

# Wage & Hour Insights

Guidance & Solutions for Employers



## Ten Things Small Business Needs To Know About Minimum Wage and Overtime

By [Bill Pokorny](#) March 07, 2012



I read the stories every day: some small business, often a local restaurant or a similar "mom and pop" operation, gets sued or tagged by the Department of Labor for failing to pay minimum wages and overtime to employees. Here's just [one example](#).

I have worked with a fair number of small and midsize businesses. I understand that there are a lot of pressures associated with running a business, and that learning the complexities of wage and hour law is somewhere far down the list of priorities, below things like serving customers and making ends meet to keep the doors open. Time and again I have talked to small business owners and managers who think that because they pay their employees well and treat them fairly, they don't have to worry about keeping track of hours or paying overtime. Here's the thing: if you ignore basic wage and hour compliance, it will hit your bottom line, hard, and often at a time when you can ill afford it.

The good news is that the basics of wage and hour law are relatively simple. Here are the essentials:

1. **Pay the Minimum Wage.** All non-exempt employees must be paid at least the minimum wage for all hours worked.
2. **Pay Overtime.** All non-exempt employees are entitled to overtime pay at one and a half times their regular rate of pay if they work more than 40 hours per week.
3. **When In Doubt, Treat Employees as Non-Exempt.** Most employees are non-exempt. Paying someone a salary or giving them a job title like "manager" or "executive" does not make them exempt. There are overtime exemptions for certain executives, administrators, professionals, and other types of employees, but these have very specific legal definitions and the burden is on you as the employer to prove that the exemptions apply. Unless you are sure that you understand the legal tests and that an employee falls within an exemption, you should assume that the employee is not exempt and is entitled to overtime pay.
4. **Keep Good Time Records.** You need to know how many hours each employee works each workweek - not each pay period. How you track the time is up to you, but your records must be accurate, and must be available for inspection if the Department of Labor comes knocking or if you get sued. Your time records are your best defense in a wage and hour lawsuit or audit. Without them, you are at the mercy of your employees' testimony regarding their work hours.
5. **Keep Good Pay Records.** You also must maintain complete records of all compensation paid to employees, so that you can prove that employees were properly paid for all hours worked.

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6. **Pay For All Hours Worked.** "Hours worked" includes all hours that you "suffer or permit" an employee to work. If you are running a business, there is no such thing as "volunteer" work.
7. **Don't Misclassify Employees As Independent Contractors.** Unless someone doing work for your business is truly independent - *i.e.*, in business for themselves, not directly supervised by you, providing their own tools and equipment, doing similar work for other customers, *etc.* - you are likely asking for trouble by classifying them as independent contractors rather than employees. This puts you at significant risk of an audit, not only by state and federal labor authorities, but also the IRS and state revenue departments.
8. **Understand What Laws Apply To Your Business.** Many states and even some local governments set minimum wage rates and overtime requirements that differ in some respects from the requirements of federal law. Make sure that you know what laws apply to your location. Likewise, if you have any union contracts or agreements with individual employees, make sure that you understand and comply with your contractual obligations.
9. **It Doesn't Matter What Your Employees Agree To.** You may be a wonderful boss. Your employees may love their jobs and be willing to work for you even without pay. Perhaps they prefer to be treated as "salaried" because they don't want to punch a time clock. Maybe they would rather have "comp time" off instead of overtime pay. The Department of Labor doesn't care about any of this, and neither will the lawyer that your employee hires after he becomes disgruntled and decides to take out his frustrations in court. Employees cannot legally waive their rights under state and federal wage and hour laws, except as part of a settlement supervised by the Department of Labor or a court. That means that regardless of what your employees want or are willing to accept, you still need to comply with the law.
10. **Good Legal Advice Is Cheaper Than A Wage and Hour Violation.** Having been down this road multiple times, I can tell you from experience that it is far easier and cheaper to deal with wage and hour prospectively than it is to fix violations after the fact. If you have a wage and hour question, pick up the phone and talk to your employment lawyer. If your question is an easy one, it will cost you very little and you will know how to proceed. If it's more complicated, then it is probably worth investing the time to make sure that you don't become the next interesting case we write about in this blog.

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