

Questions Surrounding Payroll Never End

Just when you think you understand the rules surrounding payroll and employees, new questions arise. Here are two issues addressed by the Department of Labor (DOL) that may help clarify this complex area.

1. Let's say your company has a policy prohibiting overtime work. But you have employees who routinely clock in early or clock out late and work more hours than scheduled. Do you have to pay them overtime?

Possibly. The key: If you know staff members are doing this and you don't stop them, you probably won't be protected by the existence of rules. If the DOL determines that the employer, or the employee's immediate supervisor, should have known a person was working overtime, the employer may be found to have constructive knowledge of the overtime. This could lead to charges of willful violations of the law.

According to the DOL, some employers permit or even pressure employees into working extra time and then ignore staff members clocking in early or clock out late in spite of overtime rules.

If the extra time worked amounts to ten minutes or less, it may be considered "de minimis" by the DOL, and you may not be obligated to pay for this time. But be careful. Employees who regularly work extra minutes over a long period of time may still prevail against the employer if a complaint is filed. The best policy, if you wish to limit overtime, is to monitor your staff to guarantee non-exempt employees clock in and out on time.

2. Do employers have to pay employees for smoking breaks?

The Fair Labor Standards Act doesn't require rest periods such as smoking breaks, but if employers allow them, they must be considered "hours worked," according to the DOL. The DOL went on to point out that short work breaks (other than scheduled coffee breaks) are common, not just for smoking but also to visit the bathroom, get coffee, make brief personal calls, and other minor matters.

Employers sometimes seek to cut costs by eliminating smoking breaks, which, by conservative estimates, equate to 30 minutes of lost productivity per day per employee. But carefully consider such action. Many employers have discovered that allowing reasonable breaks during the day improves concentration and productivity, rather than the other way around. If you decide to cut the breaks, it's a good idea to check with your payroll or employment law adviser first to make sure you are not violating the law.