

HOW TO PROTECT YOUR BUSINESS FROM A WAGE AND HOUR CLASS ACTION LAWSUIT

The news media is replete with stories of multi million dollar wage and hour class actions filed against California businesses. Wage and hour lawsuits are easy to file, offer tremendous upside to the workers and their attorneys who file them, and could potentially cost your business tens of thousands of dollars to defend. How does the small business owner protect himself from these types of lawsuits? One preventative measure is to conduct an employment audit with the help of your employment attorney or human resources consultant.

1. **Are your employees properly classified?** A common mistake is to classify non-exempt employees as exempt. An employee's exemption status is based on the wages they earn and the duties they perform. Non-exempt employees are entitled to overtime. Review job descriptions, and the employee's actual job duties to determine whether they meet the criteria of any of California's recognized exemptions.
2. **Are meal and rest breaks being provided to non-exempt employees?** Non-exempt employees are entitled to a 10 minute rest break every 4 hours and a 30 minute meal break after 5 hours of work. It is important that your employee's clock in and out for their meal breaks.
3. **Are non-exempt employees paid for all hours worked?** Non-exempt employees must be paid overtime for all hours worked over 8 in a day and 40 in a week. Employees cannot waive the right to overtime and must be paid even if the overtime is not authorized. Compensatory time off in lieu of overtime is not permitted for private sector employees.
4. **Are final wages being properly paid?** If the employer initiates the termination of the employee, the final paycheck including accrued but unused vacation and PTO, is due immediately on the day of termination. If the employee quits with at least 72 hours notice, the final paycheck is due on the last day of work; if less than 72 hours notice is given, the final paycheck is due within 72 hours of when the notice is given.
5. **Should your independent contractors be classified as employees?** Nearly all workers are employees, not independent contractors. Examine your business' relationship with its independent contractors to insure you are not exercising control over the work to be done and the manner in which it is to be performed.
6. **Does your business have proper insurance coverage?** Check with your insurance broker to insure that your business has the proper type and level of coverage. While not all claims will be covered your broker can advise you on the best insurance for your business.

If your business has conducted an employment audit and it is sued, while it may not be possible to avoid liability all together it will be possible to limit exposure.

Lisa E. Aguiar focuses her extensive knowledge of employment law to counsel businesses on all aspects of the employment relationship from proper hiring procedures, to managing workplace performance, including properly classifying and compensating employees, and to ending the employment relationship. She is a seasoned litigator and has handled through trial multiple employment law cases, including those dealing with wage and hour issues. She can be reached at laguiar@rmkb.com

Feb 3, 2010