Can You Defend Yourself on Timekeeping and Wage & Hour Compliance?
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Let’s say you laid-off one of your hourly employees and 60 days later you get an official note from the Department of Labor on that terminated employees’ claim that you did not pay them for overtime worked. Are you ready to defend that demand for payment? We have seen a large increase in Wage & Hour investigations by State and Federal agents in the past year.

I would like to outline a couple of true scenarios on what Flex HR has seen, first hand, to illustrate how this area of law can creep up on you:

• After being terminated for performance, an employee claimed he was terminated for National Origin. In this persons’ claim, he also said that he did not get paid overtime for hours worked. In reviewing the situation, this company only kept time records on factory employees and just paid the office hourly employees a straight 40 hours per week. However, the employee kept his timesheets but did not turn them in. The terminated employee claimed 5 additional hours per week. In defending the claim, we even went into the alarm system to try to prove that no one was in the building during some of that time. It turned out the alarm system was not set up properly and the clock was never set. Three years of overtime was a costly mistake that the company needed to pay at a price of $15,750. But it did not end there … the Department of Labor (DoL) charged the company for two times that amount for penalties and fines plus required them to make whole the other hourly employees working in the office, for a total settlement of well over $250,000.00.

• A different company was paying their sales call center employees as exempt, paying them a base salary and commissions on leads that resulted in a sale. One of the employees went to the DoL and submitted a claim for unpaid overtime. DoL overruled the company on the exempt classification and made the company re-classify these 120 employees to hourly non-exempt, and interviewed each employee affected to allow them to self-estimate the hours they worked beyond 40 hours per week. The cost to settle this claim was over half a million dollars.
We have found many businesses asking questions such as “What exactly is a non-exempt worker?” “How do I know for sure if my exempt employees are really classified properly?” “When do I have to pay overtime?”

A company needs to establish a specific work-week to appropriately administer paying non-exempt employees properly. Federal law states that a company must keep accurate time records for our non-exempt worker. We recommend retaining these records for four (4) years since these are IRS required pay documents.

Some of the key areas where we see companies making mistakes are:
- Not keeping accurate time records
- Not having an established and published work week to calculate Overtime
- Misclassification of workers as exempt when they are non-exempt
- Not keeping time card records long enough
- No written policy on prior approval of overtime, not working during lunch break, not punching in early or staying beyond the designated work shift, designating the work week
- Not punching out and back in for lunch
- Allowing non-exempts to work during lunch hour but not paying them
- Allowing non-exempt employees to use the internet after their work shift which may allow an employee to continue work and therefore be obligated to pay for that time
- Paying the non-exempt employee for only 8 hours, but allowing them to punch in early and punch out late
- Classifying tele-marketers as exempt
- Allowing an employee to say if they want to be classified as exempt
- Classifying IT help desk employees as exempt

**A Note on Timekeeping**

If you currently have time clocks in order to keep accurate records of time worked, is it really giving you what your business needs? At the right cost?

- What do you use for your timekeeping system now?
- How is that working for you?
- Can you be assured that the right person clocked in?
- Are you getting the functionality you need?
- Is there any part of that process that causes you concerns?
- What else would you like your timekeeping system to do for you?
- Do you have a need for job costing?

Today, there are many choices for any size business for timekeeping needs. These range from the manual paper forms completed by hand to very sophisticated web based systems.
The good news is the more sophisticated web-based systems have become very affordable, producing new functionality and savings. Here are just a few samples of such a system:

**COST ACCOUNTING FOR LABOR**, the major benefit of this system allows management to track all labor by the product being produced with full reporting features.

**AUTOMATIC UPLOADS** of employee related information. This greatly reduces the amount of time required to process payroll and also increases the efficiency of your staff as this system works in unison with our payroll software.

**ELECTRONIC TIME-OFF MANAGER** allows for employee self-service and automatically routes requests to the appropriate manager. The electronic format allows managers to view historical data as well as future scheduled time off to ensure staffing requirements are met.

**MULTIPLE TIMESHEET FORMATS** to easily capture time and labor data including job and department costs. This data can easily be exported into a variety of different reporting formats, from excel to a pdf. All timesheet formats are compatible with various external data collection terminals as well as web-clock time capture.

**SCHEDULE TRACKING** harnesses the task of tracking attendance behavior and productivity regardless of the number of locations and mobility of personnel. This schedule tool allows managers to quickly identify deviation from schedules and attendance infractions through system alerts. You can even create a Point System to assign either positive or negative points to employees based on attendance behavior.

**ELECTRONIC TIMESHEET SUBMITTAL/APPROVAL** ensures timesheets have been approved by the appropriate personnel. Automating this paper-intensive process can save countless hours better spent on other functions. By using a system like this, company holidays and approved Time Off can automatically populate the appropriate timesheets, simplifying the review, edit and approval of time.

**ELECTRONIC NOTIFICATIONS** are standard and can send out reminders to managers, employees or administrators for everything from incomplete timesheets to birthdays or review dates.

**A Note on Timekeeping Best Practices**
The more organized you keep good pay records, the better off you will be in any potential litigation you may come up against. We recommend a biometric time clock system if you can. Most court systems deem biometrics to be as good as
a persons’ signature. If you cannot get to that sophistication, then I suggest having each non-exempt employee sign their time card or time sheet because the statements about it are a true and honest report reflecting the accuracy of time worked and accounted for that work week. Keep all non-exempt timesheet, time cards and requests for time off for four (4) years.