

Payroll Compliance Update: New Laws and Required Changes to Avoid Penalties in 2018 (part 3)

Presented by:

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1. Inside Sales

- ◆ Also a couple industry-specific exemptions
 - Mostly limited to sales of cars, trucks, boats, etc.
- ◆ All of the rest? **Non-exempt.**

2. Entry-Level “Professionals”

- ◆ Myth: Any employee with a bachelor’s degree and a white-collar job can be exempt.
- ◆ **Many entry-level “professionals” don’t meet an exemption (or at least not clearly).**
- ◆ Massive litigation over this in financial industry and elsewhere.

2. Entry-Level “Professionals”

- ◆ Example: accountants
 - CPA designation = likely exempt
 - Bookkeeper = not exempt (even if highly skilled)
 - Entry-level accountant at “Big 4” = ???
- ◆ Remember: skill ≠ judgment and discretion
- ◆ My argument with a dozen CFOs . . .
- ◆ “But it hurts recruiting!”

3. I.T. “Help Desk” Employees

- ◆ There are specific exemptions for computer professionals
- ◆ They cover occupations that mere mortals cannot grasp:
 - Computer systems analysts
 - Computer programmers
 - Software engineers

3. I.T. “Help Desk” Employees

- ◆ **These exemptions do not cover “help desk” employees**
- ◆ That is, those who maintain and fix routine hardware and software issues for end users
- ◆ Special danger here because of on-call time and odd hours

4. Salary To Cover All Hours Worked By Exempts

- ◆ When an employee has been misclassified as exempt, how are damages calculated?
- ◆ It depends what the salary was intended to cover:
 - 40 hours a week? (Bad)
 - Or all hours worked? (Good)
- ◆ If the latter, may be able to use “fluctuating workweek” (FWW) method of damages

4. Salary To Cover All Hours Worked By Exempts

- ◆ **Simple language: “Your salary is intended to compensate you for all hours you work for the Company.”**
- ◆ Put it in offer letters, employee handbook, etc.
- ◆ If it works, the difference in damages is dramatic

4. Salary To Cover All Hours Worked By Exempts

- ◆ For example, assume:
- ◆ Paid \$1,000 per week salary
- ◆ Worked 50 hours every week
- ◆ Misclassified as exempt; three-year statute of limitations

4. Salary To Cover All Hours Worked By Exempts

Non-FWW

$$\$1,000 / 40 \text{ hrs} = \$25/\text{hr}$$

$$\$25 \times 1.5 = \$37.50 \text{ per OT hr}$$

$$\$37.50 \times 10 \text{ hrs/wk} = \$375/\text{wk}$$

$$\$375 \times 156 \text{ wks} = \underline{\underline{\$58,500}}$$

FWW

$$\$1,000 / \underline{50} \text{ hrs} = \$20/\text{hr}$$

$$\$20 \times \underline{0.5} = \$10 \text{ per OT hr}$$

$$\$10 \times 10 \text{ hrs/wk} = \$100/\text{wk}$$

$$\$100 \times 156 \text{ wks} = \underline{\underline{\$15,600}}$$

(more than 75% lower!)

4. Salary To Cover All Hours Worked By Exempts

- ◆ Many employers shoot themselves in the foot . . .
 - “You will be paid a salary of \$52,000 annually.”
 - “You will be a full-time employee on a 40-hour schedule.”
- ◆ Points to exactly the wrong conclusion
- ◆ Instead, also include: “Your salary is intended to compensate you for all hours you work for the Company.”

5. On-Call Time

- ◆ Example:
 - Non-exempt employee must be “on call” for one weekend (48 hours) every month.
 - Last weekend, employee received one call
 - Had to drive in to the office and work for 2 hours to resolve it
- ◆ So, that’s an extra 2 hours’ pay, right?
- ◆ Or could it be an extra 48 hours’ pay?

5. On-Call Time

- ◆ Time spent responding to a call obviously compensable
- ◆ **But if the terms of being on-call are very restrictive, then it can all become compensable, even if no calls actually received**
- ◆ Or if calls are so frequent the time is not the employee's own

5. On-Call Time

- ◆ What does policy say? (Is there one?)
- ◆ How does supervisor actually enforce?
- ◆ What level of unresponsiveness would get the employee in trouble?
- ◆ Liability infrequent, but damages can be massive

6. Automatic Deductions for Breaks

- ◆ Common practice:
 - Employee supposed to work 8-5 with 1 hour unpaid lunch
 - Employer has employee clock in at 8, and out at 5
 - Time system auto-deducts 1 hour for lunch

- ◆ This is OK . . . **so long as it's 100% accurate, always**
 - Employee never works through lunch
 - Never shortens lunch
 - Lunch never interrupted by work