

A workers' comp premium audit is a review of your records and operations to ensure that your coverage information is accurate. The goal is to assess and collect a premium that accurately represents your risk exposure, particularly in terms of employee numbers as well as the types of employees you have. The audit is compared to what you reported to your insurer when the policy was written.

To make sure that your premium is priced accurately and fairly, the insurer will compare your payroll estimates to your actual payroll at the end of your term. Each policy term may have a physical audit or a mail audit, based on the size of the policy, the nature of your business and other circumstances.

An audit is usually performed shortly after your policy expiration, but the insurer can also perform it earlier. Audits are also conducted after a policy cancellation, in order to determine the final earned premium for the shortened policy period.

Audits are typically performed on an annual basis, but can be performed at any time during or after your policy period.

If necessary, a premium auditor will contact you to make an appointment for a physical (on-site) audit. They will examine your records to determine the correct exposure, or risk. The various operations of your company may be observed to help better categorize the risk classes.

Preparing for an audit

Once you know an audit is pending, you should prepare at least the following:

- Have all of your necessary records ready.
- Your payroll should be organized by policy period, classification code (list each job type separately), and regular pay vs. overtime.
- Report your "total gross" payroll.
- If the insurer mails your audit materials, complete all the forms and return them promptly.
 - If you have subcontractors, ask them to provide a copy of their Certificate of Insurance for your records.
 - Be available in case the auditor has questions. ❖

AUDIT TYPES



Mail Audit



You will receive a two-page report form to complete and return to your insurer through the mail, e-mail or fax. Typically, you have to return the document within 15 calendar days.

Phone Audit

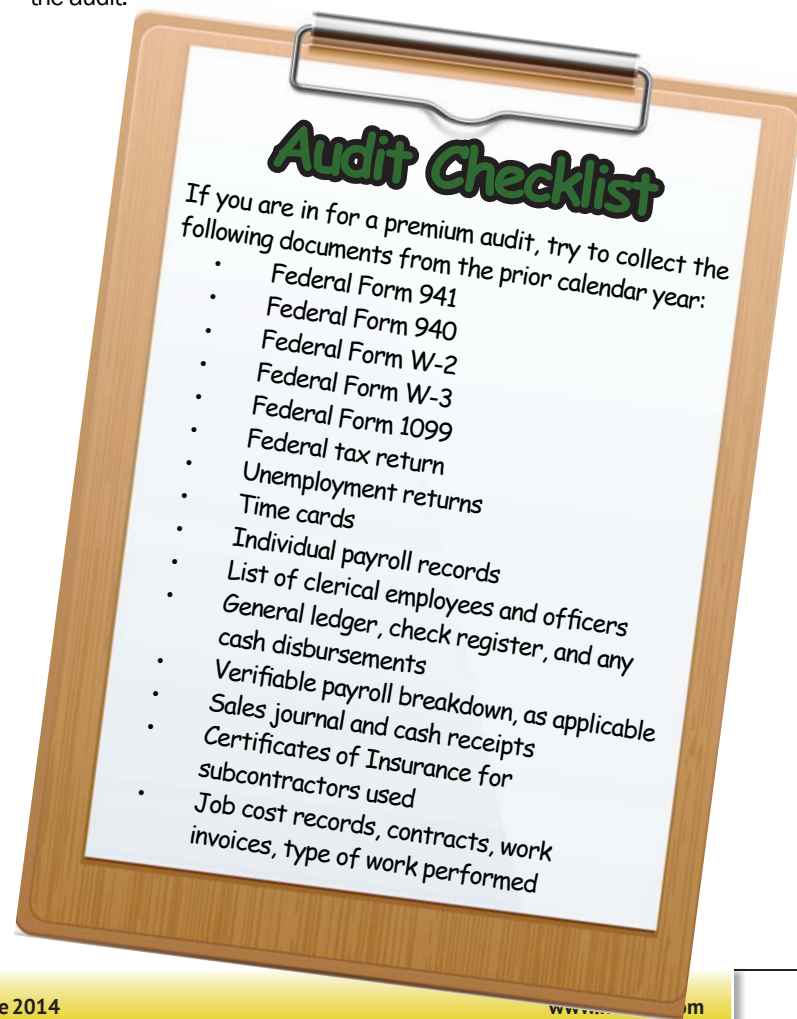
You will receive a two-page audit form to complete and return to your insurer. Then, a representative from its audit department will call you to discuss your payroll and business operations. Again, you will need to return the document within 15 calendar days.

Remote Physical Audit

You will receive a letter requesting payroll records for your company. Once you send the requested documents to your insurer, a representative from its audit department will call to discuss your payroll information and business operations.

On-site Physical Audit

You will be contacted by one of your insurer's premium auditors to schedule an appointment to visit your business location(s) to conduct the audit.



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