

Legal Hot Water: What Every Employer Needs to Know

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ATTORNEYS AT LAW

Solutions at Work®

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Wage- Hour Compliance:

Beware of Salaries and Bonuses

- **Misconception 1:** **As long as I pay my employees a salary of some amount, I don't have to pay overtime**
 - Salaries and bonuses are only best for certain employees.
 - These cases are the current “designer” class action; you will be sued if you violate this rule.

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Wage- Hour Compliance:

Beware of Salaries and Bonuses

Salary:

- Only a few kinds of employees – typically legitimate Managers – may be paid a salary without getting overtime.
- Regular Rate
- The penalties can be enormous.

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Wage- Hour Compliance:

Beware of Salaries and Bonus

Bonuses:

- Discretionary vs. non-discretionary.
- Regular Rate / Overtime.

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Wage- Hour Compliance:

Ensure Proper Timekeeping

- **Misconception 2:** **The Company is properly keeping track of all employees' time**
 - Off the clock work / Donning & Doffing
 - Watch your supervisors / Is someone changing employees' time?

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Wage- Hour Compliance:

Review Independent Contractor relationships

- **Misconception 3: As long as I have an independent contractor agreement in place, the individual is an independent contractor and not an employee.**

****Be careful – very careful – about classifying anyone as an independent contractor.***

1. Your agreement is irrelevant.
2. Economic realities test.
3. Severe penalties for willful misclassification
 - Minimum \$5,000 to \$15,000 fine *per violation*
 - Up to \$25,000 *per violation*
 - Posting of prominent notice on company website

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The Problem Employee:

Be smart in making personnel decisions

Misconception 4: **It is better to “soft ball” a termination or discipline, so as not to anger the employee and encourage a lawsuit.**

**** Play offense when disciplining & terminating***

- Disciplining employees:
 - Don't let performance deficiencies, insubordination or misconduct go unchecked.
 - Beware of incorrect performance reviews
 - Consistency is key.
- Thoughtful and HONEST Terminations that are well documented
- Consider protective categories in making your personnel decisions

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The Problem Employee:

Be smart in dealing with complainers

Misconception 5: **Employers do not need to do a full investigation for every single complaint, especially if the person complains constantly.**

**** Play offense – complaints***

- Take all complaints seriously even from your squeaky wheel complainers.
- California has created “magical words.” When you hear them, you are on notice and you MUST investigate.

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The Problem Employee:

Be smart in dealing with complainers

- Have the complaining employee describe the exact conduct in writing.
- Talk to the witnesses and consider getting statements.
- Always give the accused party a chance to explain himself or herself.
- Discipline where appropriate.
- Let the complaining party know the results.
- Remind everyone of your non-retaliation policy.

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The Problem Employee:

Stop waiting to take preventative measures

Misconception 6: I can wait another year before updating our Employee Handbook

****Play Defense - Handbooks***

- Puts employees on notice of the rules.
- Establishes intent to comply with law (i.e. makes you look good).
- Great evidence for your attorney
- New laws require updates THIS YEAR.

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The Problem Employee:

Avoiding Leave & Disability Traps

Misconceptions 7: - **I can terminate my employees who have exhausted their FMLA/CFRA leave because it is an undue hardship.**
- **I do not need to ask for doctor's notes.**
- **As a small company, I do not need to provide leave**

- Know what laws apply to you
- Be generous with your leave policy (ADA/FEHA)
- Don't forget that your duty to accommodate and engage in the interactive process never ends (beware of the "undue hardship" defense).
- Require doctors notes and fit-for-duty certifications
- Document, Document, Document!