Do you have human resources questions? Most employers do, although many business owners don’t realize these questions are actually HR-related. In working with clients of all industries, our ESG human resources consultants hear questions that might be educational (or great reminders) for all employers to read. Test your knowledge and see if you’re in line with where the law stands.

Q: Do I have to provide paid sick or vacation time to my employees?

A: No, not in Utah. There is no Utah labor law that requires employers to provide benefits to its employees. However, employers who do provide PTO and/or other paid leave must establish and abide by their paid leave policies in a non-discriminatory manner. This generally means that employees within a given class (i.e., first-level employees, mid-level employees, managers, etc.) should be offered the same amount of paid leave across the board to avoid discrimination charges. Some employers take a risk by offering varying amounts of PTO to employees within a given work group (oftentimes extra PTO days are offered as a “deal sealer” when recruiting employees); however, this is a gray area. If an employee someday believes he or she is not being treated fairly in regards to PTO amounts and entertains the reason to be due to some protected class characteristic (because I’m Catholic, I’m a woman, I’m an ethnic minority, I’m over 40, etc.), this risk could someday turn into a lawsuit.

Q: My Utah business has employees that occasionally travel into California. I don’t have to abide by California labor code when those employees are actually in California, do I?

A: It’s complicated. Perhaps you are concerned about this because California requires that employers pay overtime for any time worked more than eight hours in a day rather than based on the federal standard of 40 hours in a workweek. And perhaps adding to your concern is the recent California Supreme Court ruling that nonresident employees working for a California-based company would, indeed, have to be paid according to California rules when actually working in California. What complicates this issue even more is the careful wording used by the California Supreme Court after this case ruling, where it stated, “California law might not apply to non-resident employees of out-of-state businesses who enter California temporarily during the course of a work day.” Our interpretation of this (and final answer to the question) is no, you do not currently have to abide by California labor code for your non-resident employees working for your out-of-state business who occasionally enter California for business purposes. However, this answer is subject to change pending the next lawsuit that is bound to occur by somebody also wanting a piece of California’s generous overtime payout.
Q. My business partner and I own two separate companies with different FEINs. They are both wholly owned by the same partnership and we have employees that work for both companies (they bounce back and forth). Are we required to combine their hours in order to calculate overtime?

A. Yes. Whenever there is joint employment (meaning employers share control of the employee, or there is common ownership of the employers, or there is common management of the employers), then hours must be combined in the week to determine overtime (OT).

Q: I have given all of my employees smartphones so I can reach them when they’re out on the worksite. Is this a good or bad idea?

A: Both good and bad. Advancements in technology have allowed employers and employees to become much more productive and efficient than they were even just a few years ago. And, as you’ve experienced, smartphones have greatly enhanced communication when employees are typically out-and-about for their jobs. The tricky side to providing an employee with any smartphone-related device is both calculating work time accurately, as well as having a comfortable level of trust with how the phone will be used.

Anytime employees are actually performing work for the company, they must be paid for time worked. This includes responding to e-mails and answering work-related phone calls on their smartphones. Wage and hour laws clearly state that simply having an electronic device on your person for work purposes does not necessarily mean the person is working, however. To help track hours outside the workplace, the company may want to set up an online time-keeping system and then train employees on how to record time worked, particularly when they are unable to clock-in immediately.

Perhaps allowing employees to keep the smartphone device for personal use should be in conjunction with an electronic device policy that outlines the company’s expectations and appropriateness of its use. If employees violate the phone use policy, they may be disciplined for the misuse and/or have their phone rights amended so as to only have it at the start of the work day and returned at the end. Generally speaking, demonstrating to employees that you trust them enough to keep a smartphone at all times will provide greater morale and higher productivity returns.

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