

HOW TO REDUCE LIABILITY UNDER THE FLSA

Wage and hour litigation (including class actions) is one of the most active areas in the arena of labor and employment law. This is due, in part, to the fact that compliance with the vast array of wage and hour laws can be complex and cumbersome for employers. The Fair Labor Standards Act (FLSA) is the law that is controlling for most circumstances. The Plaintiff's bar is now well in tune with how difficult it is for employers to comply with the FLSA and consequently Plaintiff's attorneys have been aggressively pursuing lawsuits (often class actions) alleging a variety of FLSA violations and requesting exorbitant damages. Moreover, in the past couple of years the United States Department of Labor (DOL) has explicitly announced that it is businesses as part of its ramped up enforcement efforts. There are no signs that these efforts to seek out wage and hour violations will slow any time soon. As such, as employers we need to be diligent preventing problems before they arise, the keys to prevention are internal audits and wage and hour policies and procedures.

The Fair Labor Standards Act favors employers who can show they made a sincere effort to comply with the law and that they acted in good faith. For non-exempt employees, the employer must be certain to record and pay the employee for all hours worked. The regulations state that bona fide meal periods do not count as "hours worked" and need not be compensated. The key is that the employee is completely relieved from performing any work and that the meal period will typically last approximately 30 minutes. The DOL has recognized a growing trend that employees are being interrupted during their meal period, but the time system automatically deducts a 30-minute meal period. Accordingly, employers should audit the timekeeping system to make sure that missed or interrupted meal periods are accounted for and compensated. Employers should also implement a recording system that encourages its workers to acknowledge non-compensable hours. For example: *I acknowledge and agree that the time recorded is an accurate description and measurement of time actually performing work activities. I further acknowledge that I was provided and took advantage of an uninterrupted 30 minute meal/break period each workday identified herein.*

Showing good faith effort can be done through conducting routine audits of position classifications. In addition, it is imperative to have a written policy and complaint mechanism through which employees can bring issues related to deductions and/or classification. Good policies should address a policy for investigating complaints, policies on overtime work, meals and rest breaks, travel time and payroll integrity policies for actions such as falsifying time records and working off the clock. In addition, anyone receiving an unpaid meal or break period of no less than 30 minutes per work shift should use a time recording system that encompasses language affirming the employee's use of the 30 minute unpaid and uninterrupted period. In order to present a good faith showing the following are the types of

Recommended Compensation Policies and Practices that every company should have.

<p><u>Exempt Employee Pay Policy & Complaint Procedure</u> <u>Meal and Rest Periods Policy & Complaint Procedure</u> <u>Non-Exempt Employee Travel Policy & Complaint Procedure</u> <u>General Wage/Hour Complaint Procedure</u></p>
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As the DOL is only going to get more aggressive prevention is the best strategy to mitigate damages and consistent policies and procedures and proper classification are the best shield.

If you have any questions about this article, or would like sample policies **(complimentary to Mueller clients)** please contact Julie A. Proscia, Esq. Julie Proscia is a partner at SmithAmundsen LLC in the labor and employment practice group. Julie exclusively represents management in employment issues and may be contacted at (630) 587-7911 or at jproscia@salawus.com.

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