Wage and Hour Case Studies:

Exploring DOL Violation Trends

Provided by **Ollis/Akers/Arney Human Resources Consulting**

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Introduction

The U.S. Department of Labor's (DOL) Wage and Hour Division (WHD) enforces federal minimum wage, overtime pay, recordkeeping and child labor requirements of the Fair Labor Standards Act (FLSA). The WHD also enforces the Migrant and Seasonal Agricultural Worker Protection Act, the Employee Polygraph Protection Act, the Family and Medical Leave Act (FMLA), wage garnishment provisions of the Consumer Credit Protection Act, as well as a number of employment standards and worker protections as provided in several immigration-related statutes.

Generally, the WHD will initiate an investigation after a current or former employee files a complaint. An investigator may visit an employer to provide information about the application of, and compliance with, the laws administered by the WHD. A WHD investigator may also visit an organization to conduct interviews, examine time clocks and ensure all employment notifications are available to employees. Additionally, the investigator 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 or egregious violations, the employment of vulnerable workers, or rapid industry changes, such as growth or decline. Occasionally, a number of businesses in a specific geographic area will be examined.
Recently, the DOL announced an initiative to hire 100 additional WHD investigators, signaling a potential increase in enforcement during 2022. This initiative means now is the time for employers to review their wage and hour practices to ensure compliance with all relevant laws.

The case studies in this article explore the most recent, real-world examples of employers found to be in violation of wage and hour rules. Such case studies include snapshots of violations and general guidance on how employers can prevent similar issues. By examining these case studies, employers can learn from the mistakes of others in comparable industries and avoid DOL violations.

Real-world Case Studies

COLUMBIA, SC—A DOL investigation uncovered a host of child labor violations among four well-known fast food restaurants, with each paying thousands in civil monetary penalties or back wages.

What went wrong:

- One restaurant allowed 13 employees who were minors—between ages 14 and 15—to work past 9 p.m. during summer months.
- An operator of a different location allowed five minors (each 15 years old) to work past 7 p.m. at a time of year when doing so was not permitted, with four of these minors employed in prohibited baking roles.
- Two other restaurants allowed multiple minors (each 15 years old) to work more than 18 hours per week during school weeks.
- Another restaurant allowed three 16-year-old employees to work as delivery drivers.

SANTA FE, NM—A DOL investigation found that an art delivery company failed to pay its drivers overtime wages. The company was forced to pay more than $64,000 in back wages and damages for the seven affected drivers.

What went wrong:

- The company compensated its drivers per day or per mile, with no additional overtime pay, even after the drivers worked more than 40 hours per week.

GRAND RAPIDS, MI—A DOL investigation discovered that two health care employers failed to pay overtime wages to 330 workers. Altogether, the companies were forced to pay more than $259,000 in back wages.

What went wrong:

- One organization only paid overtime wages to employees after they worked 12 hours per day, rather than the correct eight-hour standard.
- The other organization failed to pay workers time-and-a-half overtime wages after they surpassed 40 hours in a workweek and instead used their regular rate of pay.
- That same organization also failed to count employee travel time between locations as compensable working hours.

LITTLE ROCK, AR—A DOL investigation found that a waste management company fired an employee who was on qualified medical leave. The company was ordered to pay more than $36,000 in back wages.

What went wrong:

- Despite giving proper notification and receiving approval from a third-party administrator, an employee was still fired while on FMLA leave.
- The employee was recorded as absent on the first day of their qualified leave, and they were subsequently terminated.
- The company failed to rehire the employee even after discovering that their FMLA leave was approved.

Avoiding Violations

Avoiding wage and hour violations isn't always easy, as illustrated by the case studies on the previous page. However, with some guidance, employers can keep their businesses compliant and their workers happy. Below is general guidance related to the issues discussed earlier, categorized by violation type.

Child Labor Violations
Hiring minors comes with greater employer responsibilities, seeing as minors have a number of specific wage and hour protections. Failing to comply with laws protecting this worker segment can be particularly costly. Between fiscal years 2020 and 2021, the DOL assessed more than $1 million in penalties for child labor violations among 190 employers in the Southeast region of the United States alone.

In the earlier case study, minors were allowed to work later, more often and in potentially dangerous roles. 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 certain positions and hours. Yet, 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 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 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 the earlier case study, the art delivery business maintained a policy where drivers were only paid per day or per mile, period. However, based on their employee class, the drivers were still eligible for overtime pay, despite their company's policy. This case study demonstrates the importance of properly constructed and regularly reviewed workplace policies and manager training, especially when managing employees with nontraditional schedules. Paying experts to 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.

Workweek Miscalculations

One of the basic tenets of the FLSA is that work hours must be recorded for covered nonexempt workers and employees must be paid for that time. Yet, that doesn't always happen, especially when it comes to overtime. In the earlier case study, two health care employers failed to accurately track employee working hours. One of the employers also miscalculated both when and how much overtime pay workers should receive. The FLSA's overtime requirements for health care workers require nonexempt employees to be paid overtime wages after working more than eight hours in a day or 80 hours in a two-week pay period—whichever is greater. Employers must also accurately track working hours to ensure employees are getting paid for the time they work. This includes traveling between worksites and conducting work before or after specified shifts.

Sometimes employee schedules don't fit neatly into a 40-hour period. When dealing with abnormal schedules, employers must be especially careful while calculating workweeks. Adopting lawyer-reviewed workplace policies and adequately training staff can help prevent potential issues.

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 that employees wouldn't need to worry about losing their jobs while dealing with serious, potentially unexpected life circumstances. Yet, an employee can follow all proper procedures, and an untrained or unknowing manager may still violate the law, resulting in costly consequences.

FMLA violations can be particularly costly, as they may involve paying back employees' lost wages. Employers should 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 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 workplace laws or wage and hour 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.