

Wage & Hour Law: Top 5 Common Mistakes and Class Action Implications

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Wage & Hour Class Actions

- The who, what, where, when, why, and how of a class action
- Maine wage payment laws:
 - Provide for treble damages and attorney fees
 - Have no good faith exception
 - Use a 6-year statute of limitations

Mistake #1 – Not paying all “working time”

- All time spent working/“on the job” must be paid
- Time that might be compensable:
 - Rest breaks/meal breaks (if not fully off duty)
 - Auto-deductions for breaks may carry risk
 - Travel time
 - Pre/post shift activities or duties
 - On-call or waiting time
 - Trainings/meetings
- “Off the clock” work – dangers for a wage and hour claim

Mistake #2 – Not Keeping Accurate Records

- The potential problem with Automatic Deductions
- Documenting corrections and errors
- Records regarding use of vacation and sick time
- Payments terms:
 - Bonuses, commissions, incentive pay and comp time

Mistake #3 – Failing to timely pay wages

- “*At regular intervals not to exceed 16 days*, every employer must pay in full *all wages earned by each employee*, except members of the family of the employer and salaried employees.” 26 M.R.S. § 621-A(1)
 - Applies to regular wages (including overtime), commissions, and bonuses
- Even if employees agree to a non-compliant pay schedule, employers may still be liable
- The employee was paid, albeit late, what is the big deal?

Mistake #4 – Making improper pay deductions

Examples of Permissible Deductions:

- Payment of loans, debts, or advances
- Payment for merchandise purchased from the employer
- Benefits/insurance
- Court-ordered garnishments

Examples of Impermissible Deductions:

- Cash/inventory shortages; dishonored payments
- Damages to the employer's property
- Uniforms
- Personal protective equipment
- Other tools of the trade considered primarily for the benefit or convenience of the employer

- Certain deductions from or reductions to exempt employees' pay

Mistake #5 – Improper exempt classifications

- Exemption categories: Administrative, Executive, Professional, Computer Employee, Outside Sales
- Traps for the Unwary
 - The meaning of “Salary Basis”
 - The meaning of “Primary Duty”
 - The Executive Exemption requires more than supervising employees
 - Learned Professional v. Creative Professional
 - The Administrative Exemption is not a “catch all”
 - Understanding that not all IT employees are exempt
 - When is outside sales really “outside sales”?

Other Areas of Risk:

- **Violation of Maine Earned Paid Leave law**
 - Carryover or payout on termination provisions
 - Base wage calculations
- **Violation of Maine's vacation payout requirement**
- **Paying an improper overtime rate**
- **Misclassification of independent contractors**

Avoiding Class Action Risk:

- Review wage and hour policies for compliance with state and federal law
- Review recordkeeping policies and procedures
- Ensure policies are being correctly implemented by managers, supervisors, and payroll professionals
- Educate and monitor employees for compliance with wage and hour policies
- Stay up to date with changes to the law

QUESTIONS?