

## EMPLOYMENT LAW

### 5 Workplace Laws Your Employer Might Be Violating

Here are five of the most common ways employers often violate labor laws – with some of them being so common that many employers and employees may not even realize a violation is occurring. Take a look and see if you spot anything here that your organization should be doing differently to protect itself from potential problems.

#### 1. Telling employees that they can't discuss their salary with co-workers.

The National Labor Relations Act says that employers cannot prevent most employees from discussing wages among themselves. The reason for that is that employees can't effectively protect themselves, organize or unionize if they're not permitted to discuss wages or uncover potential inequities. But despite the law, an astonishing number of employers have policies against this anyway – so many that most people think these policies are normal and have no idea that they violate the law.

#### 2. Treating employees as exempt from overtime pay.

Whether or not an employee is eligible for overtime pay isn't up to you as the employer. Eligibility is governed by the type of work employees perform and (in some States) by the annual compensation paid. The federal government divides all types of jobs into one of two categories: exempt and non-exempt. If an individual's job is categorized as non-exempt, the employer must pay overtime (time and a half) for all hours you work beyond 40 in any given week. (Note: State regulations may also impact when overtime is due).

The exempt category is reserved for employees who perform relatively high-level executive, supervisory, or professional work, work as outside sales employees and a few other narrowly defined categories. But many employers incorrectly categorize employees as exempt when they don't actually meet the government's qualifications for the category, thus avoiding having to pay overtime to people who the law says are entitled to it.

#### 3. Asking or allowing employees to work off the clock.

If you are a non-exempt employee, you must be paid for all the time you work, including things outside of your normal work hours, such as answering emails or taking calls from home at night or on the weekend. You cannot waive this right even if you want to. Your employer is required to pay you for that time.

It is not uncommon for employees working in a nonprofit to want to put in additional hours as a "volunteer" for the organization. This is fine, so long as the work performed is not related to their regular duties, even remotely. For example, volunteering to teach a Sunday School class on the weekends when your day job is working as the church janitor is fine. Volunteering to serve as a chaperone for a youth department retreat (even if you have a child in the program) would not be appropriate if your regular day job is working as the secretary in the department. And ....volunteering to work extra hours "off the clock" or to receive compensatory time off to perform your regular duties is not even remotely allowed.

#### **4. Hiring independent contractors but treating them like employees.**

If your organization controls the when, where and how of how the work is performed, the government says that you have employees not independent contractors, and your organization needs to pay the appropriate payroll taxes and offer the individuals the same benefits it offers to regular employees. Yet despite continued crackdowns on employers across the U.S. by both federal and state agencies, many employers continue to hire individuals as independent contractors while treating them like employees – in every way but pay and benefits.

The U.S. Depart of Labor has gone on record as saying that “...most workers are employees...” and that the “economic realities” test (<http://www.dol.gov/whd/regs/compliance/whdfs13.htm>) previously established and as interpreted by the Courts, is the sole basis for determining whether an individual can be treated as an independent contractor. Thus there is presumption on their part that unless you can definitively show that an individual can meet the definition of an independent contractor they are to be treated as an employee.

#### **5. Disciplining employees for complaining about work on social media.**

The National Labor Relations Act protects employees' ability to discuss wages and working conditions with each other. The National Labor Relations Board has ruled repeatedly that employers' attempts to control or limit what employees post on social media often violate the employees' rights to engage in "protected concerted activity," and that employees must be permitted to band together to try to make changes to their employment conditions, even if all they wish to do is to complain as a group. In many cases, the NLRB has warned employers that workers have the right to say negative things about their jobs in public forums without risk. That being the case, the NLRB does generally permit employers to prohibit maliciously false statements about the company, harassment, bullying, discrimination or retaliation.

#### **What to do if you think your organization may be violating one of these laws.**

If your organization appears to be violating one or more of the laws, you should bring it to the attention of the appropriate individual inside the organization so that it can be investigated and evaluated. Start from the assumption that leadership may not realize that there is a compliance issue and that you're being helpful by bringing it to their attention. Likely you'll get a better response and outcome. But, if that doesn't get the results needed to resolve the situation, you may need to point out to them the potential risks involved should an employee file a complaint with the U.S. Department of Labor, the National Labor Relations Board or your state employment development department.

One final thought. Under both federal and state regulations, religious organizations, including churches, are not exempt from complying with employment regulations, except as they may have been specifically exempted under the law. Consequently, to protect your organization begin with the assumption that the regulation applies to your ministry unless you can find specific language to the contrary.

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