

Payroll Potpourri: Compliance Checklist



presented by

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“Wages”

- **“Wages”** means compensation owed by an employer to an employee for labor or services rendered including salaries, commissions, holiday and vacation pay, overtime pay, severance or dismissal pay, bonuses and other similar advantages agreed upon between the employer and the employee, which are earned and due, or provided by the employer to his or her employees in an established policy.

Paid time off

- The ODOL will accept and process accrued leave claims only if:
 - The claims arise by virtue of express language in a written employment contract or policy manual which provides for the payment of cash in lieu of time-off; or
 - The claims arise by virtue of an "established policy" based upon a promise by the employer, either express or implied, and supported by a prior course of conduct by the employer where payment of cash in lieu of time-off was actually made to previous employees.

Bonuses

- Discretionary
 - Employer has the sole discretion, until at or near the end of the period that corresponds to the bonus, to determine whether to pay the bonus;
 - Employer has the sole discretion, until at or near the end of the period that corresponds to the bonus, to determine the amount of the bonus; and
 - Bonus payment is not made according to any prior contract, agreement, or promise causing an employee to expect such payments regularly.
- Exclude from regular rate

Bonuses *(cont'd)*

- Nondiscretionary examples:
 - Bonuses based on a predetermined formula, such as individual or group production bonuses;
 - Bonuses for quality and accuracy of work;
 - Bonuses announced to employees to induce them to work more efficiently;
 - Attendance bonuses; and
 - Safety bonuses (i.e., number of days without safety incidents).
- Must be included within the regular rate...

Bonuses *(cont'd)*

- Apportionment of nondiscretionary bonuses earned for performance over the course of more than one pay period:
 - Divide amount of bonus by number of pay periods in the applicable range;
 - For any weeks where an employee worked in excess of 40 hours per week, add in the additional amount attributable to the bonus;
 - Divide the total weekly compensation by the total number of hours worked = new regular rate;
 - Calculate overtime based on new regular rate;
 - Pay the employee the difference between wages previously paid and wages now owed.

Restrictions on “wages”

- “Any restrictions, criteria or conditions on benefits, including employer discretion and any limits thereon, must be contained in a written policy signed by the employee or they will not be held valid.”

Wage payment

- At least twice each calendar month;
- On regular paydays designated in advance by the employer;
- However, government, school district, exempt employees (etc.) may be paid at least once per month;
- “An interval of not more than eleven (11) days may elapse between the end of the pay period worked and the regular payday designated by the employer. The employer shall be allowed three (3) days after such payday in which to comply with this section.”

Deductions

- Oklahoma requires a payroll deduction agreement for all deductions not authorized by law:
 - Repayment of a loan or advance;
 - Recovery of payroll overpayment;
 - Value of the employer's merchandise or uniforms purchased by the employee;
 - Payment for medical, accident, disability, or retirement benefits, or insurance premiums, not including workers' compensation or unemployment;
 - Contributions to a deferred compensation plan or other investment plan provided by the employer as a benefit to the employee;
 - Breakage or loss of merchandise, inventory shortage, or cash shortage caused by the employee; where the employee was the sole party responsible for the cash or items damaged or lost, at the time the damage or loss occurred.

Wage payment at termination

- Must pay wages in full, less offsets and less any amount over which a **bona fide disagreement** exists, at the next regular designated payday established for the pay period in which the work was performed either through the regular pay channels or by certified mail postmarked within the deadlines herein specified if requested by the employee.
- Failure = shall be additionally liable to the employee for liquidated damages in the amount of two percent (2%) of the unpaid wages for each day upon which such failure shall continue after the day the wages were earned and due if the employer willfully withheld wages over which there was no bona fide disagreement.

Wage payment at termination *(cont'd)*

- Bona fide disagreement:
 - Pay such amount as the employer concedes to be due.
 - Provide to employee, within fifteen (15) days of either receipt of a wage claim form from the Department of Labor or certified mail receipt of written demand from an employee, written explanation of the relevant facts and/or evidence which supports the belief of the employer that the wages in dispute are not owed.

Wage payment upon death

- Other than an employee provided with an option of **beneficiary designation with respect to his wages and benefits** by his employer, all wages earned by an employee, not exceeding Three Thousand Dollars (\$3,000.00), shall, upon the employee's death, become due and payable to the employee's surviving spouse, or if there is no surviving spouse, the dependent children, or their guardians or the conservators of their estates, in equal shares, without the necessity of a probate court action.

Exempt: Salary deductions

- Absent from work for **one or more full days** for personal reasons, other than sickness or disability.
- Absences of **one or more full days** occasioned by sickness or disability (including work-related accidents) if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for loss of salary occasioned by such sickness or disability.
- Not required to pay **any portion** of the employee's salary for full-day absences for which the employee receives compensation under the plan, policy or practice, even if before the employee has qualified under the plan, policy or practice, and after the employee has exhausted the leave allowance thereunder.

Exempt: Salary deductions *(cont'd)*

- Cannot make deductions from pay for absences of an exempt employee occasioned by jury duty, attendance as a witness, or temporary military leave, but can offset any amounts received by an employee as jury fees, witness fees or military pay for a particular week against the salary due for that particular week.

Exempt: Salary deductions *(cont'd)*

- Penalties imposed in good faith for infractions of safety rules of major significance, i.e., those relating to the prevention of serious danger in the workplace or to other employees.
- Unpaid disciplinary suspensions of **one or more full days** imposed in good faith for infractions of workplace conduct rules. Such suspensions must be imposed pursuant to a written policy applicable to all employees.
- Not required to pay the full salary in the initial or terminal week of employment. Rather, an employer may pay a **proportionate part** of an employee's full salary for the time actually worked in the first and last week of employment.

Exempt: Salary Deductions *(cont'd)*

- Not required to pay the full salary for weeks in which an exempt employee takes unpaid leave under the Family and Medical Leave Act. Rather, when an exempt employee takes unpaid leave under the Family and Medical Leave Act, an employer may **pay a proportionate part** of the full salary for time actually worked.

Recoupment of overpaid wages

- Employee has two options (must select in writing):
 - Request a lump sum cash repayment from the employer
 - Enter into a payroll deduction agreement to either deduct the entire lump sum or deduct the amount owed in installments
- A combination of these two is also allowed.
- Installment term cannot “exceed the length of the term in which the erroneous payments were made.” So what if the amount of the overpayment was substantial, and was erroneously paid on only one occasion or over only a short term?

Recoupment of overpaid wages *(cont'd)*

- If employment terminates prior to full recoupment, the remaining balance may be deducted from final wages due – if a payroll deduction agreement is in place.
- The deduction cannot render the employee's hourly rate below applicable minimum wage and/or overtime requirements.

(Mis)classification of employees

- MUST evaluate and reevaluate:
 - Duration of “independent contractor” relationships;
 - Similarity of duties performed by “independent contractor” to those performed by “employees”; and
 - Amount of control exerted over “independent contractor”

White collar exemptions: Salary basis

- Salary thresholds:
 - Prior to July 1, 2024: \$684 per week; \$35,568 annually
 - As of July 1, 2024: \$844 per week, \$43,888 annually (except in Texas)
 - As of January 1, 2025: \$1,128 per week, \$56,656 annually

Questions?

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