

## **Checklist for Avoiding Lawsuits for Overtime Violations**

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One of the “hot” areas for Plaintiff’s lawyers to look to make life miserable for business owners are claims for overtime pay when an employer fails to properly follow the rules for calculating and paying overtime. The rise in overtime lawsuits in recent years has been significant in part because such claims can include attorney’s fees as a form of damages. Like discrimination suits, attorney’s fees in wage and hour claims can often be more costly than the overtime obligation itself.

There are several key points to audit in your payroll practices in order to avoid a claim for overtime pay.

**Who is exempt?** One of the key issues to consider is whether an employee is entitled to be exempt from the obligation to pay overtime. Simply because the employer designates an employee as “salaried” does not mean that the employee is not entitled to overtime pay. In order for an employee to be “exempt” from the overtime obligation, they must fall into one of the exemption categories namely: Executive, Administrative, Professional, Technical and Outside Sales. An employee who does not fall into one of these categories must be paid overtime regardless of whether they are paid on a salary basis.

**Deductions from pay for hours missed.** Often claims arise when an employer has employees it identifies as “exempt” from overtime but then makes inappropriate hourly deductions for missed time. Even if an employee is entitled to be exempt, if the employer makes hourly based deductions for missing work because of illness or other personal matters, the exemption can be lost. If the employer has a policy for making deductions of less than full day’s pay when an employee is tardy or misses partial days of work, the exemption for that employee and all other employees in that job class can be lost.

**“Banking” overtime.** One of the most typical mistakes is for employers to agree with their “bank” overtime for later use rather than pay it in the pay period it is due. While employees often prefer this practice in order to build up additional time off they can take for either vacation or personal leave, this is, in fact, not allowed under federal law even if the employee agrees to it. If an employee is due overtime pay, it must be paid in the corresponding pay period. If you have been banking overtime for your employees, you should stop that practice immediately.

If you have questions about your pay practices and/or concerns about potential exposure for overtime claims, contact Bob Halagan for an audit and review of your practices.