

# 7 do's and don'ts to keep wage-and-hour lawsuits at bay

During a recent 12-month period, more than 7,750 Fair Labor Standards Act (FLSA) wage-and-hour lawsuits were filed in federal courts, an increase of almost 10% over the preceding 12 months. Wage-and-hour lawsuits are attractive to plaintiffs—and, perhaps more important, their attorneys.

When employees win these cases, they are typically entitled to recover their attorneys' fees and court costs.

Second, a single lawsuit may include claims on behalf of many employees or former employees. That means they can be worth staggeringly large damages awards. Plus, plaintiffs' attorneys know it costs a fortune for employers to defend wage-and-hour lawsuits, particularly class actions.

For all those reasons, employers may be more inclined to settle these cases. A recent survey by National Economic Research Associates found that during a five-year period the average wage-and-hour settlement in class actions was \$7.5 million; the median was \$2 million.

The good news is that there are some simple ways for employers to reduce the risk of wage-and-hour suits.

## Payroll do's and don'ts

These payroll do's and don'ts are a great place to start:

× **DON'T permit "off the clock" work.** If employees work beyond their scheduled hours, pay them. Then counsel them not to do it again. Consider requiring employees to certify the accuracy of their time records at the end of the day or week.

✓ **DO review any work-related but unpaid time.** For example, review unpaid time for putting on equipment or for job-related travel to ensure your practices satisfy both federal and state laws.

× **DON'T allow "comp time" instead of overtime.** Private employers are not permitted to allow compensatory time off in lieu of overtime.

✓ **DO ensure proper calculation of overtime rates.** Overtime rates for nonexempt employees must be calculated based on one and one-half times the employee's "regular rate." The regular rate might not be the employee's base hourly rate. Instead, it often must take into account commissions, bonuses, and other monetary incentives.

× **DON'T allow improper deductions from salaried employees.** Deductions for certain absences, for example, can destroy an employee's exempt status, making him or her eligible for overtime.

✓ **DO comply with record-keeping and posting obligations.** Federal and state laws require posting of wage-and-hour notices and maintenance of payroll-related records.

✓ **DO adopt a payroll/overtime policy.** Have a written policy that confirms your commitment to comply with wage-and-hour obligations. Familiarize your employees with the policy, and train managers about it.