

DOL lawsuit against Arizona contractor alleges ‘long-running violations’

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Valley-Wide Plastering, an Arizona stucco and plastering contractor, is in the midst of a long-running investigation and lawsuit filed in 2018 by the U.S. Department of Labor (DOL). According to the DOL, Valley-Wide “fabricate[d]” and “alter[ed]” time records to make it appear that it had paid overtime” to its piece-rate workers. The agency alleged the record-keeping violations resulted in the company “continu[ing] to deny workers’ wages they have legally earned.”

What are the record keeping requirements under the FLSA?

In the May 2020 issue of *Arizona Employment Law Letter*, I alerted employers to the perils of paying piece rate to employees (see [“Overtime violations assessed against Arizona employer paying piece rate”](#)).

Employers that pay piece-rate compensation must track hours worked by employees and comply with the overtime requirements under the Fair Labor Standards Act (FLSA).

The FLSA also requires employers to maintain accurate records of hours worked for all nonexempt employees regardless of whether they are paid on an hourly, salary, or piece-rate basis. Failure to maintain accurate records could result in liability for claimed overtime violations and penalties for record-keeping violations.

Employers are required to keep certain records for each nonexempt worker. DOL Fact Sheet #21 provides a comprehensive list of the basic records you must maintain. The records may be kept in any form you choose. Generally, you must maintain each employee’s biographical information (e.g., name, date of birth), hours worked each day and each workweek, the basis on which she is paid (e.g., hourly, piece rate), and wages paid.

Under the FLSA, employers must preserve payroll records for at least three years. Arizona employers must

keep the records for a minimum of four years to satisfy specific state requirements.

Why track hours worked when paying employees piece rate?

Under a piece-rate compensation system, employers must track both output (i.e., productivity) and hours worked for each employee. Piece-rate work doesn’t exempt an employee from receiving overtime.

Therefore, piece-rate employees must track hours worked to determine the overtime compensation in each workweek. The overtime rate will fluctuate based on their productivity. For information on how to calculate piece-rate overtime, see the May 2020 article referenced above.

What are the penalties for record-keeping violations?

Penalties for FLSA record-keeping violations may be assessed in addition to back-wage violations and liquidated damages. Civil monetary penalties are normally assessed on a per-employee basis. As a result, they can mount quickly if noncompliance affects a large number of workers. According to the DOL website:

Willful violators may be prosecuted criminally and fined up to \$10,000. A second conviction may result in imprisonment.

Best practices

Regardless of whether you pay your employees on a piece-rate or hourly basis, you should audit your record-keeping practices to ensure compliance. Regularly remind employees to record time in, time out, and lunch breaks accurately.

Train supervisors to review time records when submitted to catch potential issues early on. Explain to supervisors the potential perils of altering an employee’s time card, and track the reason for each modification in writing.

An audit of records may show employees are recording the same time each day and not actually tracking hours worked. The recorded hours may later be determined to be “inaccurately recorded” or “false hours,” as the court noted in its ruling against Valley-Wide.

Evidence showed Valley-Wide may have reduced regular rates to make it appear as if overtime was paid when it wasn't. The practice resulted in the court ordering the company “to reform its recordkeeping practices and to notify its workers of their rights.” Engaging in best practices now will avoid the potential liability Valley-Wide is currently facing.

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