Employment Law Corner

Monthly Report

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February Updates

Employment Law Corner:

FLSA Compliance: Don't Let Wage and Hour Issues Sink Your Business

The Fair Labor Standards Act sets out the ground rules for employee pay—minimum wage, overtime, the works. Sounds simple? It's not. The FLSA has hundreds of regulations with countless exceptions and exemptions. Even well-intentioned employers trip up. Get it wrong and you're facing backpay, fines, penalties, attorneys' fees, and DOL audits.

***Reminder: This is a review of federal law. The federal law is the floor and state laws are often the ceiling—higher standards and burdens.**

Independent Contractor or Employee?

Misclassifying workers as independent contractors is where many employers first go wrong. If the DOL decides your "contractor" is actually an employee, you could owe years of overtime pay.

The DOL uses the "economic realities test" examining six factors: profit/loss opportunity, investments, permanency, control, whether work is integral to your business, and skill/initiative required. The problem? Employers rely on contract labels instead of actual working relationships.

In *Galarza v. One Call Claims, LLC,* insurance adjusters were labeled contractors but the court found otherwise. Why? The company controlled their work, they used company equipment and worked at fixed rates for two years. Result: two years of unpaid overtime claims. Contracts matter, but reality matters more. This is an area where state law really comes into plat too. Check out our **Independent Contractor Classification Audit**—a fixed fee service to make it easier to be on the right side of the law.

Exempt or Non-Exempt? The Costly Mistake

Once someone is an employee, are they exempt from overtime? This is where costly mistakes happen. Slapping a "manager" title on someone and paying a salary doesn't exempt them from overtime.

To be exempt, employees must pass two tests: the salary basis test ($684 per week minimum in most places) and the duties test. The duties test is where employers stumble. Your employee's actual day-to-day work must match the exemption you're claiming.

Calling someone a "manager" doesn't exempt them if they're not managing people or making personnel decisions. "Administrative" employees doing routine clerical work? Not exempt. The key is actual responsibilities, not job titles.

Get it wrong and employees can claim two years of unpaid overtime (three if willful), plus penalties and interest. Worse, many employers don't track exempt employee hours, leaving no records to dispute claims. Even proper classifications can fail if you make improper salary deductions. We offer a useful, easy to use fixed fee **Exempt and Non-Exempt Classification Service** that can save you a lot of headaches.

Beyond the Basics: Overtime, Hours Worked

Overtime isn't always straightforward time-and-a-half. Employees with multiple pay rates, bonuses, commissions, or tips require "regular rate" calculations—all eligible compensation divided by hours worked. This calculation happens weekly, and errors mean underpayment that the DOL will collect with interest.

What counts as "hours worked"? More than you think. Training, mandatory uniform changes, driving between job sites, after-hours emails, weekend calls—all potentially compensable. You're responsible for accurate records; you can't rely on employees to self-report. Once you know someone is working overtime, "I didn't authorize it" isn't a defense.

*State Laws Can Make It Even Harder

Everything we've discussed so far is federal law. But many states add their own requirements that go beyond the FLSA. You need to comply with both federal and state law—and wherever the standard is stricter, that's the one you follow.

Take Massachusetts. Their overtime law was supposed to be "essentially identical" to the FLSA. But Massachusetts hasn't adopted all the federal exemptions. So someone who's exempt from overtime under federal law might still be entitled to it under Massachusetts law. And Massachusetts has much more aggressive penalties.

Washington and New York have raised their salary thresholds for exempt employees—and they keep increasing every year. The point? FLSA compliance is the starting line. You need to know what additional requirements apply in every state where you have employees.

Don't Navigate This Alone

FLSA compliance requires constant attention to worker classification, overtime calculation, time tracking, and federal and state law. The penalties are substantial—backpay, fines, interest, attorneys' fees, DOL audits. These aren't hypothetical risks. We see them happen to employers who simply didn't know the traps.

Regular audits catch problems before they become lawsuits. We offer many fixed fee services to keep you in compliance, including our **FLSA Wage, Hour and Timekeeping Audit.** We help employers navigate wage and hour compliance so you can focus on running your business.

Ready to make sure your pay practices are bulletproof? Let's talk.

Do You Have Questions?

We can help! Our **Employment Counsel On-Call Triage Service** is a perfect resource for employers of all sizes looking to receive guidance on employment law and HR-related questions. We work with clients day in, day out to help them navigate complex legal issues and implement best practices. We receive unique questions every day through the **On-Call Service** and are ready to tackle any issue where you need help!

Who We Are:

- We represent employers exclusively from coast to coast in all facets of employment law and litigation. Our mission is solving problems and anticipating issues so you can concentrate on your business.

- We are constantly searching for the trends and upcoming issues in the law that will impact our clients. We want our clients to be informed and ready. Our familiarity with the workplace and our approach sets us apart from other law firms, making us well equipped to handle your unique needs.

- We are not like other firms: Anyone can tell you what the law states and its limits. That is easy. We find creative solutions within those restrictions that move your business forward. We seek to minimize your risk so you can get back to business. Learn how we can help your business: **Foley & Foley PC attorneys specialize in Employment and Labor Law in the Public and Private Sectors (foleylawpractice.com).**

Contact Us

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Meet Gregory Paal

Greg has experience advising employers on regulatory compliance, contract matters and employment-related litigation. Greg has worked with employers both large and small to meet various challenges, including implementing overtime and leave policies, drafting employment agreements and privacy policies, and resolving discrimination complaints! For more info, check out his full bio **here**!