

WHAT IS WAGE AND HOUR CONSULTING?



THE LAWS

Wage and hour laws govern the minimum wage rates an employer must pay its employees and the hours for which an employer must compensate its employees. The most well-known wage and hour laws are minimum wage laws and overtime laws. They also include laws on supplemental benefits, child labor, meals and breaks, vacation leave, sick leave, holiday leave, jury duty leave and severance.

Federal Wage & Hour

Federal wage and hour laws are mostly found in the Fair Labor Standards Act (FLSA) and the Davis-Bacon Act.

State Wage & Hour

Each state and some locality determines which wage and hour laws it will adopt. Some states and localities have adopted few wage and hour laws, deferring instead to the FLSA. Others have more extensive wage and hour laws regulating the relationship between employers and employees beyond that of federal law.

Challenges for Employment Lawyers: Compliance with Federal, State & Local Wage and Hour Laws

- An employer must comply with both federal and state wage and hour laws. If the relevant state wage and hour law are at odds with the federal wage and hour laws, the employer must apply the law that provides the **greatest benefit to the employees**.
- Many employers are shocked when they learn how a single employee's complaint can result in a major class action lawsuit. Compliance with the federal FLSA and related state and local laws can be difficult for any employer. Failure to comply—even when it is an unintentional error—has proven very expensive.
- Employees who believe they have not been compensated in accordance with FLSA can go **directly to court** and are not required to first submit their complaint to the U.S. or State Departments of Labor (DOL). In addition, Federal and State DOLs have significantly **increased enforcement** efforts, hiring additional investigators and targeting industries and practices with an emphasis on claimed exemptions and working time issues.
- In cases where a compliance audit has been conducted by a governing body, an employer may be liable for significantly more than the underpayment once **interest, penalties and liquidated damages** are assessed. For instance, the New York City (NYC) Comptroller's Office can assess as much as 16% interest and a 25% penalty in addition to liquidated damages if they find that the underpayment was willful.

Labor laws in New York State (NYS) are regulated and enforced by the NYC Comptroller, NYS DOL and US DOL.

CLAIMS

Wage and hour claims typically involve an assertion that a non-exempt (generally non-salaried) employee/plaintiff has been insufficiently compensated or uncompensated for time worked. This may be because some work is alleged to have been “off the clock,” was undocumented on time records, was paid at the wrong hourly rate or was mismeasured in some alternative arrangement.

Wage and hour allegations also frequently include unpaid overtime. Other wage and hour claims may involve allegations of unpaid meal and rest break penalties under state law, improperly calculated commissions, disputed bonus payments and other employer pay miscalculations.

Often, these wage and hour claims form the basis of class action suits, leaving employers vulnerable to potential multi-million dollar liabilities for back wages and damages. This type of litigation is particularly common in retail, food service and the construction industries. Many companies’ liability insurance excludes coverage for wage and hour claims due to the potential for wide exposure (and expensive payouts) in these types of cases.

HIRING A WAGE AND HOUR CONSULTANT

Anchin can help clients avoid costly litigation by ensuring their compliance with the federal, state and local wage and hour laws. Our assistance to clients includes:

- **Conducting an in-depth compliance review** of all areas covered by wage and hour laws, including exemptions, recordkeeping, minimum wage, supplemental benefits, employment of minors and overtime, as well as a review of related regulations enforced by DOLs’ Wage and Hour Division, including Family and Medical Leave Act (FMLA) and I-9 documents
- **Conducting a review of the prevailing wage rates** (including supplemental benefits) for various job classifications as defined by state and local laws and ensuring a company’s compliance with those rate rules
- **Ensuring compliance with state laws** requiring average hourly wage requirements within certain enhanced affordability areas within New York City
- **Assisting clients and labor & employment counsel** in responding to a federal, state or local audit’s findings
- **Conducting wage and hour law analyses** to assess current risks of law violations and develop an action plan to correct and prevent further violations
- **Managing DOL investigations and assisting labor and employment law counsel** in defense of wage and hour lawsuits, including preliminary assessment of liability or damage claims and calculation of worst-case and most-likely financial impact for use in settlement or mediation
- **Providing support for client decisions** on wage and hour law issues, such as position exemption classification, hours worked, overtime requirements and pay deductions



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