Employment & Compensation Law

Status, Pay, & Work Schedules

Independent Contractors & Mitigating Co-Employment Risk

Independent contractors are individuals or entities the Company contracts with to do work or perform a service for the Company. An independent contractor retains the right to control the means and methods used to accomplish a project. Independent contractors only follow the Company's directions as to the result or end work product, not the day-to-day details regarding how the work is to be accomplished.

In some instances, supervisors may interact with independent contractors and employees of independent contractors in the workplace. It is important for supervisors to recognize and understand that those individuals are not employees of the Company and thus should not be treated the same as employees of the Company to minimize the risk that the Company will be deemed such individual's co-employer. To that end, supervisors should understand and follow Company policy regarding contingent worker assignments, including: (1) length of assignment, (2) supervision of contingent workers, and (3) extension requests. Supervisors should also understand and follow Company policy regarding retirees as contingent workers and consider whether they should seek headcount to hire a person instead of using an independent contractor. Some ways of mitigating co-employment risk include: (1) making the resource a full-time employee or contract employee, (2) terminating the engagement and training an employee to perform the function, (3) replacing the resource with a new resource, (4) requesting and obtaining an extension, and (5) treating the worker like a contingent worker and not like an employee (e.g., not dictating how they perform the work, not providing direct supervision, not providing performance evaluations, providing only general training).

Exempt And Non-Exempt Classification

Employees are classified as either exempt or non-exempt for pay purposes.

Exempt employees typically receive a weekly salary and are not eligible for overtime pay. Non-exempt employees are typically paid hourly and receive overtime pay in accordance with federal and state wage and hour laws and the CBA, if represented.

HR and the Compensation department are in charge of assigning these classifications based on a review of the employee's job duties. Supervisors are responsible for ensuring proper timekeeping for exempt and non-exempt employees.

Timekeeping and Off-the-Clock Work

While all employees are required to track their hours worked in MyTime, it is especially important for non-exempt employees to accurately track all hours worked to ensure they are paid for all hours worked. Employees must be compensated for all hours they are "suffered or permitted to work" for the benefit of the Company.

Off-the-clock work is when a non-exempt employee works hours the Company knows about but fails to record them on the employee's timesheet, resulting in the employee not being paid for such time. Off-the-clock work is illegal and prohibited. As a supervisor, it is part of your responsibility to ensure that all non-exempt employees are accurately recording their time to avoid any off-the-clock work. As a reminder, as an agent of the Company, if you know about off-the-clock work, then the Company knows. If a claim is filed, the burden will be on the Company to prove it did not know or have reason to know the employee was working off-the-clock.

If a supervisor learns about off-the-clock work, the supervisor should ensure that the employee is paid for such time, and that disciplinary action is taken, if warranted.

Overtime Pay

Exempt employees typically do not receive overtime pay because they receive a fixed salary which compensates them for their job duties rather than the specific time it takes to complete their work.

Represented non-exempt employees are entitled to overtime pay in accordance with the provisions of the CBA.

Under federal law, unrepresented non-exempt employees are entitled to overtime pay as follows:

- Time-and-one-half for all hours worked over 40 hours in a workweek.

Under California law, unrepresented non-exempt employees are entitled to overtime as follows:

- Time-and-one-half for:
  - Hours worked exceeding 40 hours in a workweek;
  - Hours worked exceeding 8 hours, but less than 12 hours, in a workday; and
  - Up to 8 hours of work on the 7th consecutive day of the workweek.

- Double time for:
  - Hours worked over 12 hours in a workday; and
  - Hours worked over 8 hours on the 7th consecutive day of the workweek.

Meal Breaks and Rest Periods for Unrepresented Non-Exempt Employees

Meal Breaks

Under California law, unrepresented non-exempt employees who work more than five hours are entitled to a 30-minute uninterrupted meal break for every five hours worked. The first meal break must be taken by the end of the fifth hour of work. Employees can waive their first meal break if they are going to work no more than 6 hours. Employees who work more than 10 hours are entitled to a second 30-minute meal break. Employees may waive their second meal break if they are not going to work more than 12 hours and did not waive their first meal break. HR has forms for waivers.

During their meal break employees must be relieved of all work. If an interruption is required, the employee should be allowed to restart the 30-minute meal break when practicable and should receive one hour of penalty pay. Requiring an employee to work through their meal break may result in overtime pay. Employees should not be allowed to work though their meal break to leave 30 minutes early. Employees must be free to leave the premises during meal breaks. If a meal break is late or not provided, the employee will receive one hour of penalty pay and will be paid for the time worked during the meal break, if any.

Rest Periods

Under California law, unrepresented non-exempt employees must be authorized and permitted to take a 10-minute paid rest period for every four hours worked (or major portion thereof). Supervisors must "provide" an opportunity for employees to take their rest periods. Rest periods should be provided near the middle of the four hour period, if possible. Rest periods cannot be combined with meal breaks and should not be scheduled at the beginning or end of the work day. If a rest period is not provided, the employee will receive one hour of penalty pay for the missed rest period. Repeat offenders should be managed through performance management.

Partial Day Absences

Exempt employees:

- With very few exceptions, cannot be docked in pay for any partial day or partial week absences.

- May be docked pay for a FULL week's absence if no work is performed.
- For full day absences, may dock exempt employees by using either vacation time, sick time, personal time off, or time without pay, after consulting with the employee and depending on the circumstances.

Unrepresented non-exempt employees:

- Can be docked for partial day absences.
- For partial day absences, an employer may dock pay using vacation time, sick time, personal time off, or time without pay, depending on the circumstances.

Make-Up Time

Under California law, a non-exempt employee may request "make-up time" to allow them, for personal reasons, to work fewer hours on one day and make up for it by working more hours on another day in the same workweek.

- The request for make-up time must be in writing up to 4 weeks in advance.
- The make-up time must not cause the employee to exceed 11 hours in a workday or 40 hours in a workweek.
- Make-up time is strictly at the employee's request; a supervisor cannot suggest or imply that make-up time be taken. However, a supervisor may inform employees of their right to request make-up time.
- Granting of make-up time is at the employer's discretion; it is not required; however, supervisors may not illegally discriminate in granting make-up time.
- Sempra policy requires that make-up time be approved in writing by the supervisor before the employee uses the time. The employee must submit a signed request to make-up the missed time at straight time for each occasion that make-up work is requested.
- The Make-Up Time Policy and Make-Up Time Request Form can be accessed on the Timekeepers Connection website.

Travel Time Outside Normal Work Hours

Commute time between work and home is not paid.

<u>Exempt</u> employees are not entitled to pay for travel outside normal work hours.

Unrepresented Non-exempt employees who travel outside of normal working hours on behalf of the Company are entitled to wages for actual travel time. However, in advance of the travel time, the Company may establish a special rate for travel pay that may be less than the normal wage rate, but not less than minimum wage.

Vacation

Exempt employees:

- Under the Company's policy, vacation for exempt employees is charged in full day increments and may only be deducted in full day increments. Partial day vacation is not charged for exempt employees.

- If an exempt employee works any part of a workday, the employee cannot have any vacation time charged for the portion of the day not worked.

- The Company cannot require exempt employees to use vacation time on days the Company is closed for business.

Unrepresented non-exempt employees:

- Vacation for unrepresented non-exempt employees may be charged in partial day increments.

Alternative Work Schedules (AWS) for Non-exempt Employees

A California State regulation authorizes that non-exempt employees may work more than 8 hours in one workday without receiving overtime pay if the employee is working an Alternative Work Schedule (AWS) that equals a 40 hour workweek in which the employee works at least 4 hours a day and no more than 10 hours a day. Twelve-hour days are prohibited for unrepresented non-exempt employees. The Company may offer the 9/80 schedule (9 workdays for a total 80 hours), or a 4/10 schedule (4 10-hour workdays).

- An AWS must be agreed to by 2/3 of the work unit voting in secret ballot.

- The employer must reasonably accommodate those employees who cannot comply.

- The employer must implement the new schedule within 30 days of the vote.

- Overtime must be paid for any time worked over the hours scheduled for a given workday.

- Represented employees are not covered under this policy and should refer to their CBA for specific negotiated work schedules.

- Employees cannot work on an AWS without going through a formal approval process from HR.

Supervisors should contact HR to confirm the exemption status of any job being considered for an AWS and to ensure proper implementation of an AWS under the law. The AWS policy can be accessed by going to the Timekeepers Connection website.