Watching the clock

How to protect your business against wage and hour lawsuits

STEPHEN C. GOLDBLUM
Member
Semanoff Ormsby Greenberg & Torchia, LLC

(215) 887-5961
sgoldblum@sogtlaw.com

A worrisome trend for businesses is the explosive growth of wage and hour lawsuits. The Department of Labor reports that it receives nearly 25,000 wage and hour related complaints per year, and the number of lawsuits brought against companies under the Fair Labor Standards Act (FLSA) continues to soar — wage and hour lawsuits against companies for violations of the FLSA have increased 456 percent since 1995. These lawsuits can be expensive to defend, extremely disruptive and often result in the payment of significant settlements.

"The popularity of these lawsuits is explained by the potential for recovery," says Stephen C. Goldblum, a member at Semanoff Ormsby Greenberg & Torchia LLC. "Even a small wage and hour violation can result in large damages when the claim is brought on behalf of all similarly situated employees."

Smart Business spoke with Goldblum about wage and hour violations and how companies can steer clear of them.

What types of claims are brought in wage and hour suits?

Although failure to pay overtime wages accounts for nearly 40 percent of wage and hour class action lawsuits, these suits can include a variety of other claims including: misclassification of employees, failure to pay for off-the-clock time, failure to pay for meal breaks, and failure to pay compensable time before and after a work shift. A burgeoning area of concern is the failure to pay employees for the use of email and mobile devices outside of working hours.

How can companies decrease the chance of a wage and hour suit?

An internal audit of wage and hour practices by expert outside counsel can identify and help prevent most violations of the law, thereby helping to avoid a lawsuit. The cost for such a review is substantially less than the fees to defend a single claim.

An effective wage and hour audit will include a thorough review of the company's policies and practices, including a review of employee classifications, independent contractor relationships, timekeeping and payroll practices, employment policies, overtime calculations, and whether and to what extent managers are properly trained with respect to these issues. If violations are found, counsel can offer strategies to correct them and deal with any potential back pay obligations in ways that reduce the likelihood of litigation. After an effective audit, a company will know and understand any existing risks and can take steps to bring the company into compliance.

How important is it to review and revise wage and hour policies?

One of the most vital things a business can do is to periodically have its wage and hour policies reviewed by an attorney well-versed in this area of the law. For example, handbook policies that notify employees of the company's expectations regarding off-the-clock work and meal and rest periods are a vital tool in defending wage and hour claims. Moreover, a clear policy that states smartphone use during off hours is only permitted with supervisory approval and must be recorded and reported immediately (i.e., within 72 hours) is recommended, as is a statement that 'off-the clock work is prohibited.' Employers should additionally ensure that time cards and electronic recording programs contain language that require employees to confirm that they have recorded all time worked. Finally, clearly articulated meal and rest period policies are now a necessity in employee handbooks.

How can companies implement effective time-keeping measures?

Employees and former employees often assert in class action lawsuits that the hours paid were not accurate because the hours were under-reported or not reported by the employee. To prevent this type of claim, ensure that time-keeping practices are well documented and that the reported time is verified by the employee. Best practices for accomplishing this include using a standard system to record all time, either electronically or with an actual punch-clock; having each nonexempt employee record, review and sign off on their time each pay period; implement a signed verification that the hours reported accurately include all time worked for the period; and training supervisors to monitor and review employees' time records. ●