



Wage and Hour Case Studies:

Today's DOL Violation Trends

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 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; and supporting efforts to combat worker retaliation and worker misclassification as independent contractors. In fiscal year 2021, the WHD collected \$230 million in wages owed to 190,000 workers, the DOL reported.

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 or rapid industry changes, such as growth or decline. Occasionally, several organizations in a specific geographic area will be examined.

At the start of 2022, the DOL announced an initiative to hire 100 additional WHD investigators, signaling a potential increase in enforcement in 2022 and beyond. This initiative means now is the time for employers to review their wage and hour practices to ensure compliance with all relevant laws.

This article contains case studies that explore the most recent, real-world examples of employers found to be in violation of wage and hour laws. The 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 costly consequences.

Real-world Case Studies



TAMPA, FL—A [DOL investigation](#) uncovered child labor violations by a fast-food restaurant franchisee. The franchisee had to pay more than \$12,000 in civil monetary penalties.

What went wrong:

- The organization allowed 17 employees who were minors—between ages 14 and 15—to work past 7 p.m.
 - The organization also allowed minor employees to work more than three hours during a school day when doing so was not permitted.
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ROCHESTER, NY—A [DOL investigation](#) found that a health care agency failed to pay its home health care aids overtime wages. The organization was forced to pay more than \$228,000 in back wages for the 260 affected workers.

What went wrong:

- Although the organization paid its health care aids overtime for hours worked over 44, it failed to pay workers time-and-a-half wages for hours between 40 and 44 they worked per week.



NEW ORLEANS—A [DOL investigation](#) discovered that two contractors misclassified their painters and drywall workers as independent contractors. The organizations were forced to pay more than \$246,000 in back wages for 306 workers.

What went wrong:

- One organization misclassified its workers as independent contractors.
 - The same organization also failed to pay workers time-and-a-half overtime wages after they exceeded 40 hours in a workweek and instead used their regular rate of pay.
 - Both organizations failed to maintain complete and accurate records of the hours their employees worked.
 - The DOL determined that a joint employment relationship existed between the two organizations and, as a result, they were both liable to pay back wages.
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ATLANTA—A [DOL investigation](#) found that the Georgia Department of Public Health wrongly disciplined and terminated an employee for absences protected under the FMLA. The department was ordered to pay more than \$77,000 in back wages and reinstate the employee.

What went wrong:

- The department denied the employee's request for leave for an FMLA-qualified condition.
- The employee's denial of FMLA benefits resulted in wrongful discipline and subsequent termination.

Avoiding Violations

As illustrated by the 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.



Child Labor Violations

Hiring minors comes with greater employer responsibilities, as minors have a number of specific wage and hour protections. Failing to comply with laws protecting this worker segment can be particularly costly.

The DOL [recently](#) publicized investigations uncovering child labor law violations. The WHD's recent investigations of three grocery store operators in Idaho and Oregon resulted in more than \$240,000 in civil penalties and \$114,382 in unpaid overtime and liquidated damages for 266 employees. From [2017 to 2021](#), the DOL identified more than 4,000 cases of child labor law violations, finding more than 13,000 youth-aged workers employed in a violation.

In the Tampa, Florida, case study detailed in this article, minors were allowed to work later and more often than permitted by law. 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 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-a-half—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 Rochester, New York, case study, the health care agency maintained and followed a practice in which home health care aids were paid straight time until they had worked more than 44 hours in a week. However, these employees were eligible for overtime pay once they had worked more than 40 hours. This case study demonstrates the importance of properly constructed and regularly reviewed workplace policies and manager training. 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.



Employee Misclassification

One of the most serious problems facing employers is the misclassification of employees as independent contractors. Under the FLSA, employees are entitled to basic workplace protections that do not extend to independent contractors, such as minimum wage, overtime pay, protected FMLA leave, antidiscrimination and antiretaliation protections, workers' compensation and unemployment insurance. The WHD is responsible for determining whether an employee has been misclassified as an independent contractor. Employers who misclassify workers may be forced to pay back wages, liquidated damages, attorneys' fees and costs.

In the New Orleans, Louisiana, case study examined in this article, one contractor misclassified its workers as independent contractors. The workers were paid straight-time rates for all hours they worked. Because these workers were employees, they should have been paid time-and-a-half wages after they surpassed 40 hours in a workweek. Both contractors were also required to keep complete and accurate records of all hours their employees worked. This case reveals the importance of correctly classifying workers at the outset of the relationship and ensuring accurate and complete records are kept. Sometimes it can be difficult to determine whether a worker is an employee or an independent contractor. However, seeking legal advice in these situations can help curtail potential violations and costly mistakes.



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 Atlanta, Georgia, case study, the Georgia Department of Public Health wrongly denied the employee's request for FMLA leave, believing the employee's condition did not qualify for leave. As a result of the denied leave request, the employee was disciplined and subsequently terminated due to absences related to their FMLA-qualified condition. Employers must be aware of conditions that qualify for FMLA leave to avoid wrongfully disciplining or terminating otherwise 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 protection). Understanding these details can help prevent wrongful termination and significant monetary penalties.

Conclusion

These wage and hour violation case studies demonstrate how easy it can be for an employer to face challenges related to wage and hour regulations. That's why it's so important for employers to seek professional guidance before making potentially costly 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 complying 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.
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