Centricity Solutions

Common Mistakes
Made by California Employers

Vacation and PTO Use it or Lose it Policies

In California, vacation time and paid time off (PTO) are considered vested wages that cannot be forfeited. At the end of every year, any unused vacation time or PTO must roll over to the following year or be paid out to the employee. Policies that require employees to use the vacation or PTO time during the year or lose it are illegal under California law. Vacation time accrues on the basis of time worked, and it is also impermissible for an employer to have a policy that vacation time is not considered earned or vested until the end of the year. Employees must be paid any earned vacation time at the time they leave their employment.

Overtime Misclassification/Reclassification without Paying Back Pay

Simply paying workers a salary does not relieve employers from paying overtime unless they qualify for a specific exemption. Computer technology employees, loan officers, and many store managers work long hours and weekends, are paid a salary without premium overtime pay, but do not qualify under any overtime exemption by devoting more than 50% of their time to exempt duties. Employees are entitled to four years of back pay. Companies are reclassifying salaried employees from overtime exempt to overtime non-exempt but failing to pay four years of overtime owed.

Taking Deductions from Wages

The California Labor Code prohibits deductions from wages to pay portions of assistant's salaries or bonuses, processing fees, uncollected fees from third parties, uniforms, cash shortages, or differential shortages between quoted sales prices and actual sales prices.

Miscalculating Overtime Rates

Employers are required to include earnings for non-discretionary bonuses in calculating workers' hourly rate of pay for premium overtime pay of 1.5 times the hourly rate for hours worked in excess of eight hours per day and 2.0 times the hourly rate for hours worked over twelve hours per day.

Employees paid by the number of jobs they complete or people they service during the day ("piece rate" employees) must also be paid overtime of one half their regular rate of pay, calculated as total weekly income, including expense reimbursements paid as wages, divided by total hours worked.

Non-exempt employees paid hourly or salary wages plus commission must be paid a separate "commission overtime" rate in addition to the hourly overtime rate. When a commission is paid on a weekly basis, it is added to the employee's other earnings for that workweek and the total is divided by the total number of hours worked in the workweek to obtain the employee's regular hourly rate and applicable overtime rate. When payment of a commission is delayed until after the regular payday for the period during which the commission was earned, the employer must calculate additional overtime compensation by dividing total commissions by the total hours during the commission period to calculate the regular hourly rate and paying one half the regular hourly rate for all overtime hours.

California employers are not allowed to use any "comp time," failing to pay overtime premium pay by taking overtime from one day or week and giving time off on a subsequent day or week.

Failing to Provide Uninterrupted Rest and Meal Breaks

Employees who are not provided a paid, uninterrupted rest period for every four hours or major portion thereof worked and an unpaid, uninterrupted 30-minute meal period free to leave the premises for shifts of over five hours is entitled to an additional hour of pay.

Paying Different Hourly Rates for Identical Work

Employers cannot pay the same employee different amounts for the same work as a subterfuge for avoiding overtime pay, such as one rate for regular hours a lesser rate for overtime hours.

Misclassifying Employees as Independent Contractors

Employers improperly classify employees as independent contractors to avoid paying payroll taxes, minimum wage and overtime, provide meal periods and rest breaks, or reimburse workers for business expenses incurred in performing their jobs. Among other factors, if an employer has control or the right to control the worker both as to the work done and the manner and means in which it is performed, the worker may be misclassified as an independent contractor.

Off the Clock Work and Failure to Pay for Unrecorded Hours

Forbidding hourly employees from clocking in until after they have completed tasks, such as donning protective clothing, waiting to pass through security clearances, and walking distances on work premises, or requiring hourly employees to perform tasks after clocking out (such as cleaning, setting up, bookkeeping, or money counting) violates California labor laws.

Employers often forbid overtime hours without permission and instruct employees not to record hours in excess of eight per day or forty per week. However, the employer is required to pay for all hours worked regardless of the number recorded, and it is the employer's burden under the law to maintain accurate time keeping records.

Failing to Pay Hourly Wages for Travel Time

California law requires that employees be paid for all hours worked, including travel time other than commute time from home to the place of employment. Compensable time includes time in which an employee is required to travel in an employer's vehicle.

Failure to Reimburse All Business Expenses

Employees are entitled to reimbursement for automobile, cell phone, marketing, and virtually all expenses incurred as a part of their job.