
In addition to making wise and profitable business decisions, those in the construction industry should take care to fully comply with the requirements of the Fair Labor Standards Act. The Department of Labor has targeted the construction industry in particular for Fair Labor Standards Act violations related to pay practices and record keeping. Such violations may lead to hefty fines and assessments for general contractors and subcontractors. In order to avoid costly Fair Labor Standards Act violations, construction industry employers should prioritize record keeping and improve pay practices in compliance with Fair Labor Standards Act regulations. Several best practices for contractors and other construction industry employers are suggested below as a start to Fair Labor Standards Act compliance.

The Fair Labor Standards Act (FLSA) is federal legislation that regulates wages and hours for both public and private employees. The FLSA was created in response to the Great Depression to protect employees and to boost the economy by creating better opportunities for wage earners. Minimum wage, the number of hours in a work week, and child labor are all addressed and regulated by the FLSA. The Wage and Hour Division of the Department of Labor is responsible for enforcing the FLSA and its mission is to “…promote and achieve compliance with labor standards to protect and enhance the welfare of the Nation’s workforce.” The Wage and Hour Division is responsible for enforcing the federal minimum wage as mandated by the FLSA, overtime pay of wage earners, and child labor restrictions. Below are federal labor issues often faced by the construction industry and simple but effective ways to best avoid these common issues and comply with FLSA regulations.

Banking Hours

Pursuant to FLSA regulations, employees are to receive a premium payment of time and a half for any hours worked beyond the 40-hour work week. If an employee, for example, earns $10 an hour and works 45 hours in one week, the employee will earn $15 per hour rather than $10 for each of the 5 hours worked beyond the 40 hour per week maximum. Rather than pay overtime, some employers promise their employees that they may work hours in excess of a 40 hour work week to “bank” the additional hours for use as vacation at a later date. An employer’s offer to allow its employees to work overtime and then bank additional hours is in violation of FLSA regulations.

In order to avoid an FLSA violation as a result of banking hours, contractors must keep detailed records of each employee’s timesheets, wages earned, and total overtime hours worked pursuant to FLSA requirements. A contractor’s best defense against a Department of Labor audit is the ability to show that employees have been paid for their time in compliance with federal labor laws. The Wage and Hour Division suggests that employers keep records of how wages are computed and paid for each employee for two years and to have these records ready and available for inspection by the Department of Labor. Contractors must also carefully weigh the costs and benefits of asking an employee to work overtime, given the premium hourly wages that will apply. An employer’s
failure to properly compensate an employee for overtime hours worked could result in thousands of dollars owed to an employee in addition to fines assessed by the Department of Labor.

Pre and Post-Shift Time

Activities undertaken by employees before and after work may be compensable and could increase the number of overtime hours worked for which the employee must be compensated. Employers should be careful to understand exactly how pre and post-shift time activities may affect an employee’s earned wages. When the pre or post-shift activity is “integral and indispensable” to a “principal activity”, it is itself a principal activity and is compensable under the FLSA. The beginning of the first principal activity of the day triggers the “continuous workday rule” which requires an employer to compensate an employee for all activities between the first and last principal activity of the work day.

The key to determining whether a pre or post-shift activity is integral and indispensable to a principal activity and therefore compensable is whether the activity is made necessary by the nature of the work performed by the employees. In determining the wages that must be paid pursuant to the FLSA for an employee’s activities during the work week, an employer must carefully examine whether the activity in question is done in initiation or furtherance of the work day. If so, the employer must compensate the employee for the time spent on those work activities.

Lunch Time

Whether lunch breaks or other shorter breaks are compensable under the FLSA can also have a significant effect on the wages that employers must pay their employees. Typically, shorter rest breaks during the work day that last about 20 minutes or less are compensable under FLSA regulations. Longer breaks for lunch periods however, are not compensable and an employer is not responsible under the FLSA to pay wages to employees for time on lunch breaks. Here, the best practice for employers is to remain mindful of instructions to, and expectations of employees during lunch breaks. If an employer requires employees to continue working through lunch breaks, the lunch breaks become compensable pursuant to the FLSA.

Travel Time

Under the FLSA, travel time may be compensable when the travel is during the work day and is done in furtherance of work activities. Typically, an employee’s daily travel to and from work is not compensable. However, travel time during the work day, from jobsite to jobsite for example, is considered to be work and is compensable. If an employee is sent to work at a different work site for the day, travel time to the alternative work site is compensable, except that the employer may deduct the amount of time it normally takes the employee to commute to the usual worksite each day. When an employee must travel to a work assignment that requires the employee to stay away from home overnight, the time spent in travel by the employee that cuts across the employee’s normal work day is compensable. The employer is not required to compensate an employee for time spent in travel away from home outside of normal working hours as a passenger on a plane, train, automobile, or the like. Employers must keep detailed records of each employee’s travel time and the hours within their typical work days. Requiring
employees to log their travel time and the activities they engaged in
while away from the normal job site could be helpful in assisting
employers with understanding which hours and activities should be
compensated and which are non-compensable. Again, these records
should be maintained in an employer’s records for at least two years.

Conclusion

The FLSA has many regulations that affect an employer’s
responsibilities to its employees. Violations of these federal
regulations could result in an employer owing its employee
thousands of dollars per year. In addition to complying with federal
regulations, employers should also determine whether there are
state regulations that have more stringent requirements than the
FLSA. The key to avoiding violations of both state and federal labor
laws is to keep detailed and extensive records of each employee’s
work hours and work activities and to compensate employees in
accordance with the FLSA and state law requirements.