



DO WE HAVE TO PAY FOR THAT?

10 Common Wage and Hour Pitfalls and How to Avoid Them

Did you know that wage and hour class-action settlement values have tripled in the last two years? If you want to avoid fees, fines and courtrooms—and what employer doesn't?—check out our top 10 wage and hour pitfalls, so you can take steps to steer clear.



It's easy to get tripped up by state laws that go beyond federal standards, so we've included some notable examples. Make sure you're compliant in every state where you do business—especially California, home to many intricate wage and hour regulations!



PITFALL 1

Not Paying Employees for All "Compensable Time"



Compensable time includes all time that employers "suffer or permit" employees to work—i.e., allows work that isn't requested.

- ✔ Rule of thumb: if you know an employee is working, you must pay for it.
- ✔ The reason is immaterial—even voluntary work is compensable.



Most states mirror the federal standard. However, in California, compensable time is "the time during which an employee is subject to the control of an employer, and includes all of the time the employee is suffered or permitted to work, whether or not required to do so."

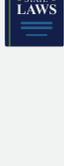
PITFALL 2

Assuming Work is "Off the Clock"... When It's Not



Pre-shift and post-shift work is compensable if it involves the employee performing his/her "principal activity." Here's where problems often arise:

- ✔ Pre-shift meetings
- ✔ Work during meal periods
- ✔ Taking work home
- ✔ After-hour calls
- ✔ Using mobile devices to answer work emails
- ✔ Donning and doffing
- ✔ Bag security checks



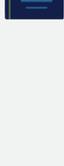
In California, work is compensable when "an employee is subject to the control of an employer, and includes all of the time the employee is suffered or permitted to work, whether or not required to do so." The problem areas are the same.

PITFALL 3

Paying for Overtime Correctly



Employees must be paid overtime for all hours worked over 40 hours in a work week. Overtime pay must be at least 1.5 times the employee's regular rate of pay.



In California, in addition to the 40 hour/week rule, overtime must be paid for all hours worked:

- ✔ Over 8 hours in a workday
- ✔ On the 7th consecutive day of work in a workweek.

Overtime pay must be at least 1.5 times the regular rate of pay in the above situations. But it must be at least 2 times the regular rate of pay for:

- ✔ All hours worked over 12 hours in a workday
- ✔ Any hours over 8 on the 7th consecutive day of work in a work week.

Other states also require overtime be paid after an employee works a certain number of hours per day, including:

- ★ Alaska
- ★ Colorado
- ★ Nevada
- ★ Puerto Rico

PITFALL 4

Not Providing Written Wage Notices



There is no federal law requiring employers to provide employees with individual written wage notices. However, there are a number of state mandates.



These states have written wage notice laws (obviously, the specifics of each law vary):

- ★ California*
- ★ Connecticut
- ★ Delaware
- ★ D.C.
- ★ Hawaii
- ★ Idaho
- ★ Illinois
- ★ Kansas
- ★ Louisiana
- ★ Maryland
- ★ Montana
- ★ New Hampshire
- ★ New York
- ★ North Dakota
- ★ South Carolina
- ★ West Virginia

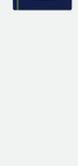
These states require written wage notice postings:

- ★ Alaska
- ★ Colorado
- ★ Iowa
- ★ Pennsylvania
- ★ Tennessee
- ★ Utah

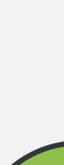
* Requires a detailed "Wage Theft Prevention Act" Notice

PITFALL 5

Not Providing Pay Stubs When Required



While federal law requires employers keep accurate records of hours worked and wages paid, there is no federal law requiring employers to provide employees with pay stubs. That's not the case on the state level.



So many states have pay stub laws, it's more efficient to list those that don't, which are:

- ★ Alabama
- ★ Arkansas
- ★ Florida
- ★ Georgia
- ★ Louisiana
- ★ Mississippi
- ★ Ohio
- ★ South Dakota
- ★ Tennessee
- ★ Virginia

Note: California requires employers provide employees with itemized "wage statements" containing highly-specified information.

PITFALL 6

Not Paying Terminated Employees' Final Wages on Schedule



While federal law does not require employers to pay employees final wages within a certain time after following termination, many states have laws that govern how and how quickly final wages must be paid.



California has very specific laws regarding final wages, and employers can face stiff penalties for noncompliance:

- ✔ An employee who resigns - must be paid on their final day, provided they gave 72 hours notice. If not, they must be paid within 72 hours of giving notice.
- ✔ An employee who is terminated - must be paid on his/her final day.

These states also have laws requiring final wages be paid before the next scheduled pay period (the specifics vary):

- ★ Alaska
- ★ Arizona
- ★ Arkansas
- ★ Colorado
- ★ Connecticut
- ★ D.C.
- ★ Hawaii
- ★ Idaho
- ★ Illinois
- ★ Iowa
- ★ Louisiana
- ★ Maine
- ★ Massachusetts
- ★ Michigan
- ★ Minnesota
- ★ Missouri
- ★ Montana
- ★ Nevada
- ★ New Hampshire
- ★ New York
- ★ Nevada
- ★ New Hampshire
- ★ North Dakota
- ★ Oregon
- ★ Rhode Island
- ★ Tennessee
- ★ Vermont
- ★ Washington
- ★ West Virginia
- ★ Utah
- ★ New Hampshire
- ★ Vermont
- ★ Wisconsin
- ★ Texas

PITFALL 7

Not Providing Meals and Rest Breaks as Required



Meal Breaks - While federal law does not require meal breaks, it does require that employers who offer meal breaks of less than 30 minutes pay for that break time.

Rest Breaks - While federal law does not require rest breaks, it does require that employers who offer rest breaks of less than 20 minutes pay for that break time.



These states require meal breaks of a specified duration after employees have worked a specified number of consecutive hours, paid or unpaid (details vary):

- ★ California*
- ★ Colorado
- ★ Connecticut
- ★ Delaware
- ★ Illinois
- ★ Kentucky
- ★ Maine
- ★ Massachusetts
- ★ Minnesota
- ★ Missouri
- ★ Montana
- ★ Nevada
- ★ New Hampshire
- ★ New York
- ★ North Dakota
- ★ Oregon
- ★ Rhode Island
- ★ Tennessee
- ★ Vermont
- ★ Washington
- ★ West Virginia

These states also require rest breaks of a specific duration after employees have worked a specific number of consecutive hours, paid or unpaid (details vary):

- ★ California*
- ★ Colorado
- ★ Kentucky
- ★ Minnesota
- ★ Nevada
- ★ Oregon
- ★ Vermont
- ★ Washington

* While each state law requires careful scrutiny, California meal and rest break laws are especially detailed.

PITFALL 8

Not Providing Lactation Breaks



- ✔ Federal law requires that employers provide non-exempt mothers with "reasonable" time as needed and a private space to express breast milk for 1 year after a child's birth.
- ✔ Lactation breaks are generally not compensable, with some exceptions.

Some states have additional lactation accommodation laws that extend lactation breaks beyond the first year of a child's life.

PITFALL 9

Not Compensating for Travel Time

- ✔ Travel time from home to work (i.e., commuting) is generally not compensable.
- ✔ When traveling away from home, only time that cuts across normal working hours is compensable, on regular work days and non-work days.
- ✔ Work performed during travel time is always compensable.

In California, commuting is generally not compensable, but all other travel time by non-exempt employees generally is compensable, with the exception of duty-free meal breaks.

PITFALL 10

Not Compensating for On-Call/Reporting Time Correctly

There is no federal law requiring that employees be paid for on-call time in general, except when certain constraints are placed on an employee's freedom, such as when an employee:

- ✔ Is required to remain on or close to premises.
- ✔ Has a short time limit to respond to calls to come to work.
- ✔ Is frequently responding to calls during off-hours.
- ✔ Has excessive geographical restrictions.
- ✔ Has an agreement with his/her employer that there will be some compensation.

Some states have additional reporting time laws, including:

- ★ California*
- ★ Connecticut
- ★ District of Columbia
- ★ Kansas
- ★ Massachusetts
- ★ New Hampshire
- ★ New Jersey
- ★ New York
- ★ Rhode Island
- ★ Washington

*In California, an employer must pay an employee for half his/her usual scheduled day's work (no less than 2 hours or more than 4) when an employee reports to work as required but is not put to work OR is furnished less than half of the usual scheduled day's work.



HOW DO YOU GUARD AGAINST COMMON WAGE AND HOUR PITFALLS?

- ✔ Learn the laws in every jurisdiction where you do business.
- ✔ Create detailed written policies that are compliant at the federal, state and local levels.
- ✔ Train your managers and HR staff extensively.
- ✔ Use time and labor management and payroll systems that help you maintain wage and hour compliance automatically...like EPAY!

EPAY HCM includes an advanced time and labor management solution that makes it easy to track employee worktime precisely, even tricky areas like overtime and meal breaks. Plus, it's unified with our robust payroll engine, ensuring employees are paid correctly for their work time.

Want help avoiding wage and hour pitfalls? Learn more about EPAY—request a demo.

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