

Checklist: Wage and Hour Claims

Disclaimer: This checklist is a summary of statutes and regulations and is intended only as a shorthand method to identify potential wage and hour claims. [REDACTED]

1. Employment

___ Was the individual "engaged to work, permitted to work, or suffered" to work?

___ Was a purported "independent contractor" or "subcontractor" in "economic reality" an employee?

2. Employer Covered?

___ Federal Fair Labor Standards Act (FLSA) requires "employees engaged in commerce or in the production of goods for commerce" and \$500,000 in annual gross sales or "business done." "Engaged in commerce" is broadly defined. File with federal agency or go to court.

___ Generally, state and local public agencies are covered.

3. Minimum Wages

___ The state and federal minimum wage is \$5.15 an hour. For tipped employees, the state minimum wage is \$2.65, so long as tips at least make up the difference between the wage and the \$5.15 minimum wage.

4. Overtime

___ Both federal and state law require private employers to pay overtime at 1½ times the regular hourly rate for all time worked over 40 hours in a "workweek." Generally, this is determined by the start of the employer's payroll period.

___ "Comp time" for overtime is not permitted for private employers covered by FLSA, but can be used by government employers so long as any compensatory time is used within the same pay period at a rate of 1½ times the overtime worked. Special rules for police and fire personnel.

5. Hours Worked

Note: Work actually performed is work that must be paid, regardless of a "no overtime" policy or requirement for prior approval of overtime or work after hours. Employers cannot expect or allow hourly employees to perform unpaid work.

___ Was employee paid for all hours worked?

Note: In some cases, duties performed "off the clock" or before or after work hours are

compensable and may require regular or overtime compensation. Also, if "on call" or performing duties during unpaid lunch hour, pay or overtime may be due. Examples: clean up, uniform change, preparation or cleaning of equipment, closing out cash drawer.

____ Was employee paid for "on call" time or duties required before or after work or during unpaid breaks or lunch periods?

6. Salaried Employees

Note: Many employers improperly classify employees as "salaried." Clerical and administrative jobs are often misclassified simply because they are white collar jobs. There is no overall "white collar" exemption from overtime requirements and "salaried" employees are improperly denied overtime and/or regular compensation just because they're deemed "salaried" and not paid hourly wages by their employers.

An "executive, administrative, or professional" salaried employee is exempt from overtime only if two tests are met. Both the salary and duties tests must be satisfied for salary status:

Duties test: employee's primary duties must be executive, administrative, or professional. Job titles and "honorifics" do not control, job duties must be analyzed. In general, at least half of employee's time in each work week must be actually spent in exempt duties to render job exempt from overtime requirements.

Salary test: employee must be compensated on a "salary basis." Regulations require payment of a predetermined salary amount without "reduction because of variations in the quality or quantity of work performed." This means that:

(1) salary amount is not cut if employee misses less than one day from work for illness or personal reasons (quantity of work), and

(2) unpaid disciplinary time off from work for salaried employees is not permitted for rule violations, other than violations of major safety rules (quality of work). Again, special rules apply for public employees in this area.

7. Retaliation

Employers cannot take any adverse action against an employee for complaining to an agency about his/her statutory wages or for participating in an investigation.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

