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The Top 10 Things You Might Not Know About Managing Wage and Hour Issues

Did you know the North Carolina Department of Labor (NCDOL) receives 6,500 to 7,000 complaints per year? A staff of 20 investigators across the state handles these complaints. Jim Taylor, Administrator for the North Carolina Department of Labor's Wage and Hour Bureau, and Richard Blaylock, North Carolina District Director for the United States Department of Labor's Wage and Hour Division provided expert insights and information during CAI's public training, **Ask the Expert – Understanding and Managing Wage and Hour Issues**, conducted on December 17, 2009 in Raleigh and January 19, 2010 in Greensboro.

Wage and Hour regulations and compliance can be difficult for any HR professional to keep up with and understand. Below are some facts and interesting information you may find helpful when working through the many aspects of wage and hour issues:

1. **All workers** are protected by federal and state labor laws. Once you have put someone to work, you must pay them. Labor laws apply without regard to immigration status (legal or illegal).
2. **Audits** occur due to 1) complaints from employees; 2) trends, which are non-complaint in nature; and 3) past practices. The most recent trends in NC have been child labor, home healthcare and group homes. Other areas that drive audits and investigations are the Food Service Industry, mostly regarding tipped employees. Employers must pay more than the hourly cash wage (\$2.13) if the tipped employee earns less than the credit in tips per hour, as it is the employer's responsibility to make sure that all tipped employees earn at least the minimum wage in cash wages and tips.
3. Audits occur to assure **compliance**. Over the past 5 years, 75-85% of investigations involve promises (promised wages) made to employees that were not kept. "Promised wages" can be an hourly rate that is more than the minimum wage, shift differential pay, commissions, bonuses, or mileage expenses to name a few. "Wage benefits" are benefits such as, but not limited to, vacation pay (including PTO leave), sick leave, jury duty pay, and holiday pay. The employer must pay all promised wages, including wage benefits, accruing to its employees based on any policy, agreement or practice the employer has established. These policies regarding payment and forfeiture of wage benefits must be clearly spelled out in your policy.

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4. Typically you cannot **volunteer** with a for-profit company. The Fair Labor Standards Act (FLSA) does not permit volunteers in for-profit private companies. Even though employees may be willing to volunteer their time, the FLSA considers work performed as a benefit to the employer and views this as an employment relationship. DOL states, “An individual will be considered a volunteer under the FLSA if the individual: 1) performs hours of service for a public agency for civic, charitable, or humanitarian reasons, without promise, expectations, or receipt of compensation for services rendered; although a volunteer can be paid expenses, reasonable benefits, or a nominal fee to perform such services; 2) offers services freely and without pressure or coercion; and 3) is not otherwise employed by the same public agency to perform the same type of services as those for which the individual proposes to volunteer.”
5. If an employee is eating lunch at his/her desk and while eating, directs calls, makes business calls, conducts business, etc., this would be considered **compensable work time** - they are working and therefore should be compensated. Employers are not required by either state (GA, NC, VA) or federal wage and hour laws to give breaks to employees who are at least 16 years of age. Employees younger than 16 are required to have a rest break of at least 30 minutes after five consecutive hours of work.
6. Lectures/meetings/training time all count as **compensable work time** unless **all four of the following criteria are met**: 1) outside normal work hours, 2) attendance is voluntary, 3) not job related, and 4) no work is performed. For example: Wellness lunch and learns. If the attendance/participation affects your employment, including discounts on health care premiums, the time is not voluntary and would be paid time.
7. **Youth Employment Laws** apply to all schools. Home school hour limitations are considered in session when the public school the child/student would attend is in session. Charter schools are just like public schools for this purpose.
8. It is important to address in **commission plans** what happens when an employee quits or is terminated. If the agreement does not specify, an employee could receive commissions on sales indefinitely. Be specific about terms and conditions regarding the commissions.
9. Employers must keep an **accurate record of the hours** worked by each non-exempt employee for each day and each workweek whether they earn commission, an hourly wage or salary. However, the statutes do not specify the method to be used to keep such records such as time clocks or other methods.
10. When due, **overtime** is paid on the “regular rate”, not the base hourly rate. Examples of pay that should be included in the regular rate are commissions, incentives (attendance, quality), other non-discretionary bonuses and shift premiums. The regular rate is a rate per hour even if the employee is paid a different way (total pay/total hours).