Employment practices: test your knowledge

by Dayln Jones

Ever wondered about your employment practices, if perhaps maybe following the "industry standard" might not be legal? In working with a number of employers that span across a variety of industries, our ESG human resources consultants have heard a few basic questions that are repeated by multiple clients. Test your knowledge and/or your employment practices and see if you’re in line with where the law stands.

Q: Employees who receive tips don’t have to be paid the federal $7.25 per hour minimum wage, right?

A: Yes and No. First of all, to be considered a “tipped employee” in Utah, employees must make at least $30 per month in tips. If that criterion is met, then the base minimum wage for a tipped employee is actually $2.13. However, Utah tipped employees must make a combined amount (tips and base $2.13 wage) of at least the federal minimum wage of $7.25 per hour. If they don’t make that minimum $7.25 per hour with the combined tips and base wage within a given pay period, then the employer must make up the difference.

Q: I heard we can pay teenagers less than the federal $7.25 per hour minimum wage. Is that true?

A: Yes. This is called the training wage. In Utah, minors (employees under 20 years old) may be paid $4.25 per hour as a training wage for the first 90 consecutive calendar days of employment. If your community is saturated with teenagers wanting summer employment, you may likely find some employees willing to work for this rate. Obviously, this won’t make you a very competitive employer and perhaps may deter the more capable workers from applying for the job, but there may be a chance of finding a star employee that just needed to get her foot in the door.

Q: I have a business license but don’t have any employees. I have a few jobs that I’d like to pay my nephew to help me with this summer, but do I have to pay him as an employee if he makes less than $600?

A: Yes and No. The “$600” rule that you’re likely referring to pertains to independent contractors. That particular rule says that if you pay a contractor less than $600, you do not need to file a 1099. Anything more than $600 paid to a contractor, however, requires a 1099 to be filed. Paying your nephew to do some side jobs for you would mean he’d need to become a true independent contractor, i.e., have his own FEIN, obtain his own workers’ compensation coverage (or exemption certificate), be able to take on the risk of profit/loss for his efforts, provide his own tools, market his skills to obtain additional jobs and, of course, be responsible to pay his own tax withholdings, including Social Security and Medicare taxes. Unless your nephew is in the process of doing all of this already to become a business owner, he should
be paid as an employee with you as his employer.

Q: I pay all of my employees a salary, so I don’t need to worry about paying overtime, right?

A: No. Being paid on a salary basis doesn’t automatically qualify you for an overtime exemption under the Federal Labor Standards Act (FLSA), regardless of your fancy job title. To be exempt, you must (a) be paid at least $23,600 per year (or $455 per week), (b) be paid on a salary basis, and (c) perform exempt job duties, as outlined under the FLSA.

Q: Do I have to pay my employees while they eat lunch?

A: No. However, to qualify for a true non-paid lunch break, the company should have a meal-break provision that specifies that employees will have a non-paid meal break of 30 minutes or more where they’ll be completely relieved of their job duties. Completely relieved of job duties means they CANNOT do any form of work for the company while on their lunch break, including answering phones, responding to employee requests, replying to work-related e-mails, etc. An employee who eats her sandwich while checking e-mail will not qualify for a non-paid lunch.

Q: Can we pay our outside door-to-door salesmen as 100 percent commissions?

A: Yes, but with some stipulations. First of all, according to the Department of Labor, “the employee’s primary duty must be making sales or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer.” In addition, commission-only employees who are exempt from overtime are not office employees — i.e., they must be regularly away from the employer’s office or place of business. You can pay office employees on a commission-only basis, but they will not receive the FLSA outside sales exemption from overtime.

Q: Can’t we just pay our outside door-to-door salesmen as independent contractors?

A: No, not unless they are truly independent contractors. Again, independent contractors have their own FEIN, their own workers’ compensation coverage (or exemption certificate), risk profit/loss for their efforts, provide their own tools, market their skills to obtain additional jobs (i.e., they don’t just work for your company), don’t require training specific to your job and are typically paid when the job is completed rather than on a set pay schedule. If you “hired” a worker to do outside sales for your company, you likely hired an employee.

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