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quickly turn this assumption into a costly error. In fact, even a competitor can file a complaint with the DOL if they believe an employer is violating employment law.

Nov. 23, 2017

# *Fair* Labor Standards *Act*

[From the SwipeClock blog.](#)

## **Flying Under the Radar is not a Good Compliance Plan**

According to the Department of Labor (DOL), the division recovered more than 266 million in back wages for more than 280,000 workers in 2016.

Although this represents only a partial representation of the total employment law

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Too often, employers believe that if they have a policy banning unauthorized overtime, that they do not have to pay for overtime that has not been previously authorized.

This is incorrect.

The DOL requires that nonexempt employees be paid for all hours worked. This includes all overtime the employee worked, even if the overtime was not previously approved or was specifically denied.

However, employers can discipline or fire employees who work overtime without prior authorization. Overtime hours worked must still be paid.

## **Mis-calculating Regular Rate of Pay for Overtime Purposes**

When paying overtime to employees, employers must first calculate “regular rate of pay.”

Overtime must be paid at a minimum of 1 ½ times the employee’s regular rate of pay. Most employers understand this, but they fail to realize that “regular rate of pay” must calculate the average hourly pay the employee receives and that it includes any bonuses or commission pay for that time period.

This means that, any bonus or commission pursuant to a plan, policy or announcement must be included in the employee’s calculated regular rate of pay. When commissions are paid in periods longer than a weekly or regular pay cycle, then overtime pay must be paid based on the employee’s known regular rate of pay.

However, once commission is earned and paid, then it is added to the employee's

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## Deducting from Employees Pay

Employers cannot make pay deductions from employees paychecks if that brings them below minimum wage.

This includes uniform deductions, shortages, or tools used in the employee's work, damages or theft to the employer's property. Sometimes a payroll specialist fails to make sure that pay deductions don't bring employee's pay below either the Federal or State minimum wage.

A payroll software like SwipeClock's can be set to ensure this mistake doesn't happen.

In addition, **exempt** employees must receive full weeks pay. There are only a few allowed deductions.

The first allowed deduction is if the employee misses 1 or more full days of work for reasons other than disability or sickness.

Secondly, exempt employees who miss time to serve on a jury can have their pay deducted by the amount that they were paid by the courts for their service.

Third, unpaid disciplinary actions of 1 day or more are allowed.

Fourth, in the 1st or last week of employee's employment, they can have their pay deducted to represent the partial work week.

Lastly, employers are allowed to deduct for penalties imposed in good faith for infractions of safety rules of major significance.

Employers who regularly deducts improper deductions from exempt employee's pay may lose the right to classify employees as exempt.

# Failing to Pay for all Time Worked

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Another time that employers must be certain to pay employees is when the employee is on call and is required to remain at the business location or at a location nearby.

This may occur during a power or utility outage or due to other emergency situations. When the employee must remain at a location and is unable to conduct regular personal duties, then the employee must be paid.

Non exempt employees must not be allowed to work off the clock. This includes any volunteer work for the employer, [cleanup after disasters](#), and special projects.

Employees breaks that are small, defined as between 5 and 20 minutes, must also be paid time. Only meal breaks that are 30 minutes or longer can be unpaid breaks.

Training time must be paid. Additionally, employees who work remotely, even without prior permission must be paid for all remote time worked. This includes answering work emails, phone calls, and other types of remote duties.

Continue reading online at [www.cpapracticeadvisor.com/12379109](http://www.cpapracticeadvisor.com/12379109).

## Automatically Deducting for Meal Breaks without Accounting for Interrupted Breaks

Under the FLSA, employers are not required to pay for employee meal breaks if three criteria are met.

First, the meal break must be at least 30 minutes or longer.

Second, the employee must be completely relieved of all duties during the meal period.

Lastly, the employee must be free to leave their duty post. This does not mean that the

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that their break times are accurate.

## Replacing Employees with Unpaid Interns

The DOL aggressively combats the use of unpaid interns who are performing work. There are specific guidelines for having [unpaid interns](#) which include training the intern and the student receiving the benefit of the training.

The intern cannot displace regular employees and the company receives no immediate advantage from the activities of the intern. The intern must not be guaranteed a job after the internship and the intern and the company understand that the student is not entitled to wages at the end of the internship.

## Mis-classifying Employees as Independent Contractors

Some employers mis-classify employees as independent contractors as a means to save on employee expenses and benefits. This is a costly mistake as the Department of Labor spent over 14 million dollars to combat employee mis-classification last year.

Independent Contractors have specific requirements which looks to the degree that the employer and the employee are economically independent and the degree to which the employer exercises control over the company.

## SwipeClock Software Helps Employers Stay Compliant

For the rest of the top 10 FLSA mistakes that employers make check out part two [here](#). Employers that use SwipeClock timekeeping solutions are better able to stay compliant

with federal and state labor laws. Records are automatically kept and maintained.

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