

WAGE AND HOUR DISPUTES

Employment Law Lawyers Assisting Clients Throughout Pennsylvania and New Jersey

In the last several years, the Wage and Hour Division of the Department of Labor (DOL) has become very aggressive in multiple areas and increasing the number of employer audits and enforcement proceedings. The DOL has focused on two primary areas: the misclassification of employees as "independent contractors" and the failure of employers to pay overtime when due. The DOL also proposed a major change to the rules regarding the exemptions to overtime which was supposed to become effective at the end of 2016. After many employers took steps to comply with the impending rule change, a Federal Court Judge in Texas blocked the implementation of the rule, but that ruling came as "too little, too late" for most affected employers. Kaplin Stewart helps employers stay on top of developments in wage and hour regulations so that employers can remain compliant while protecting their rights.

Independent Contractor Issues

Individuals who work sporadically or on specific projects for employers, and employers who do not need additional full time employees, may propose the use of an "independent contractor" agreement to meet their mutual needs. Many industries today function as "virtual companies" in which many employees work from home offices, creating tax and other incentives for prospective employees and employers to consider alternate employment or contracting arrangements. The DOL has been clear that it distrusts such agreements and views such agreements as a way for employers to avoid the payment of payroll taxes and reduce costs for worker's compensation and other insurance benefits. Employers are entitled to staff their workforce as they see fit, but employers must be mindful that independent contractors who "look and smell" like employees likely will be determined to be employees in the event of an audit, and the penalties and costs to an employer can far outweigh the perceived benefit of having an independent contractor. The problem is compounded when employers are held liable for unemployment and employment discrimination claims because an employment commission or court determines that the independent contractor functioned as an employee. Kaplin Stewart counsels employers on the use and management of independent contractors, planning and negotiating independent contractor agreements, DOL audits, and the defense of litigation from independent contractors who seek to rewrite their agreements and experience to file employee claims.

Payment of Overtime

The requirement to pay overtime to employees is one of the most misunderstood obligations of employers, thanks in no small part to the DOL's confusing terminology and lack of clear guidance. Employers often think that if they pay employees a salary that their employees are not entitled to the payment of overtime, but that is not how the laws and regulations operate. To the contrary, the law presumes that all employees are entitled to be paid overtime when they work over 40 hours in a workweek unless the employee falls into one of several exemptions to overtime eligibility. Employers who are familiar with the exemptions often are unclear as to what the exemptions mean and which employees can be classified as exempt and not entitled to overtime. The laws and regulations on the payment of overtime are a virtual minefield for employers with substantial risk. Employers must focus on employment duties and the structure of their workforce when dealing with overtime issues because the payment of overtime, whether in the normal course of operations or after an audit, can have a major effect on a company's profitability. Kaplin Stewart understands the critical role that overtime issues can have on business operations, budgeting, and profit and loss. Our attorneys counsel employers on overtime issues, employee classification, and the defense of DOL claims and audits on overtime classification.

Overtime Regulations

The overtime rules provide that any employee who is not paid a minimum salary set by the rules must be paid overtime regardless of whether the employee falls under any of the exemptions to overtime. In 2016 the DOL prepared to implement a major rule change which would double the minimum salary requirement, leaving employers scrambling to implement new overtime policies, advising managers that they now would have to clock in and out like the employees they supervise, and revising budget and profitability forecasts to determine whether to pay more overtime or increase salaries to exceed the new minimum salary. After many employers made those changes and notified their employees, a Judge blocked the rule change from taking effect and the rule change is held up in litigation. Employers now find themselves faced with the difficult choice of revoking the changes and causing another workplace disruption or implementing the new changes so as not to anger employees. Kaplin Stewart has been issuing client updates on proposed rule change and counsels employers as to how to best manage overtime rule changes for their specific businesses.

Experience and Services provided

- Negotiation of independent contractor agreements
- Internal/private reviews of employee/independent contractor classifications
- Internal/private reviews of overtime exemption classifications and policies
- Defense of wage claims brought by employees in Federal and State court seeking overtime and other wage payments
- DOL and state wage and hour audits

Contact an Employment Law Attorney Today

The attorneys in our Employment Law group take pride in delivering high quality, comprehensive representation to employers throughout the region and beyond. If you have questions about our firm's services or are seeking legal counsel in connection with an employment law matter, we encourage you to schedule an appointment with a member of our Employment Law team.

Learn how our attorneys can help you advance your business objectives. We service businesses and other entities with offices in Philadelphia and Blue Bell, Pennsylvania as well as Cherry Hill, New Jersey. Contact us online or by phone at 610-260-6000 today to arrange a consultation.