

# Overtime labor law: Fire if manager falsifies employee hours worked

Nonexempt employees must be paid for all hours they work. Time clocks and other time-tracking systems are designed to ensure workers receive all the pay they are entitled to.

Manipulating those systems can easily lead to huge back-pay awards, which are then doubled as punishment for not paying properly.

Sometimes, the way employers reward managers contributes to wage-and-hour liability. If managers must keep labor costs to a minimum in order to receive bonuses, they may be tempted to falsify time records. Don't let that happen.

If it does, you are justified in firing the manager.

**Recent case:** Isis was in charge of the housekeeping crew at a Minneapolis hotel. The hotel fired her after an internal wage-and-hour investigation revealed that the housekeeping department had been rounding down employee hours.

The hotel said it fired Isis because she cheated employees out of pay so she could receive a bigger annual bonus. She had told the workers to provide handwritten time sheets showing no more than eight hours per shift, even when the time clock revealed they had worked longer. Isis then overrode the time clock records.

Isis sued, alleging retaliation for taking FMLA leave.

The hotel conceded Isis had been fired within a month of her return to work. However, that was because the hotel only discovered the time-keeping irregularities while she was gone. That's when it launched an internal wage-and-hour investigation. It then fired Isis and disciplined three other managers who had engaged in similar conduct on a smaller scale. The court dismissed the case. (*Naguib v. Trimark*, 8th Cir., 2018)

## Per diem payments aren't wages for overtime purposes

Do you pay a *per diem* to employees who work away from home for several days or more? It's a way to repay them for the expenses they incur being away from home for extended periods of time. It's not compensation. That means *per diem* payments should not be included in the base pay you use to calculate overtime wages.

**Recent case:** A group of traveling clinicians sued their employer under the Fair Labor Standards Act for underpayment of overtime. They based their claim on what they said was an erroneous calculation of their regular pay. The workers received a set *per diem* payment for expenses when working away from home for a week, but if they missed a shift, the payment was removed for that day.

The court upheld that practice and tossed out the case. (*Clarke, et al., v. AMN*, CD CA, 2018)

# San Diego massage parlor rubs DOL the wrong way

Following an investigation by the U.S. Department of Labor's Wage and Hour Division, the owners of two San Diego-area massage parlors have agreed to pay 17 employees \$61,317 to settle charges they violated the Fair Labor Standards Act. WHD investigators determined that Massage Eden and Rama Thai Massage improperly classified the workers as independent contractors when they were in fact employees.

Massage Eden erroneously classified 13 employees as independent contractors, failed to pay the minimum wage for all hours worked, failed to pay overtime and failed to keep accurate payroll records at three facilities in San Diego County. Those employees will receive \$46,555 in damages.

Four employees at two Rama Thai Massage locations are due \$14,762 under the settlement.

**Note:** When determining whether a worker is an independent contractor or employee, WHD looks at the total economic realities of the arrangement. Workers who never perform services for other firms are most likely considered employees.

**Advice:** Regularly review your independent contractor arrangements to ensure you preserve your contractors' independence.