

## Guest Perspective

# Employee wage laws present minefield to small businesses

AS EMPLOYERS gear up for a new tax year, there are many issues to consider with regard to employee wages. Wage and hour violations are one of the more prevalent and costly mistakes an employer can make.

While the federal Fair Labor Standards provides that all employees must be paid overtime (time-and-one-half the average hourly rate for any hours worked beyond 40 in a seven-day work-week) and receive minimum wage (\$5.85 per hour), a host of problems present themselves with these simple concepts. Some of the more problematic areas employers face include:

**Salaried-exempt employees:** While many employers believe paying an employee a salary excuses them from paying that employee overtime, this is not the case. Unless an employee fits a specific white-collar exemption or one of the very few exemptions allowed under the FLSA, an employee must be paid time-and-a-half for overtime.

There are three white-collar exemptions. The executive exemption is reserved for employees who make more than \$455 per week and whose primary duty consists of managing an enterprise, a subdivision or department of that enterprise, or who customarily and regularly directs the work of at least two or more full-time employees.

The administrative exemption is reserved for employees who are paid more than \$455 per week, and whose primary duty consists of office or non-manual work directly related to the management or general business operations of the employer. Clericals, for example, are usually never administrative employees.

The learned professional exemption is reserved for those who make more than \$455 per week and perform work requiring advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction.

Other exemptions are the computer employee exemption (must receive not less than \$455 per week or receive at least \$27.63 per hour); the outside sales exemption (primary duty is making sales and the employee is customarily and regularly engaged away from the employer's place of business); and the highly compensated employee who performs office or non-manual work, is paid a total annual compensation of \$100,000 or more and exhibits other exempt functions.

All employers should review whether their salaried-exempt employees fit within one of these exemptions. If a salaried employee is improperly classified, the overtime liability could stretch back three years. Liability is derived by dividing each week's salary by the



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total hours worked for that week to arrive at an average hourly rate. Half of that average hourly rate would then be owed for all overtime hours worked in that week.

**Salary deductions:** Even if an employee qualifies as exempt, the employer will lose the exemption if prohibited deductions are taken from that employee's salary. While deductions are permitted for Family and Medical Leave Act absences, for example, they are otherwise highly restricted. An employer who is deducting for absences from a salaried employee's pay must make sure those deductions are proper.

**Working time:** Many employers fail to properly capture all time worked by their non-exempt employees. Orientation, training and certain travel may be considered working time and must be included as time worked for the purposes of determining whether overtime is owed. The employer must capture most preliminary activities by an employee.

**Bonuses:** Any lump sum incentive bonus given to a non-exempt employee, such as a production, attendance or safety bonus, will inflate the average hourly rate for that employee during the period of time covered by the bonus. Since overtime must be based on the average hourly rate for each week, overtime liability will occur if the correct hourly rate was not used to calculate the overtime.

The only way to circumvent the problem is to classify an incentive bonus as a percentage of total earnings for the bonus period.

**Lunch and rest periods:** Generally, an employer must always pay for rest periods. Lunch periods can be unpaid but only if the employee takes a full half-hour uninterrupted lunch. If the employee takes less than a half-hour lunch, the entire time must be counted as hours worked and compensated. Also, minors in Louisiana may not work more than five consecutive hours without a 30-minute meal break.

**Compensatory time:** Private employers generally cannot use compensatory time to satisfy overtime obligations. An employer may only use compensatory time if it allows the employee to take the compensatory time within the pay period it was accrued. This is usually not practical.

All businesses, no matter what their size, should have an expert review their pay practices to determine potential problems. With multiple plaintiffs, liquidated damages and attorneys' fees, these types of mistakes can be very costly. •

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## Guest Perspective

# Precise employee handbooks save business headaches

**BUSINESS OWNERS** can disagree about what the most essential tools are for operating a business. No law requires you to have an employee handbook but it is a critical tool to help communicate to your employees the company's rules and expectations. And it will help your supervisors do a better job of keeping you out of trouble.

The following discussion underlines important policies in an employee handbook:

**Vacation:** In Louisiana, vacation time is considered an earned wage and cannot be forfeited. All earned but unused vacation must be paid at termination regardless of the reason for termination. Your policy should clearly set out how and when vacation is earned. Whatever is in an employee's "vacation bank" at termination must be paid to that employee by the applicable time limits.

**Sick leave:** Sick leave should only be paid time off if the employee is sick. If employers fold sick leave into vacation for the creation of a paid days off account, for example, sick leave may be due an employee upon termination.

**Health insurance:** Detailed health and welfare benefits information is dangerous because an employee may rely on information in the handbook even when the specifics of the benefit plans have changed. Any reference to health or welfare benefits in a handbook should be as brief as possible. All employees must receive summary plan descriptions detailing these benefits and should rely on that only.

**Family and medical leaves:** The Family and Medical Leave Act applies to employers with 50 or more employees and allows eligible employees 12 weeks of protected, unpaid leave in any designated 12-month period for family related medical conditions. FMLA policy is mandatory for covered employers with a handbook. The policy must contain sufficient information to apprise employees of their rights and obligations under the law.

**Maternity leave:** Louisiana mandates maternity leave for employees is six weeks for a normal delivery and four months if the employee is disabled. Unlike FMLA, employees are immediately eligible and leave runs concurrently with FMLA leave, if applicable.

**Sexual and other harassment policies:** A strong anti-harassment policy is helpful in protecting employees and employers. The policy should include: a clear statement harassment of any type is forbidden; illustrative examples of harassing conduct; a procedure for reporting harassment, including specific individuals to receive complaints (upper management — not first-line supervisors, and possibly a phone number; and an anti-retaliation provision.

Also, considering the possibility the employer's immediate supervisor may be the



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alleged harasser, the policy should list managers other than the supervisor to whom an employee can complain.

**No solicitation policy:** Often an employer's no-solicitation policy is too broad wherein the employer prohibits solicitation on company premises at any time. This violates the National Labor Relations Act.

An employer must allow employees the opportunity to solicit each other

while not working such as on breaks, lunch periods and before or after work.

**Discipline:** Flexibility is the key with any published discipline policy. Many times employers segregate violations as first-warning offenses, suspension offenses or termination offenses. This is problematic. All infractions should be listed together and employers should reserve the right to take any discipline, up to and including termination, for the violation of any rule or the commission of any offense.

**Internet access/e-mail/voice mail policy:** In order to reduce the potential of liability from lawsuits alleging sexual harassment, defamation or invasion of privacy, employers should create and implement a clear e-mail, voice mail and Internet policy to reduce employees' expectations of privacy, as well as set clear boundaries for employee conduct with respect to electronic communications.

**Drug testing:** A drug test policy may contain provisions on pre-employment, random, reasonable suspicion or post-accident testing. Employees should also be made aware that a positive test screen may result in the disqualification of workers' compensation and/or unemployment benefits.

**Handbook disclaimer:** The disclaimer should indicate employment is at will and the handbook does not constitute a contract of employment and no one has the authority to create any contract of employment other than one specified individual.

**Signature page:** The signature page on the employee handbook is extremely important. Once signed by the employee, the page should be removed from the handbook and placed in the personnel file.

**Other policies:** Other provisions typically seen in a handbook include an Equal Employment Opportunity statement and policies related to holidays and military, jury, funeral or personal leave.

Handbooks are necessary to provide organization and peace of mind for employees. They provide guidance to your management team. But like your car, your handbook should be regularly inspected and fine-tuned to stay current with applicable legislation and case law.

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## Guest Perspective

# Supervisors play crucial role in solid employee relations

GIVEN THE POST-KATRINA difficulty in finding qualified labor and the ever-present risk of employment litigation, it is important to keep an eye on the relationship between your employees and supervisors.

Employees who have no confidence in their supervisors are likely to feel they have no representation in the workplace. This makes them more of a turnover risk, less productive and more likely to cause legal trouble either during or after their employment.

Too many times supervisors do not realize the impact they have on employee morale and just how important their role is in positive employee relations. Years ago, a well-known survey asked hundreds of supervisors from various companies to rank 10 workplace morale factors in the order they thought their employees would rank them, from most important to least important.

As you might expect, most supervisors believed good wages and job security were the most important factors in determining employee morale. Here is how the supervisors said their employees would rank the 10 morale factors:

- 1) Good wages.
- 2) Job security.
- 3) Promotion, growth in the company.
- 4) Good working conditions.
- 5) Interesting work.
- 6) Personal loyalty to workers.
- 7) Tactful discipline.
- 8) Full appreciation of work done.
- 9) Sympathetic help on personal problems.
- 10) Feeling "in" on things.

In the same survey, more than 30,000 employees in the same companies were asked to rank these 10 factors in order of importance to them. Here is how the employees ranked them:

- 1) Full appreciation of work done.
- 2) Feeling "in" on things.
- 3) Sympathetic help on personal problems.
- 4) Job security.
- 5) Good wages.
- 6) Interesting work.
- 7) Promotion, growth in company.
- 8) Personal loyalty to workers.
- 9) Good working conditions.
- 10) Tactful discipline.

As you can see, the supervisor rankings were almost upside down and opposite from their employee rankings of the same factors. Unfortunately, that mindset continues today.

Many supervisors mistakenly believe economic items such as wages and benefits are the primary factors in employee morale. They also tend to think what makes their employees happy is out of their control or not their responsibility.

Nothing could be farther from the truth.

The first four factors on the employee list deal with communication, which falls squarely within the supervisor's daily responsibilities. Employees want recognition for a job well done. They want to feel they have a stake in what's going on. They want someone to talk to who



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will listen and be sympathetic to their concerns, and they want the kind of job security that comes from their supervisors treating them on an even keel each day.

An employee's day or week may be ruined because they did not get a pat on the back for a task or a job well done. On the other hand, the supervisor may have no clue he or she failed to seize on an opportunity to solidify the employment relation-

ship by giving a nod for a job well done.

All supervisors should create their own good employee relations program. It begins immediately after hire, where the supervisor, during the orientation phase, pays extra attention to the employee and makes sure he or she is comfortable and confident in their new position. From the outset, employees should have loyalty to the supervisor, not fellow employees.

Thereafter, supervisors should engage in constant communications with employees, seek feedback on the job and proactively solicit questions and concerns from employees.

All supervisors should engage in constructive discipline of their employees with their No. 1 goal being to turn that employee into a model employee, not to build a record against the employee for termination purposes. Even terminations, when they occur, can have a positive impact on the work force if all employees believe the employee was treated fairly by the supervisor.

Good supervision and constructive communications are the most crucial factors in preventing morale problems among employees. They also play a critical role in minimizing the risk of workplace complaints, litigation and high turnover, which costs an employer money and lost productivity.

So what does it take to be a good supervisor? Follow these 15 good supervisory keys:

- 1) Know your people as individuals.
- 2) Be approachable and a good listener.
- 3) Be responsive to questions and concerns.
- 4) Always follow up with employees.
- 5) Apply policies and practices consistently.
- 6) Keep employees informed about the business.
- 7) Communicate employee concerns up the line.
- 8) Recognize employee efforts.
- 9) Train employees in all aspects of their job.
- 10) Seek ideas on how to do things better.
- 11) Develop your own technical job skills.
- 12) Expect, believe in and encourage good work.
- 13) Constructively counsel employees.
- 14) Use authority with reason and restraint.
- 15) Admit mistakes and correct them.

It is critical for all supervisors to understand the vital role they play in good employee relations.

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