



Straight-Ahead Facts on Wage and Hour Rules

By TDIC Risk Management Staff

Wage and hour laws take a little time to sort through, but the incentive is high for practice owners to sharpen their “wage and hour IQ” and keep current on topics such as minimum wage, overtime, meals, breaks and paid sick leave.

Wage and hour rules are increasingly in focus and related lawsuits have increased 438 percent since 2000, according to numbers released last year by the Federal Judicial Center. Additionally, the U.S. Department of Labor’s Wage and Hour Division reports collecting nearly \$250 million in 2013 due to minimum wage and overtime violations affecting more than 269,000 employees nationwide.

With the heightened awareness of wage and hour laws and employee rights, The Dentists Insurance Company (TDIC) advises practice owners to review federal and state laws as well as city ordinances related to minimum wage and fair labor practices. TDIC’s Risk Management Advice Line is available to policyholders to help resolve employee-related issues, which can help prevent a minor situation from becoming a legal issue.

“The potential is very high for practice owners to have a problem with wage and hour issues,” said attorney Ali Oromchian, who specializes in employment law in California. “In fact, doctors can count on being sued at some point as most employees in a dental practice have a high wage and hour IQ — HR laws are their version of the Dental Practice Act.”

According to Oromchian, the most common wage and hour issues are unpaid overtime (especially for hygiene and associate doctors), not providing lunches and breaks, and failing to provide a timely final paycheck.

While wage and hour requirements are set by multiple agencies, one key idea about the various rules is to follow the law that is most generous to the employee. For example, the federal minimum wage is currently \$7.25 per hour, but employers in California, which has a minimum wage of \$9 per hour, must pay the higher amount. Further, employers in San Francisco must pay the higher amount of \$11.05 per hour, which became effective in January and will increase to \$12.25 on May 1. Last November, San Francisco voters passed Proposition J, raising the minimum wage to \$15 per hour by July 2018.

Other cities have higher minimum wages as well, including San Jose, San Diego, Seattle and Chicago. The movement to increase the minimum wage at the city level appears to be gaining momentum as local agencies nationwide discuss the issue.

Twenty-three states have minimum wages higher than what is mandated by federal law, including Alaska, Arizona, Illinois, Minnesota, Nevada and New Jersey. State wage and hour laws are accessible online at dol.gov/dol/location.htm.

Federal and state laws require most employers to pay overtime. The “time-and-a-half” formula is set by the Fair Labor Standards Act (FLSA) and applies to nonexempt employees. FLSA requires 1.5 times an employee’s regular rate of pay for all hours worked over 40 in a week. California and a few other states, including Alaska, have a “daily overtime standard” that entitles nonexempt employees to time-and-a-half pay for every hour more than eight hours in a day. California additionally requires “double-time” for hours worked over 12 in one day. Further information about overtime is online at dol.gov/dol/topic/workhours/overtime.htm.

“Make sure that hygiene and doctor associates are paid overtime if they do not fall under the exemptions set by federal or state law,” said Oromchian. Federal exemptions for employees are specified by the Department of Labor online at dol.gov/elaws/esa/flsa/screen75.asp.

Paid sick leave for employees is an area where laws are changing. One significant change is in California, where employers are required to provide at least three days of sick leave per year effective July 1. Employees who work for 30 days accrue one hour for every 30 hours worked. According to the California Chamber of Commerce, the accrual method works out to a little more than eight days a year for full-time employees, but employers can limit the amount of paid sick leave to three days per year (24 hours).

Paid sick leave can also be mandated at the local level and cities such as San Francisco, San Diego and Jersey City, N.J., have related policies.

“Every locality can have its own rules regarding minimum wage, sick leave and health insurance,” said Oromchian. It pays for practice owners to follow local regulations as these rules can take precedence over state and federal law.

Rest break requirements vary by state, and California and Minnesota require employers to allow staff to take a paid 10-minute break for every four hours worked. If practical, these breaks must be provided in the middle of the work period. Employers do not have to pay for breaks in which an employee is relieved of all duties in order to eat

a meal. Typically, a meal break is “bona fide” if it lasts at least 30 minutes. Not all states require meal breaks, but many employers allow staff members a lunch break. California requires employers to provide a 30-minute meal break once an employee has worked five hours and is scheduled to work more than six hours in that day. Minnesota is among other states requiring meal breaks, and state standards are outlined online at dol.gov/whd/state/meal.htm.

In addition to following wage and hour laws, practice owners can follow these recommendations to help prevent potential problems:

- Document all wage and hour policies in an employee manual and have employees sign off on receipt and understanding of the policies every year as laws change on Jan. 1.
- Maintain accurate time cards for all nonexempt employees. An electronic time clock that has fingerprint image capability is highly recommended.
- When a meal break is required, do not allow employees to work through the break and have the employee “clock out” during the meal.
- Pay nonexempt employees for all hours worked, including time spent in meetings and required training classes.
- If an employee is considered exempt, document this status according to federal law.

TDIC’s Risk Management Advice Line can be reached at 800.733.0634.

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