

Workers' Compensation

Employers Beware: Are You Shortchanging Your Employees?

by Steven P. Lee, Esq.

California wage and hour laws are some of the most complex in the country. Failure to strictly comply with these laws can have devastating consequences for even the most conscientious employer. This article will address various case scenarios that might apply to you and your company. If so, you may wish to seek professional advice on how best to structure your employee compensation programs.

Case Scenario Number One

Suppose you are the manager of an insurance company. Your claims adjusters' duties include adjusting and settling mostly run-of-the-mill automobile accident claims. They typically work no more than 40 hours per week, but will work in excess of 40 hours per week if needed. They are salaried employees and do not receive overtime pay. Are they entitled to receive pay for their overtime work?

Case Scenario Number Two

Suppose you operate a medium-sized clothing store in a shopping mall. You employ one store manager and several clerks. The manager is paid a yearly salary and the clerks are paid minimum wage. The manager spends some of his time interviewing, hiring, training and supervising the clerks. The remainder of the manager's time is spent tending to customers and selling clothes. The manager works at least 50 hours per week. You have always considered the manager as an exempt employee and therefore have never paid him for overtime work. Is the manager entitled to overtime pay?

Case Scenario Number Three

Suppose you own a small computer software design company and employ an experienced programmer who has the primary responsibility for designing the programs marketed by your company. The programmer spends a large percentage of her time designing software and a small amount of her time supervising three assistant programmers. You pay the programmer by the hour. She frequently works in excess of 40 hours per week and you pay her for her overtime work. Are you obligated to pay the programmer for her overtime?

Case Scenario Number Four

Suppose you own a large chain of automobile repair shops and pay your shop workers a certain percentage of the total charged each customer. Your shop workers typically work less than 40 hours per week, but occasionally work as much as 60 hours per week. You do not pay any of the shop workers overtime. Are your shop workers entitled to overtime pay?

Case Scenario Number Five

Suppose you own a 20-unit apartment complex. You employ an on-site resident manager to collect rent and address tenant concerns. You pay the manager a small fixed yearly salary and provide him with a one-bedroom



apartment unit rent free. The market value of the manager's unit is approximately \$1,000 per month. Your practice has been to credit the value of the apartment unit toward the manager's compensation for minimum wage requirements. Is your compensation practice in violation of the California wage and hour laws?

California Wage and Hour Laws

The answer to each of these scenarios is perhaps. As with many areas of the law, there are few black and white rules in California wage and hour law. Many employers go for years without realizing they have neglected to pay overtime due, have paid overtime when they were not obligated to do so or have paid their employees less than the minimum wage. In fact, many employers have no idea there is anything wrong with their compensation policies until a dispute arises with one of their employees. The outcome of many wage and hour disputes depends largely on the specific facts of each dispute and whether the occupa-

tion is governed by a specific regulation.

The California Industrial Welfare Commission is the entity that creates the California minimum wage and overtime pay regulations. These regulations are called Wage Orders and are located in Title 8 of the California Code of Regulations. Once a violation is alleged the burden of proof is on the employer to prove that the employee is exempt from the minimum wage or overtime requirements. Simply paying an employee a salary or giving an employee the title manager does not, in itself, make an employee exempt. Whether an employee fits within an exemption requires a detailed factual assessment of the employee's duties and responsibilities as well as the applicable wage orders.

Remedies

If an employer is found to have violated the California wage and hour laws, remedies include: recovery of all wages and compensation due including benefits and vacation pay, interest on unpaid wages, waiting time penalties (up to 30 days of the employee's regular rate of pay) for willful violations, attorney fees and costs, and injunctive and declaratory relief.

Although litigation involving California wage and hour law does not occur in most employer/employee relationships, it can easily develop. Even innocent misconceptions as to what constitutes an exempt versus non-exempt employee can have devastating effects on large and small companies alike, depending on the scope and willfulness of the employer's violations. As such, a yearly review of the wage orders applicable to all employees should be undertaken in connection with a yearly assessment of every employee's duties, responsibilities and rate of pay. Any actual or potential violation of an employee's wage and hour law rights should be immediately rectified to avoid not only a disruption of the employer/employee relationship, but the economic impact violations can cause. □

Don't Forget Your Fire Extinguishers

Fire extinguishers are an often forgotten part of a loss control program. To make sure they work in an emergency, they need regular inspection and maintenance.



In 2005, approximately 115,000 fires occurred in nonresidential structures, causing 50 deaths and 1,500 injuries, and more than \$2 billion in property damage.

These statistics only give part of the picture of fire's devastation. In addition to direct property damage, businesses can suffer indirect damage from fire, including lost productivity, lost income and loss of market share. Experts estimate these costs at some \$10 billion per year.

Sprinkler systems can help prevent widespread structural damage, so insurers usually discount premiums for businesses protected by sprinklers. Most sprinkler systems work by activating once they sense the heat of a fire. But sprinklers aren't effective for all situations. Sprinklers might not activate soon enough to prevent extensive smoke damage; they can also damage your building contents—particularly electronics. And if you rent your premises, installing sprinklers might be impractical or impossible.

That's why every business, even ones with sprinklers, needs at least one fire extinguisher per floor. A fire extinguisher can stop a small fire from becoming a large one; however, one type of extinguisher will not work on all types of fires. For best results, match the type of extinguisher to the type of combustibles in the area:

- ★ Class "A"—Ordinary combustibles (wood, paper, cloth, rubber, etc.)
- ★ Class "B"—Flammable liquids (fuel oil, gasoline, cooking grease, solvents, etc.)
- ★ Class "C"—Energized electrical equipment (wiring, fuse boxes, electric motors, etc.)
- ★ Class "D"—Combustible metals (magnesium, sodium, zirconium, etc.)

Inspections and maintenance

In time of crisis, a non-working hydrant is worse than none at all. Every organization needs a procedure for inspecting and maintaining its extinguishers to keep them in working order.

- 1 Assign someone the job of inspecting all the company's fire extinguishers. If you don't have a dedicated safety department, this could be someone with maintenance or operations duties.
- 2 Check each extinguisher for the following at least once a month, more often if a fire extinguisher is located outdoors or exposed to extreme heat, cold, dust or dirt:

- ★ Location. Is the extinguisher accessible and not blocked?
 - ★ Does it have adequate pressure? On extinguishers with gauges, the needle should be in the green zone – not too high and not too low.
 - ★ Are the pin and tamper seal intact?
 - ★ Are instructions for use of the extinguisher posted in a visible location nearby?
 - ★ Is it in good condition? A dented, rusted or dirty extinguisher might not work properly. Either clean and test or replace it.
 - ★ Shake dry extinguishers to prevent settling, if the manufacturer recommends doing so.
- 3 Create a checklist of items to examine during the inspection. Have your inspector complete a checklist for each fire extinguisher each time he or she does an inspection.
 - 4 Conduct regular maintenance on all extinguishers. At least once a year, every fire extinguisher needs to be tested. This should be done by a professional.

For information on premium discounts for having fire extinguishers, sprinklers and other fire protections, please call us.

PDA Pain Can Lead to Workers' Comp Claims

Employers could face workers' compensation claims related to injuries from personal digital assistants (PDAs), according to a report published in November 2006 by USA Today. The American Physical Therapy Association and other occupational organizations are warning that improper use and overuse of PDAs can lead to hand throbbing, tendonitis and swelling, a condition known as BlackBerry Thumb. Alan Hedge, an ergonomics professor at Cornell University, said full-blown symptoms can be severe.

Employers can train people how to correctly hold and use the handheld devices and encourage employees to write brief e-mails, he notes.

