

Basic methods to prevent wage and hour lawsuits



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Photo: Grand Canyon National Park/Flickr^[2]

In the **landscaping business**^[3], it is almost always necessary to hire seasonal workers to help out during the growing season, but their temporary nature can prove to be tricky.

In order to avoid wage and hour lawsuits, it is important to determine which labor laws apply to your company. Here are four steps to follow that can lower your risk for **Fair Labor Standards Act**^[4] (FLSA) violations.

1. Assume that minimum wage and overtime rules apply.

While Section 13(a)(3)^[5] of the FLSA exempts businesses that are open less than seven months a year from having to pay minimum wage or overtime provisions, it is not always a blank check as certain states may not recognize or permit the application of this exemption.

“State law usually mandates payment of minimum wage, with very few exceptions,” Maria O. Hart, an attorney at NexTitle, told TSheets^[6].

While the FSLA does not define full-time or part-time employment and does not limit the number of hours that can be worked per day or per week, overtime compensations can apply for hours worked over 40 in a week. Extra pay for working weekends or nights is a matter of agreement between the employer and employee as the FSLA does not require extra pay for weekend or night work.

2. Always check state labor laws as well as the federal labor laws.

Employers are required to comply with the most stringent of the state or federal provisions, so federal laws do not always trump state laws.

“The federal law is merely one legal framework but it’s structured to set a minimum standard,” Hart said. “Each state is well within their authority to create a more robust or stronger law.”

If employees are working in multiple states, state laws apply to whatever state the employee is working in so it is wise to check with your legal counsel or someone who is familiar with different state laws.

3. Ask an expert.

As a business owner, ignorance is not an alibi for any FSLA violations so it is your job to have a basic understanding of what you are required to do. The Department of Labor (DOL) is a good place to start as it often spells out what owners need to know and offers many fact sheets on the matter.

“Enlist legal counsel to help you stay abreast of changes that may impact you,” Hart said.

While legal counsel may sound a little excessive to some, the number of lawsuits brought privately by employees against employers have spiked to 8,781 in 2015 from 1995 when only 1,580 were filed, according to TSheets^[7].

Even if you know your company isn’t in the wrong, it’s good to know who to turn to already when an employee accuses you of withholding wages.

4. Keep accurate and organized records.

It is crucial to keep track of the hours your employees are working because if it does come down to a lawsuit, you need to prove that they earned minimum wage and were paid the correct amount if they worked any overtime.

Also, the DOL regulations require employers to maintain accurate records of hours worked each workday, hours worked each workweek and earnings and wages paid.

“In the event you are hit with a wage and hour lawsuit, accurate and organized time records can serve as your No. 1 defense,” Hart said.

Around 80 percent of FLSA prosecutions are for unpaid overtime so having a reliable time tracking system is a good idea.



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