

Would Your Wage and Hour Practices Withstand Scrutiny?

Article By:

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These are real headlines from the last four days:

- **Holiday Inn at LA Airport Hit with Wage Class Action**
- **Bath & Body Works Will Pay \$1.3M to End Managers' Wage Suit**
- **Texas Sales Managers Hit Gold's Gym with Overtime Suit**
- **FedEx to Pay \$10M to Settle OT, Meal Break Suit**
- **Kraft Paying \$1.75M to Settle Sales Workers' OT Suits**
- **ZipRealty Pays \$5M to Settle California Agents' Wage Claims**

Similar headlines from the last two weeks would fill this screen. And these headlines do not reflect a new trend – rather, they are just examples of the many similar headlines featured almost daily in Labor and Employment publications. In fact, a record number of wage and hour lawsuits have been filed in the last 18 months. And there's no sign that they will be dwindling any time soon.

Why are these suits here to stay? For one, with the availability of attorneys' fees and liquidated damages, they're a boon for plaintiffs and their lawyers. For another, given economy-driven layoffs, potential plaintiffs may end up in lawyers' offices more often, looking for ways to strike back. And don't think you're protected just because the former employee signed a severance agreement. Employees cannot release wage and hour claims, even if your agreement says otherwise. Perhaps most compellingly, the **Fair Labor Standards Act** is not the easiest law to comply with. Ever try to compute the regular rate when non-discretionary bonuses are paid every week and the amount varies? Do you really know what "independent discretion and judgment" is? Do you know if you need to count the time employees spend at home checking their email as "time worked"?

What are the most popular practices targeted by plaintiffs?

- **Failure to pay overtime – either because the employer doesn't like paying overtime or because employees are misclassified as exempt.**
- **Failure to pay overtime at the proper rate.**
- **Paying workers less than the minimum wage, especially tipped workers.**
- **Failure to provide uninterrupted meal breaks of the appropriate length.**
- **Retaliation against workers who complain.**

What should you do? Short of making everyone non-exempt and prohibiting overtime, ask yourself how confident you are that your classifications are correct. If you're not confident, call your lawyer and schedule an audit. Review a sampling of time and pay records to ensure that overtime was properly calculated and paid. Not sure? Call your lawyer. Don't have time records? Groan.

Finally, don't think you're safe because your company is not big enough to be on anyone's radar screen. Ever heard of 888 Consulting Group? Savvy Car Wash? Geosite Inc.? Quicksilver Express Courier Inc.? ZipRealty? Me either. But all of these companies have been hit with wage and hour suits. You may not be able to avoid being sued, but an FLSA audit before that happens could help you minimize the damages.

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National Law Review, Volume II, Number 286

Source URL: <https://natlawreview.com/article/would-your-wage-and-hour-practices-withstand-scrutiny>