

**Dear HR Knowledge, I hear a lot about wage and hour audits, so how I can protect my business, and stay on the right side of compliance?**

The Fair Labor Standards Act (FLSA), which is a division of the Department of Labor (DOL) sets the standards for wage and hour compliance and, to make it more complicated, there are some states, such as California, that have stricter laws than the FLSA. In those instances when state law differs from federal law, employers must comply with the law that is most beneficial to the employee.

The myriad wage and hour laws can make things confusing for both business owners and managers, and often, you may not even be aware when you are out of compliance. When we think of wage and hour issues, what usually comes to mind is willfully unpaid employee wages, but the most common reason for an audit or lawsuit is misclassification of employees as exempt rather than nonexempt. Another issue that sparks an audit, is individuals being misclassified as independent contractors. Other typical areas for noncompliance relate to improper rates of pay and negligent tracking of hours, including travel time for nonexempt employees, such as determining when you need to compensate for travel time that exceeds an employee's ordinary commute time or travel time that requires an overnight stay.

The DOL tends to conduct audits in highly regulated industries, as well as those where there are trends of noncompliance, such as food services, healthcare, technology, construction, and banking. The price is steep for noncompliance, and employers who willfully violate these laws may be subject to criminal penalties, including hefty fines and even imprisonment. If ever faced with an audit or lawsuit, the burden of proof is always on the employer.

Small businesses tend to operate a little more informally than larger companies, but looser rules or lack of policies won't be good excuses when faced with an audit or lawsuit. For example, you might have a special compensation arrangement with your employees, where you build in bonuses to make up for any overtime. Perhaps you agreed to classify an employee as exempt because they didn't want to track their hours, or because they were classified as exempt in their last position. Some business owners are not even aware of wage and hour noncompliance, since similar employers in their industry operate the same way. But these types of excuses will never absolve your business from potential costly consequences.

**What's an employer to do?**



To stay on the right side of compliance, your best strategy is to be attentive to wage and hour laws, both at the federal and state level. Be accurate in your recordkeeping and make sure you have determined appropriate employee classification. It is imperative to set clear expectations between you and your employees regarding policies and procedures as well as individual working arrangements. No matter the size of your business, having clearly written policies, such as an [employee handbook](#), will help you stay compliant.

Not sure where to start to stay on top of the ever-changing regulatory, employment, and wage and hour laws? Contact us today to see all the ways we can offer valuable guidance on compliance and regulatory changes. We are here to be a trusted partner and work with you to uncover any potential areas that are putting your business at risk.

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