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PERSPECTIVE

Avoid wage and hour compliance issues

By Michael Warren

Wage and hour litigation continues to pose a threat to employers, especially in California. There are many potential reasons for the persistence of this phenomenon, despite increased awareness of the issue by the business community. Wage and hour is a heavily regulated area of the law. Assuring strict compliance with the multitude of legal requirements in the Labor Code is a challenge for even the well-intentioned employer. Not to mention that every year additional wage and hour legislation and regulations are implemented to further complicate compliance efforts. This year is no different.

The problem is particularly persistent in the entrepreneurial-rich culture of Silicon Valley. Understandably, start-ups tend to place the early focus on research and development, rather than wage and hour compliance. The problem of noncompliance typically presents itself to the start-up during the maturation of the company as more employees are hired, roles change, and the company grows. Misclassification of employees as overtime exempt is of particular concern for start-ups. A position that may have qualified for an exemption in the early stages of the company, may lose that exemption as the company grows and the duties of that position become more clearly defined. If start-up founders are not attentive to wage and hour compliance from

the beginning, they may unwittingly expose their businesses to significant liability in the future if compliance is not addressed.

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The importance of wage and hour compliance cannot be understated. The risks of noncompliance are significant and they may even create a serious threat to the survival of a business, especially when an employer is confronted with a class action lawsuit. As with any litigation, wage and hour lawsuits are expensive to defend and are a distraction for a business, negatively affecting employee morale and productivity. What some employers do not realize is that most wage and hour statutes include attorney fees provisions, which enable a plaintiff (not a defendant) to recover attorney fees should the plaintiff prevail on a wage and hour claim in court. It is not uncommon for the potential attorney fees liability in an individual wage and hour lawsuit to exceed the liability for the violation itself. These attorney fees provisions are a strong incentive for the plaintiff's bar to pursue these claims and part of the reason for the persistent problem of wage and hour litigation.

Compliance is also important in the event that an employer is

subject to a wage and hour audit by a government agency, such as the U.S. Department of Labor, the California Labor Commissioner, or the California Employment Development Department. These unannounced audits target employers of all sizes and tend to move their focus from one industry to another. Sometimes there appears no rhyme or reason why a government agency initiates a particular audit. Not surprisingly, these audits often find what they are searching for and result in significant payment of back wages and penalties.

All of this reinforces the point that wage and hour compliance is a serious issue that demands the continuous attention of employers. The good news is the problem is preventable. Here are 10 tips for ensuring wage and hour compliance:

10. Make sure your "independent contractors" are truly independent contractors.
9. Make sure your overtime exempt employees actually meet the tests for an overtime exemption.
8. Take another look at the content of your paystubs and confirm they comply with the law.
7. Know what deductions are proper from an employee's paycheck and pay workers on time.
6. Track all hours worked and have zero tolerance for off-the-clock work.
5. Know which wage order applies to your business and know the requirements of that order.
4. Maintain and archive your

time and payroll records.

3. Do not take a break from implementing your meal and rest breaks; enforce the taking of breaks by employees.

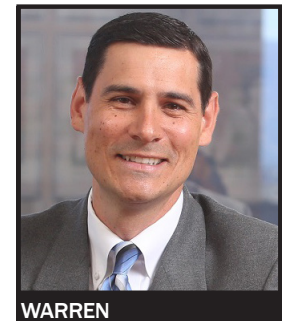
2. Properly train your managers and non-exempt employees on wage and hour policies and procedures.

1. Do not assume you are in compliance. Conduct an audit.

The above is not meant to be an exhaustive list for wage and hour compliance. There are additional recommendations that arguably may be added to the list. However, these 10 tips are a product of real-world experience and risk assessments. Adhering to them will significantly decrease the potential for wage and hour liability and save your business money.

Do not wait until your business is sued to address wage and hour compliance. Get ahead of the problem before it can threaten your business. With the help of these tips, you may prevent a preventable problem.

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