



Navigating you through the various legal employment and business issues that your Company encounters as you journey to business success!

Navigational Beacon

A Simon | Paschal PLLC Publication.

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Regular Rate Problems

Regular rate miscalculations are an increasing issue in FLSA cases and DOL audits

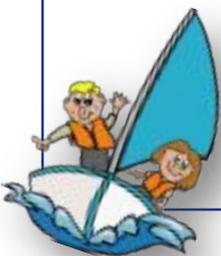
Clients and potential clients often ask us what we see most often in our litigation practice. The answer by far is FLSA overtime cases. Within those cases, the biggest issue we are seeing is problems involving the “regular rate.” The regular rate includes all payments made by an employer to or on behalf of an employee, absent certain statutory exclusions. It is determined by adding the employee’s pay for the workweek and all other earnings and dividing by the total number of hours the employee worked in that week. Exclusions include gifts/rewards, vacation/holiday pay, expense reimbursements, premium rate pay (i.e. overtime), benefits contributions (i.e. retirement, health insurance, etc.), profit sharing payments, payments otherwise made not as compensation for work (i.e.

loans/advances, costs related to parking, lockers, on-site gyms, etc.), and discretionary bonuses. Very few bonuses (*cont’d on Page 3*)

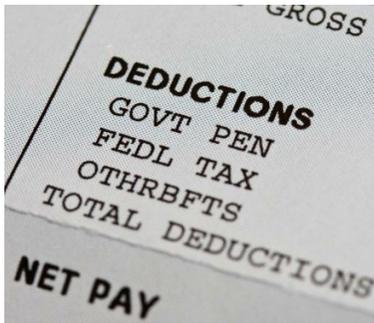


Breakfast:

Join us on Tuesday, December 9, 2014 at 8:00 a.m. for our Quarterly Breakfast at our office (13601 Preston Rd., Ste. W870, Dallas 75240). We will provide breakfast and a chance to network followed by a short presentation on a relevant topic to your business. RSVP to info@simonpaschal.com.



Wage Deductions



Except for payroll tax deductions and benefits deductions, employers often forget about the area of wage deductions.

Employers, though, should use caution in making deductions.

Absent a deduction for withholding taxes, FICA taxes, IRS tax levies, court-ordered child support or alimony, guaranteed student loan wage attachments, or any garnishments mandated by a federal court, all employee wage deductions in Texas must be authorized in writing and signed by the employee prior to the deduction. Without a signed authorization, these deductions violate the law.

Another issue about which to be aware with wage deductions is reducing an employee's wages below minimum wage. Only deductions for loan and wage advance repayments, voluntary wage assignments (i.e. deductions for health, dental, disability, and life insurance plans), uniform costs (under extremely limited circumstances), payroll taxes, employee theft/misappropriation, and union dues may cause an employee's wages to drop below minimum wage. Furthermore, although an employer can charge interest on a loan or wage advance, the interest deduction cannot cause an employee's wages to drop below minimum wage.

Employers should always include a Wage Deduction Authorization in their new-hire paperwork.



End of Year Checklist:

As we approach the end of the year, there are a lot of things to keep in mind regarding your business and your employees. Here are just a couple quick ideas for your business:

- 1.** Holiday Parties. Many people are already aware of the dangers created by holiday parties with respect to sexual harassment claims and worries about alcohol-induced issues. Beyond that, though, employers should be aware of religious discrimination and harassment concerns regarding holiday parties. Religious beliefs accommodations should be thoroughly examined.
- 2.** Performance Reviews. Every company should be completing performance reviews. It is important to be honest, thorough, and objective. These reviews are critical to later employment decisions, including disciplinary actions, and they are almost always relied upon in any future lawsuits.
- 3.** Policies Updates. Now is the time to ensure your policies are up to date with any new laws or regulations that go into effect at the beginning of 2015.



Another great Simon | Paschal client

Client Spotlight

BTI Solutions, Inc. is an advanced communications services company headquartered in Richardson, Texas. BTI brings together wireless industry experts who provide staffing and vendor management solutions, network deployment and maintenance solutions, network installation and construction services, and mobile device testing solutions. BTI is a certified minority-owned business with offices throughout the United States. We are proud to have BTI Solutions, Inc. as a client and we appreciate the faith they put in us. Check out more about this great company at www.BTISolutions.com.



cont.

are considered discretionary under the FLSA. To be discretionary, the employer must retain discretion both as to the existence/issuance of the bonus and the amount of the bonus until a time very close to the end of the period for which the bonus is paid. As an example, if an employer announces a monthly bonus based on production whenever, in its discretion, the financial position of the company warrants it, the bonus is not discretionary and must be included in the regular rate. A major mistake by many companies is paying monthly production bonuses but failing to include those bonus payments in calculating the regular rate for overtime payment purposes in that month. As a result, those companies are not paying the proper overtime rate. Although the calculations can be difficult and convoluted, they must be made in the proper way or you could be liable for significant sums of back overtime wages if you are ever sued or audited by the Department of Labor.

Beat the H-1B Rush, Plan Now!

Is your company considering hiring a foreign worker as an engineer, scientist, or computer programmer? If so, that foreign worker will likely need a company-sponsored H-1B visa. H-1B visas are for temporary workers to perform work that requires highly specialized knowledge. Each year, the U.S. government limits the number of H-1B visas to 65,000 plus another 20,000 that can qualify under the advanced degree exemption.

The first day a company can apply for an H-1B visa is April 1. Last year, the U.S. government announced that on April 7 it had reached the H-1B cap (85,000 visas). In fact, more than 172,500 applications had been received between April 1 and April 7. When the cap is reached, a lottery is used to determine which applications will be reviewed and approved. This means that last year almost half the applications were returned and never considered for the H-1B visa. All of these companies had to make alternate plans to address their employment needs.

If your company is considering the H-1B route to address your employment needs, it is best to discuss with a lawyer to determine whether the position and candidate are eligible for an H-1B visa. April 1, 2015 will be the target date to file the H-1B application and it should be anticipated that the cap will be reached within days of that date.

Stay Up To Date with Simon | Paschal PLLC

If you like this newsletter and want more updates from us throughout the year, follow us on Facebook (www.facebook.com/SimonPaschalLaw), Twitter (@SimonPaschalLaw), and Google+ (plus.google.com/+SimonPaschalPLLC). We post alerts, updates, and information regarding breaking employment and business law news as well as tips and advice. You can even see that lawyers have a little bit of personality and have lives outside the practice of law!

During the first month of every quarter, we also distribute a newsletter like this one, followed by a breakfast presentation during the last month of every quarter. If there is a topic you would like to see discussed in our newsletter or at the breakfast presentation, just let us know!



Simon | Paschal PLLC Happenings

Earlier this month, we spoke at HR Southwest, the official State of Texas SHRM conference. While there, we spoke about the FLSA, disparate impact, employee handbooks, and employment litigation. Later this month, we will be attending the Dallas Bar Association Bench Bar Conference. We are also proud to announce that Paul Simon recently was named a Texas Super Lawyer by Super Lawyers Magazine. There is no age limitation for this honor and at age 33, Paul is part of only 5% of Texas lawyers who received this honor.

The small print: The contents of this newsletter are not intended to provide specific legal advice and you should not take any action based on the content of this newsletter without seeking legal counsel. If you have specific questions, please contact a lawyer, preferably us!



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