



# Distribution Center MANAGEMENT

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Managing people, materials and costs in the warehouse and DC

## ■ From the Golden Zone

### Steering clear of wage-and-hour lawsuits

By Richard D. Alaniz

A spate of high-profile wage-and-hour suits has been in the news recently — most notably a \$4.7 million settlement for a Wal-Mart DC outsourced to Schneider Logistics. Below Richard D. Alaniz outlines the scope of the problem for U.S. employers and suggests strategies for keeping clear of these all-too-common suits.

Wage-and-hour lawsuits have cost U.S. companies hundreds of millions of dollars. These actions have become a staple for the plaintiffs' bar because of their ease of proof.

According to the consulting firm NERA Economic Consulting, wage-and-hour settlements for U.S. companies totaled \$467 million in 2012. To resolve a case, companies paid an average \$4.8 million and a median of \$1.7 million.

Overtime claims are the most common wage-and-hour allegations, followed by missed meals and breaks, misclassification, and off-the-clock work allegations. Many wage-and-hour lawsuits combine different violations — a common theme being both overtime and misclassification suits. To avoid wage and hour liability, employers need to be sure they are complying with all the relevant minimum wage, overtime, and other wage- and benefit-related regulations.

Wage-and-hour law is regulated by both the

federal Fair Labor Standards Act (FLSA) and a variety of state laws. The Wage and Hour Division of the Department of Labor conducts investigations of alleged FLSA violations. When the Labor Department determines that a company is not in compliance with the FLSA, the agency can impose penalties and fines, including payment of back wages. The NERA Economic Consulting study found that more than 25 percent of the companies that settled wage and hour suits in 2012 had been found by the Labor Department to have an FLSA violation. Assessed back wages associated with those violations totaled \$18.8 million.

To stay out of wage-and-hour trouble, employers should be sure to follow all applicable federal and state laws. A few areas to watch:

**Classify workers properly.** Determining who is exempt from overtime pay is not always straightforward. Many wage-and-hour lawsuits allege that the employer has misclassified employees, thereby ultimately underpaying those employees for overtime. Employees are either classified as “exempt” or “non-exempt” employees. Exempt employees are exempt from the protections of the federal and state wage-and-hours laws, such as overtime requirements. Exempt employees under federal law are generally executives, administrative workers, and professionals.

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The administrative exemption is where many employers misclassify workers. Merely because someone is paid a salary does not always mean they are properly exempt. Non-exempt employees are generally covered by federal and state wage and hour laws.

Under the FLSA, to classify a position as exempt, that position must pass both a salary and duties test. In addition to the salary test (a minimum \$455 per week), there are four major categories of duties: (1) executive; (2) administrative; (3) professional; and (4) outside sales.

Duties to look for include: directing and supervising the work of others; having the authority to hire, fire, and promote; exercising independent judgment and discretion; and advanced knowledge in a field of science and learning through prolonged course of instruction.

Because the distinction between exempt and non-exempt employees is unclear, discuss any classification with your human resources department or legal counsel. In addition, the patchwork of state laws can complicate the test. In most wage-and-hour suits involving misclassification, the employer made a good-faith effort to correctly classify its employees, but many times failed to do so properly.

**Review payroll practices and job classifications.** Periodically review how employees track their hours. Laws change, job classifications get reworked, and new technology can make the

process easier and less prone to errors. Under the FLSA, the onus of keeping track of employees' time falls on the employer, regardless of whether the employee is required to clock in and out.

Employers should work to have solid overtime and timekeeping practices in place, to ensure that wage-and-hour laws are followed — and avoid lawsuits and government investigations.

**Conduct audits.** While you're being proactive, add routine audits to your list. A spot check of one site or department may reveal that employees are not tracking hours properly or that supervisors are not following established procedures.

**Be careful with union employees.** At union shops, the number of hours that employees work is not just reflected in their paychecks, but in many cases is used to calculate contributions to pension and benefit funds. In these situations, employers can get into even more trouble when they shortchange such funds. If you have union employees, pay extra attention to how those employees' hours are tracked to be sure that you are complying with your collective bargaining agreement.

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