



Understanding the Cost of Employment Law Violations

Agenda

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Wage and Hour
and Employee
Classification

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Pay
Transparency and
Non-Competes

3

Litigation and
Discrimination

Most Common Wage and Hour Violations

- Overtime
- Minimum Wage
- Tips
- Retaliation
- Businesses Expenses
- Meal and Rest Breaks
- Leave

Fair Labor Standards Act (FLSA)			
	FY 2024	FY 2023	FY 2022
Total FLSA Back Wages	\$149,957,029	\$156,152,548	\$156,052,923
Total Employees Receiving FLSA Back Wages	125,301	135,067	126,934
Back Wages for Minimum Wage Violations	\$15,306,067	\$20,866,247	\$17,941,190
Employees Receiving Back Wages for Minimum Wage Violations	21,543	31,150	26,642
Back Wages for Overtime Violations	\$126,967,097	\$130,686,461	\$134,591,521
Employees Receiving Back Wages for Overtime Violations	101,043	106,759	103,128
Back Wages for Retaliation Violations	\$274,956	\$169,878	\$199,399
Employees Receiving Back Wages for Retaliation Violations	60	60	63
Back Wages for Tip Related Violations	\$7,410,410	\$4,429,962	\$3,320,814
Employees Receiving Back Wages for Tip Related Violations	10,651	6,645	4,686

<https://www.dol.gov/agencies/whd/data/charts/all-acts>

Overtime Pitfalls

Federal: Non-exempt employees earn 1.5x their regular pay for hours worked over 40 per week.

Regular Rate of Pay

Regular rate of pay includes not only base hourly wages but also commissions, non-discretionary bonuses, and most types of compensation are included with some exceptions.

$$\frac{\text{Total compensation in the workweek}}{\text{Total hours worked in the workweek}} = \text{Regular Rate for the workweek}$$

Calculating Hours Worked

Problems arise when employers fail to recognize and count certain hours worked as compensable hours.

Common mistakes include working meal breaks, waiting time, training and meetings during work hours, travel (for special assignments, all in a day's work, and away from home community)

Averaging of Workweeks

Overtime must be calculated on a fixed, seven-day workweek basis, not averaged over a bi-weekly or monthly pay period.

If an employee works 50 hours one week and 30 hours the next week, they are still entitled to 10 hours of overtime.

State Specific Overtime Rules

Colorado

Employees earn overtime for all hours worked in excess of 12 in a single day, or 12 in a single shift, regardless of the way a workday is measured.

Kentucky

Employees earn overtime for all hours worked on their seventh consecutive day of work in a single week.

Rhode Island

Work performed on Sundays and holidays must be paid at the rate of time and one-half unless qualified as an exception under General Law 25-3.

California

Employees earn overtime for (1) all hours worked in excess of 8 in a single day, and (2) the first 8 hours worked on their seventh consecutive day of work in a single week

Employees also earn 2x their normal wage for all hours they work (1) in excess of 12 in a single day, and (2) in excess of 8 on their seventh consecutive day of work in one week”

Other Common Mistakes

Tips

Tip pool violations: The decision must be entirely the employees' with no influence from the employer.

Minimum Wage Tip

Credit: Correctly calculating how much you are allowed to apply tips to the minimum wage requirement

Breaks

Federally, breaks aren't required, but short breaks (usually 5-20 minutes) must be paid

Meal periods (usually 30+ minutes) don't need to be paid unless the employee works during the break

State's have additional meal and rest break requirements

Business Expenses

Federally, employers must reimburse business expenses that would bring the employee's wages below minimum wage.

Some states have broader requirements like requiring reimbursement of all necessary expenses incurred at the employers direction or while doing their job duties.

Total DOL Penalties and the FMLA

→ Back Wages

→ Civil Penalties

WHD Enforcement Statistics: All Acts

	FY 2024	FY 2023	FY 2022	FY 2021	FY 2020
Concluded Compliance Actions	17,300	20,215	20,422	24,746	26,096
Back Wages	\$202,676,115	\$212,325,391	\$213,161,638	\$234,362,486	\$257,829,604
Employees Receiving Back Wages	151,989	163,768	152,970	193,796	229,934
Civil Money Penalties Assessed	\$35,920,310	\$25,834,687	\$21,613,896	\$20,399,042	\$17,871,969

→ Denial of Leave

→ Discrimination/Discipline

→ Termination

Common FMLA Violations

	FY 2024	FY 2023	FY 2022	FY 2021	FY 2020
Denial of Leave	115	140	120	156	178
Failure to Reinstate to Same or Equivalent Position, Benefits, etc.	40	79	43	77	71
Termination	109	71	65	86	119
Failure to Maintain Health Benefits	8	6	8	10	7
Discrimination (Disciplinary Action, etc.)	112	142	140	150	791
Amount of Back Wages	\$1,482,398				

Employee Classification

Exempt v. Non-Exempt

Salary Basis Test: The employee must receive a fixed, predetermined salary that does not fluctuate based on the quality or quantity of work performed.

Salary-Level Test: The salary must meet a minimum federal threshold. This threshold varies but generally is \$684 per week, or \$35,568 per year.

Duties Test: The employee's primary job responsibilities must align with the specific duties of the exemption (e.g., executive, administrative, or professional).

Contractor v. Employee

Different tests for FLSA, IRS, and ERISA

- All are complicated multi-factor tests
- The FLSA considers the “economic realities” of the relationship
- Considers behavior controls, financial control, and the nature of the relationship
- Factors like: established work hours, discipline, length and consistency of relationship, how integral the worker is, and training.

Check out SixFifty's [Employee/Contractor Analyzer](#) and [Exempt/Non-Exempt Analyzer](#)

Final Paycheck Requirements

California

Separation

Final Paycheck Requirements

[California state law](#) requires that employees who separate from their employer be paid according to the following schedule:

- Termination Payment: Employees who are terminated must be paid immediately.
- Resignation Payment: Employees who resign their employment must be paid within 72 hours of resignation. However, if the employee provides at least 72 hours' notice of their resignation, they must be paid at separation.
- Final Wage Amount: Employees must be paid "all earned and unpaid wages." Premium pay for missed meal and rest periods is considered part of employees' wages.
- Payout of Accrued Vacation: All earned, unused vacation time must be paid upon separation. [Cal. lab. code § 227.3](#).
- Final Paycheck Location: Discharged employees must be paid at the place of discharge. Employees who resign must be paid at the office where they worked. Employees may receive their wages by mail if they so request. Because direct deposit authorizations are immediately terminated upon resignation or discharge, employees must be paid by [live check](#) unless they voluntarily authorize the deposit.
- Failure to Pay Wages Penalties: Employers who fail to pay wages may be [required](#) to pay both the unpaid amount plus an additional 30 days' wages at the employee's regular pay rate.

Action

- Confirm any departing employee is timely paid their final earned wages

Sources

[Cal. Lab. Code § 201](#)

[Cal. Lab. Code § 202](#)

[Cal. Lab. Code § 203](#)

[Cal. Lab. Code § 208](#)

[Cal. lab. code § 227.3](#)

Other State Final Paycheck Penalties

- **Colorado:** Pay both the unpaid amount and the greater of (1) an additional 10 days' wages, or (2) 125% of unpaid wages up to \$7,500 plus 50% of unpaid wages that exceeds \$7,500. If the employee can show that failure to pay was willful, the penalty increases by 50%.
- **Delaware:** Pay the unpaid amount and 10% of the unpaid wages for each business day the failure continues. Payment will continue to accrue until either payment is rendered or the amount equals the unpaid wages.
- **Pennsylvania:** Pay the unpaid wages and the greater of (1) 25% of the total unpaid wages or (2) \$500. Further, failure to pay wages may be subject to criminal penalties up to \$300 in fines, 90 days' imprisonment, or both for each offense.

Pay Transparency and Non-Competition Penalties

Criminal

Can include monetary penalties and jail time.

Requires a more stringent burden of proof: beyond a reasonable doubt.

Civil

Penalties are monetary or injunctive in nature—no jail time.

Requires a lighter burden of proof: preponderance of the evidence.

Pay Transparency: Civil Penalties

- CA: Civil fines for pay transparency violations range from **\$100** to **\$10,000** per violation, with no penalty for a first offense that's remedied promptly
- MA: Employers (25+ employees) required to post salary ranges (effective Oct 29, 2025). Penalties include fines up to **\$500** for second offenses and up to **\$25,000** per violation for the fourth and subsequent offenses.
- NY: Employers must include salary ranges in job postings (for employers with 4 or more employees). Violations carry fines of up to **\$1,000** for the first offense, **\$2,000** for the second, and **\$3,000** for the third and subsequent offenses.
- RI: First offense: up to **\$1,000**; second: **\$2,500**; third or more: **\$5,000** per violation. Private right of action is available

Pay Transparency: Criminal Penalties

- Pay transparency violations are almost exclusively dealt with by use of civil penalties, except for in Jersey City, which implies a criminal aspect.
- Jersey City, NJ: noncompliance is “**punishable under state law**” with fines up to **\$2,000**, which carries quasi-criminal implications

Non-Compete Agreements: Civil Penalties

- CO: Employers can be liable for **\$5,000** per injured employee, in addition to **actual damages, injunctive relief, attorneys' fees**, and **costs**.
- D.C.: Employers face administrative penalties between **\$350–\$1,000, \$1,500** minimum per enforcement attempt, and **\$250** for notification violations.
- IL: The Attorney General can impose civil penalties ranging from **\$5,000** to **\$10,000** for violations.

Non-Compete Agreements: Criminal Penalties

- CA: Employers who require prohibited non-compete terms can face a misdemeanor, punishable by up to **\$1,000** in fines, **6 months** in jail, or both
- NV: Enforcing a non-compete on hourly workers can result in a gross misdemeanor, with fines up to **\$2,000** per violation, possible jail time up to **365 days**, and administrative penalties up to **\$5,000** per violation.
- CO: Employers using or enforcing void or overly broad non-compete clauses can face criminal charges—class 2 misdemeanor, with up to **\$750** fines, **120 days** in jail, or both.

Private Right of Action vs. Gov't Enforcement

Government Enforcement

Gov't resources can be limited, leading to a narrower scope of enforcement.

Enforcement can be more predictable and potential damages are often capped.

Gov't investigations can be costly but typically don't include attorney's fees.

Private Right of Action

Private citizens (and their attorneys) often have more resources, which can lead to significantly more enforcement actions.

Enforcement can be unpredictable.

Even if damages are capped, enforcement actions can be expensive and difficult to settle because of attorney's fees.

Washington's Pay Transparency Law - Part 1

- Washington's Equal Pay and Opportunity Act was amended on January 1, 2023, to require employers hiring in Washington to include both a salary range and a description of benefits in job postings.
- The amendment permits applicants to bring suit against employers who omit salary or benefits details from job postings.



Washington's Pay Transparency Law - Part 2

- Employers were flooded with suits and there claims arose that many were filed by individuals who had no real interest in the posted jobs.
- The Legislature updated the statute to require potential litigants to provide employers with notice of defective job postings and five business days to cure any defects before bringing suit under the EPOA. This provision sunsets July 27, 2027.



Wage and Hour Suits

- Employee Classification
 - ◆ Employee vs Contractor
 - ◆ Exempt vs Non-Exempt
- Minimum Wage
 - ◆ Changes frequently in some states and localities
- Overtime
 - ◆ Can vary from state to state
 - ◆ Keep an eye on California
- Meal and Rest Breaks
 - ◆ State-specific rules on whether breaks must be paid and whether they can be waived



Employment Discrimination Suits

- Title VII prohibits employment discrimination on the basis of race, color, religion, sex, and national origin
- The American with Disabilities Act (ADA) prohibits employment discrimination against individuals with disabilities
- Age Discrimination in Employment Act of 1967 (ADEA) prohibits employment discrimination against individuals 40 years of age and older
- States have their own anti-discrimination laws that in some cases are broader than federal law

How can you minimize the risk of employment litigation?

- Monitor changes to the law and changes to your organization
- Keep your employee handbook up to date, accessible, and understandable
- Provide Employment Discrimination Prevention Training for your employees, especially managers
- Check in frequently with employees and keep the lines of communication open



**Thank you for
joining!**

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