



A Sure Way to Lose Your Business

Most articles of this nature suggest ways a Small Business Owner can improve his or her business.

Here is an article on the opposite: how to hurt your business, maybe to the point that the business must close.

How to do it? Mess up the overtime.

Don't keep adequate records, and/or don't comply with the law to begin with.

Fail to do those two things consistently over time, and you're just a phone call away from disaster.

The phone call isn't to the IRS, either. It's to the Department of Labor.

And it's not made by you. It's made by any unhappy employee, or fired employee, or a relative of the unhappy employee.

That phone call must provide sufficient justification for the DOL to send an auditor out. If the auditor can't find adequate documentation from you, the unhappy employee (see above) will gladly provide something the auditor can work with.

So what are the requirements of the law, anyway? Actually, the requirements are pretty simple: For most employers, overtime is paid for hours worked in excess of 40 hours worked per week.

Hours worked per week is the key phrase. That's different from hours paid per week.

Thus, someone who works 40 hours and takes a vacation day in the same week will be paid for 48 hours, but all at regular pay.

Its hours worked, not hours paid.

I know of an employer who made the following agreement with the employees: You can work more than 40, and we'll pay for it, but we won't pay overtime.

The courts will hold that no employer—or anybody else—can make a legally binding contract, even if sealed in blood, where the fulfillment of the contract

results in breaking of the law.

The employer will be held liable for all overtime not paid, including OT due those employees who are no longer with the Company. Penalties and interest will likely be charged. Some payroll related penalties can be as high as 100%.

Another case resulted in a \$250,000 settlement based on records kept by 15 or 20 employees. In the absence of convincing evidence to the contrary, the results of those employees were extrapolated to the rest of the group.

In another case involving a 10-person work group, an \$87,000 settlement forced the owner to close the business.

In my own experience, I became Director of Human Resources for a general acute care hospital that had a long-standing practice of not paying overtime to nursing personnel who did not secure authorization in advance for the overtime.

We changed that practice. We paid every dime of overtime, but we also let it be known that we would take disciplinary action against either the employee or the supervisor if a sufficiently valid reason did not exist for not securing advance authorization.

The theory of overtime law is that the employer did indeed benefit from the employee's labor, and therefore is obligated to compensate the employee.

Overtime—and labor law compliance—is serious stuff, with significant penalties imposed for noncompliance. Here is some background on what is happening nationally. And it certainly can happen here in York County.

Most state laws are built with employee protection in mind. Most small employers have little or no payroll records, particularly regarding overtime.

So in a dispute, the employee will win unless the employer has maintained good records.

One authority I know has stated, "a few major court cases in the last years, plus downsizing, has made overtime the tort of choice nationwide."

Beacon

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If true, we will see more of these actions in the future, and most small businesses, due to their lack of formal payroll controls and documentation will be particularly vulnerable.

There is a final reason to fully comply with overtime law and to keep the necessary documentation. It's maybe the best reason.

Nothing is going to happen unless DOL audits the employer. Now the employer is not going to request an audit.

So who do you think triggers these audits? Disgruntled employees!

If you as an employer have knowingly not complied with labor law, you have become a hostage to your own workforce!

All they have to do is to make the call, and provide reasonably convincing evidence to justify an audit.

So which employee is going to make The Call? Your "best and most loyal" employee, or your worst nightmare troublemaker?

Your course is simple, really. Comply with the law. And document your compliance.