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Employment Case Studies:
2023 Wage and Hour Violations

Provided by **Employco USA, Inc.**

Introduction

The U.S. Department of Labor's (DOL) Wage and Hour Division (WHD) is tasked with enforcing employment laws that affect more than 148 million workers. The WHD enforces federal minimum wage, overtime pay, recordkeeping and child labor requirements of the Fair Labor Standards Act (FLSA), as well as the Family and Medical Leave Act (FMLA) and a number of other employment standards and worker protections.

According to the DOL, the core enforcement obligations of the WHD's investigators include the following:

- Conducting investigations to determine if employers are paying workers and affording them their rights as required by law
- Helping ensure that law-abiding employers are not undercut by employers who violate the law
- Promoting compliance through outreach and public education initiatives
- Supporting efforts to combat worker retaliation and misclassification as independent contractors

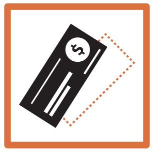
In fiscal year 2022, the WHD collected more than $213 million in back wages owed to over 152,000 workers, the DOL reported. On average, WHD investigations found $1,393 in back wages for each employee.

Generally, the WHD will initiate an investigation after a current or former employee files a complaint. A WHD investigator may visit an employer to provide information about the application of and compliance with the laws administered by the WHD. An investigator may also visit an organization to conduct interviews, examine time clocks and ensure all employment notifications are available to employees. Additionally, they may review up to three years of wage and hour records to determine whether there are any violations in an employer's payroll practices.

In addition to complaints, the WHD selects certain businesses and industries for investigation. For example, the WHD often targets low-wage industries due to high rates of violations, the employment of vulnerable workers and rapid industry changes, such as growth or decline. Occasionally, several organizations in a specific geographic area will be examined.

This article contains case studies published in 2023 that explore the most recent, real-world examples of employers found to be in violation of wage and hour laws. These case studies include snapshots of violations and general guidance on how employers can prevent similar issues. Employers can examine these case studies to learn from the mistakes of others in comparable industries and avoid DOL violations.

Real-world Case Studies



EDINBURG, TX—A WHD investigation found that Hidalgo County failed to pay full incentive bonuses to workers due to the workers taking FMLA leave even though they were eligible and met the criteria for full bonuses. The county had to pay $30,241 in back wages for 31 workers who were awarded prorated bonuses after taking protected leave.

What went wrong:

- Hidalgo County paid employees prorated bonuses despite these employees being eligible and meeting the criteria for full bonuses simply because they took time off under the FMLA.
- The county paid other employees—who took other forms of leave but not FMLA leave—their full bonuses.

KNOXVILLE, TN—A WHD investigation discovered that a hospitality company willfully failed to pay workers the federal minimum wage and overtime rates of at least time-and-one-half hours for all hours over 40 in a workweek. The department also found that the employer engaged in oppressive child labor by employing two minors under age 12. Both the hospitality company and the individual hotel operator had to pay $21,658 in penalties for employing the two children and for repeated minimum wage and overtime violations. They also had to pay $27,296 in back wages to six workers who were denied proper compensation and the same amount in liquidated damages. Additionally, the employer was required to obtain and implement an electronic timekeeping system, maintain records of any changes or edits to their electronic time records and avoid employing minors in oppressive child labor conditions.

What went wrong:

- The hospitality company employed two minors under age 12, thus violating child labor laws.
- The organization and its owner failed to pay workers at least the federal minimum wage for the hours they worked and deprived them time-and-one-half overtime compensation after they exceeded 40 hours in a workweek.

NASHVILLE, TN—A WHD investigation found that a restaurant and small retail market operator failed to properly combine hours worked by three employees at multiple locations, instead issuing the workers separate paychecks for each establishment. In doing so, the organization failed to pay overtime rates of at least time-and-one-half hours for all hours over 40 in a workweek. The department also found that the employer paid 19 employees hourly rates and arbitrarily switched them to salary wages without giving them overtime compensation. Additionally, the company failed to pay overtime compensation to a manager who worked on an hourly basis. The company had to pay $82,059 in back wages to 23 employees.

What went wrong:

- The employer failed to combine employees' checks when they worked at multiple locations, which resulted in failure to pay the employees overtime rates for all hours worked over 40 in a workweek.
- The organization switched employees who normally worked hourly to salary wages without compensating at least time-and-one-half hours for all hours over 40 in a workweek.
- The employer failed to pay a manager overtime as required by the FLSA when he worked on an hourly basis.

SAN DIEGO, CA—A DOL investigation determined that two logistics and transportation companies egregiously violated the FLSA by failing to pay workers at least the federal minimum wage. Some employees were paid as little as $2.43 per hour. One of the companies and its owner were ordered to pay $1.1 million in back wages and damages to 35 workers, who were Mexican nationals, in addition to $26,215 in civil monetary penalties. The other company and its owner agreed to pay $70,104 in back wages and liquidated damages to 15 workers, who were also Mexican nationals, as well as $12,105 in civil money penalties. In addition, both employers were required to change their payroll practices and recordkeeping to comply with the FLSA and provide their workers with information regarding their FLSA rights in their spoken language.

What went wrong:

- Both employers failed to pay workers at least the federal minimum wage for all hours worked.
- The organizations didn't pay workers at least time-and-one-half hours for all hours over 40 in a workweek.
- The employers used affiliates to pay workers in Mexican pesos each week.
- Both companies engaged in labor practices that exploited foreign workers.

Avoiding Violations

As illustrated by these case studies, avoiding wage and hour violations isn't always easy. Due to the complex nature of employment laws, compliance is an ongoing challenge for employers. Reviewing these laws and regulations infrequently or only a handful of times is rarely sufficient, but by reviewing these laws regularly, employers can keep their businesses compliant and their workers satisfied. Below is general guidance related to the issues discussed earlier, categorized by violation type.

FMLA Violations

The FMLA protects workers who need to take a prolonged absence due to a qualified family or medical reason. This law was enacted so employees could deal with serious and potentially unexpected life circumstances without losing their jobs. Yet, an employee can follow all proper procedures, and an untrained or uninformed manager may still violate the law, resulting in costly consequences.

In this article's Edinburg, Texas, case study, Hidalgo County failed to pay full incentive bonuses to workers who took FMLA leave. Employers must be aware of their obligations with respect to those who take FMLA leave to avoid violating the legal rights of protected employees.

FMLA violations can be particularly costly, as they may involve paying back employees' lost wages and reinstating lost benefits. Employers need to ensure managers, employees and other stakeholders understand their FMLA rights. This includes knowing how to submit FMLA requests, understanding situations that might qualify for FMLA leave and comprehending workplace guarantees that come with this leave (e.g., job and pay protection). Understanding these details can help prevent incorrect compensation and significant monetary penalties.

Child Labor Law Violations

Hiring minors comes with additional employer responsibilities, as minors have a number of specific wage and hour protections. Further, not all minors are allowed to work, so employers must confirm the ages of those they seek to employ. Failing to comply with laws protecting youth workers can be particularly costly.

In general, the FLSA requires that employees be at least 14 years old. Additionally, there is a limit to the number of hours minors may work, and there are restrictions on the types of conditions they are allowed to work under. Employers should confirm the ages of their employees to ensure that they are following all legal requirements for employing minors that are set out in the FLSA. From 2017 to 2022, the DOL identified more than 4,800 cases of child labor law violations, finding more than 17,000 youth-aged workers employed in a violation. In 2022 alone, employers paid over $4 million in child labor civil penalties.

In the Knoxville, Tennessee, case study detailed in this article, minors were not only employed in violation of the minimum working age required by law, but also employed them in oppressive labor conditions. All of these instances are violations of the child labor provisions of the FLSA. Perhaps this was due to a shortage of workers, and only minors were available for specific positions and hours. Despite challenges in the current labor market, employers must remain compliant with all relevant state and federal laws governing child labor. Employers should also consider regularly consulting with attorneys to ensure their policies and practices are up to date and compliant.

Overtime Violations

The FLSA requires employers to pay covered, nonexempt employees overtime wages—at a rate of time-and-one-half hours—if they exceed 40 hours in a workweek. Some companies utilize a variety of tactics to avoid paying these wages, including those that are unlawful.

In this article's Nashville, Tennessee, case study, the restaurant and small retail market owner maintained and followed a practice where it would provide workers hourly wages and then arbitrarily switch them to salary pay without giving them overtime compensation. However, these employees were eligible for overtime compensation once they worked more than 40 hours. The employer also improperly issued three employees separate paychecks for each establishment they worked at and, in doing so, failed to provide overtime compensation.

This case study demonstrates the importance of properly constructed and regularly reviewed workplace and compensation policies, as well as the value of diligently recording hours that employees work. Additionally, consulting with experts and having them review policies prior to their enforcement could save employers tens of thousands of dollars down the line. According to the DOL, employers may also contact the WHD to ensure they understand their responsibilities and avoid similar violations.

Minimum Wage Violations

If a person is employed in the United States, they must be paid at least the federal minimum wage in accordance with the FLSA. Further, federal minimum wage—which is $7.25 per hour—must be paid in U.S. dollars. In 2022, the WHD found over 7,000 minimum wage violations, with employers paying nearly $18 million in back wages.

In this article's San Diego, California, case study, the DOL recovered over $1 million in back wages, damages and civil penalties from two employers who violated the FLSA by failing to pay workers at least the federal minimum wage. These employers paid some employees, who were Mexican nationals, as little as $2.43 per hour. Both companies were forced to change their payroll and recordkeeping practices to comply with the FLSA and provide workers with information regarding their FLSA rights in their spoken language. It is unwise for employers to try to avoid paying minimum wage to specific classes of workers who may be less likely to report FLSA-related violations, such as children or foreign nationals, because penalties for such violations can be extremely costly. Employers should also confirm compliance with state and local minimum wage laws, as these laws may exceed federal minimum wage requirements.

Conclusion

These wage and hour violation case studies demonstrate how easy it can be for an employer to violate wage and hour regulations and the substantial financial consequences those violations can carry. That's why it's so important for organizations to seek professional guidance before making potentially costly employment decisions. By learning from these employers' mistakes, others in similar industries can avoid major violations and prevent DOL audits.

Reach out to us for more information regarding compliance with complex workplace laws or DOL audits.

The information in this article is not intended to be construed as legal or professional advice. Employers seeking legal advice should speak with legal counsel.