

Five New Workplace Issues That You Should Know About

Employees Padding Their Time Cards

In the recent case, *White vs. US Postal Service*, a supervisor with 15 years of job tenure was accused of time card padding.

The Postal Inspector General received a tip that people in a certain facility were padding their time and attendance records and took action by setting up surveillance.

The IG was able to document 8 separate incidents where a supervisor claimed overtime when he did not work—totaling over \$7,000 in pay.

In handing down their decision, the court noted the supervisor was the manager responsible for enforcing time card rules.

In mounting an appeal, the supervisor claimed he was out of the office on interviews at the times in question. However it was learned that this individual had no authority to hire for the positions he was supposedly interviewing for and he could not prove that even one interview occurred. He lost all appeals and was terminated.

As with almost all time and attendance issues, it all comes down to having all activity documented.

Validity of Electronic Signatures

In the first ruling of its kind the Utah Supreme Court recently ruled state election offices must accept online petition signatures to qualify individuals for the ballot. In the ruling the judges said:

“A signature under [Utah law] does not require a signor to physically handle a piece of paper and sign her name with a pen. An electronic signature is sufficient to satisfy the election code.”

Although this ruling focused on electronic signatures in the election process, it will open the door for other cases involving electronic signature usage including employee “check off” on time and attendance records.

On The Rise: Wage and Hour Litigation

In California, lawyers have shifted their focus from discrimination lawsuits to wage and hour cases. There has been a marked increase in these cases over the past 12 months.

Wage and hour cases are considered more lucrative and require less work on the part of the lawyers. One firm is San Jose California has ad campaigns with topics such as: “Have you missed a meal or rest break?” in the hopes of stirring up some litigation business. California employers beware.

Collecting Service Fees & Tip Pooling

World Yacht, Inc. operates the very popular Sunset Dining Cruises in New York. World Yacht charged patrons a ‘service fee’ for each cruise. This was interpreted by the waitstaff to be their gratuity and in 2008, after not receiving said monies, the servers sued their employer and won.

This case has lead to more legal action in the area of tip pooling. Recently, nine banquet workers at the Waldorf Astoria in New York (part of Hilton Worldwide) filed a class action lawsuit against their employer. They claimed banquet customers were charged a 21.5% service fee of which only 15% was distributed to the waitstaff.

Also in New York at the National Tennis Center, three employees filed a lawsuit over a 21% service charge assessed on all food and beverage served during events like the U.S. Open. They claim management, over a 5-year period from 2004 through 2009, retained the service charges.

There is not a lot of clarity in the ruling on cases such as these. Some courts have determined the service fees are not tips because the consumer must pay these fees—they are not discretionary. Federal law states as long as the employer pays minimum wage, they do not have to share the service fees.

And that is the crux of this problem: when Federal and State laws conflict, the ruling that is most favorable to the employee typically wins. To further muddy the waters, State law and case rulings vary widely. So if you are in New York, for example, you cannot rely on a decision handed down in Georgia.

If you are in the hospitality industry, stay tuned as more cases (and confusion) are certain to follow.

Paying Salaried Employees Overtime: The Fluctuating Workweek

Non-exempt employees must be paid overtime for all time worked over 40 hours in a given week. This is Federal law written in stone, right?

Did you know there is another method for calculating overtime in FLSA code? It’s called a fluctuating workweek. Employers who want to give employees a morale boost by classifying them as salaried adopt it and it can potentially be a huge cost saver.

Here are the criteria for determining eligibility for this calculation:

- ✓ Your employees must be classified and paid a salary.
- ✓ The salary must be at least equivalent to minimum wage.
- ✓ Employee hours must vary on a weekly basis.
- ✓ There is an employer / employee agreement on this compensation.

To calculate overtime under these rules, first determine the employees equivalent hourly rate:

$$\text{Weekly Salary} \div \text{Hours Worked} = \text{Equivalent Hourly Rate}$$

Then, calculate the overtime amount due:

$$\left(\text{Equivalent Hourly Rate} \times 0.5 \right) \times \text{Hours Worked} = \text{Overtime Pay Due}$$

As you can see, the multiple of 0.5 is where there is a huge potential cost savings for the employer.

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