

HR compliance

How California employers can avoid common wage-and-hour mistakes **Interviewed by Lisa Murton Beets**

Wage-and-hour violations, including misclassification of employees for overtime purposes, continue to present a challenge for California employers. How can employers avoid some of the more common pitfalls under California law?

“Employment laws place complicated and often overlapping obligations on employers,” says Thomas H. Reilly, a partner in the Newport Beach office of Newmeyer & Dillon LLP. “The wage-and-hour laws in California are more expansive than in other states. Employers must be vigilant. Class actions for unpaid overtime have resulted in astonishingly large verdicts against, and settlements with, California employers.”

Smart Business spoke with Reilly about some common wage-and-hour mistakes made by California employers and how they can be avoided.

How can a company avoid misclassifying employees as exempt or nonexempt from overtime pay?

Employees are presumed to be nonexempt and entitled to overtime unless they meet the requirements of an exemption. There are three primary exemptions.

Executive: The employee must spend more than 50 percent of his or her time managing a recognized department and supervise at least two subordinates. Positions that normally qualify for the exemption include line supervisor and department manager.

Administrative: The employee must spend more than 50 percent of his or her time performing nonmanual work directly related to operating the business (as opposed to producing the goods or services of the business) and work under only general supervision. Positions that would normally qualify for the administrative exemption include controller and human resource manager.

Professional: The employee must be licensed or certified by the state and primarily engaged in the practice of law, medicine, dentistry, optometry, architecture, engineering, teaching or accounting. Certain other ‘learned’ professions, such as



Thomas H. Reilly
Partner
Newmeyer & Dillon LLP

chemists, may also qualify if the duties of the position require a degree more advanced than a bachelor’s degree. Certain ‘artistic’ professions such as actors and musicians also qualify for exemption.

All three exemptions also require that the employee exercise discretion and independent judgment and receive a salary that is not less than two times the state minimum wage.

California also recognizes exemptions for certain commissioned sales personnel and highly skilled computer software employees.

The requirements of the exemptions cannot be waived. To avoid misclassifications, employers must have staff members who are knowledgeable of the exemptions, or seek guidance from their employment attorneys or consultants.

Are there special requirements for accrual and payment of vacation pay in California?

Yes. Under California law, vacation time accrues day by day throughout the work year and, once accrued, cannot be forfeited. However, California employers are permitted to cap vacation accrual and reach the same objective as use-it-or-lose-it policies, that is, avoiding massive vacation pay obligations. Any such cap on accrual must

allow employees reasonable time to use their vacation days before reaching the maximum. Many employers cap vacation accrual at approximately 150 percent of the annual accrual rate.

What are the requirements for providing rest and meal periods to employees?

Under California law, employees must receive a 10-minute paid rest period for every four hours of work or major fraction thereof (more than two hours). Employees who work at least five hours in a workday must also receive a 30-minute unpaid meal period. This meal period may be waived by mutual consent if the employee does not work more than six hours.

Employees who work 10 hours in a workday must receive an additional 30-minute unpaid meal period. The second meal period may be waived by mutual consent if the employee does not work more than 12 hours. All rest and meal periods must be duty-free (for example, employees cannot answer telephones while on their breaks). Employers who fail to provide required meal periods and rest periods are liable for one hour of pay at the employee’s regular rate for each workday that a meal period and/or rest period was not provided.

How can a company avoid wage-and-hour disputes?

Maintain accurate and detailed time records for all nonexempt personnel.

Avoid easy fixes, such as putting lower level employees on salary to avoid paying overtime, or copying another company’s employee handbook without first checking its content for compliance.

Conduct self-audits on an annual basis to determine whether changes in job duties or reporting relationships have affected exempt designations.

Know the legal requirements and seek professional advice on unusual or borderline cases.

THOMAS H. REILLY is a partner in the Newport Beach, Calif., office of Newmeyer & Dillon LLP. Reach him at (949) 854-7000 or tom.reilly@ndlf.com.