

# Cheating on overtime pay: Can it mean jail time?



Here's a worry that may not have occurred to you as you tried to figure out which employees are entitled to overtime: If you get it wrong, you could wind up in jail.

At least that's the case in New York, where state Attorney General Eric Schneiderman is leaving little doubt he is serious about enforcing the state's wage theft law.

Abdul Jamir Khokhar, who operates several Papa John's Pizza shops in New York City, will serve 60 days in jail for falsifying business records after Schneiderman teamed up with U.S. Department of Labor investigators to prosecute the case.

Failure to pay proper wages is a misdemeanor under the state's labor code, but an amendment to New York's Wage Theft Law made falsifying business records a felony. Federal law provides for double damages for willful violations, but now New York employers could face both fines and incarceration if employee time cards are inaccurate or missing.

DOL investigators will often look at company time records for signs the employer is cheating employees. Questionable records raise a red flag that makes investigators dig deeper. From there, they will interview employees to check the accuracy of time cards and look at other information (such as sales receipts) to corroborate the information shown on the records. Employers will have to explain any discrepancies.

State and federal laws prohibit retaliation against employees who cooperate with wage-and-hour investigations.

**Advice:** If you must punish or take other adverse action against any employee who has previously been interviewed or otherwise participated in a wage-and-hour investigation, thoroughly document the reason for the discipline. Analyze the disciplinary decision to ensure that it could not be construed as retaliation for cooperating with investigators.

Review your overtime practices with your attorney to ensure they comply with state and federal law. Implement any changes your attorney recommends.