The SESCO management consultants Report

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SESCO Client Wage-Hour Cases

SESCO was founded in 1945 by an ex-Department of Labor, Wage-Hour Investigator. As such, Dr. J.W.R. Lawson, Sr. was the first such labor and employment law consultant in the country. Our firm continues to be recognized as one of the country's experts in wage and hour accounting (Fair Labor Standards Act of 1938).

You would think that employers would understand and comply with the Fair Labor Standards Act of 1938. However, after all of these years, non-compliance and subsequent financial fines and back wage liability continue to be the **number one** employment liability for employers of all sizes and industries.

You would also think that Certified Public Accountants (CPAs), payroll processing firms as well as general business attorneys would advise their clients to ensure compliance. However, these entities are not well versed in the Fair Labor Standards Act and subsequent compensation and overtime compliance. In fact, the ADPs of the world clearly articulate in their contracts with clients that they will not be responsible for non-compliance. Whatever you send to your payroll processor, that is what they process and do not ask questions in terms of compliance.

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We have several clients who are experiencing wage and hour investigations as well as internal employee complaints. We represent clients which are large and small as well as in various industries and professions across all 50 states.

There is one current case that is an example of the frustration that we live every day in consulting our valued clients. This case involves an internal complaint by an employee. The owner contacted us and we explored his concern and determined that, in fact, he was not compensating a certain position properly and that was not including overtime on top of commissions. By the way, this is the number one violation across all employers and industries.

We determined that his CPA firm, who was processing payroll, was not ensuring compliance. We offered to meet on a conference call with the owner and his CPA who made it clear that he had been in the profession for over 40 years, even with large accounting firms. Of course, we educated the CPA and, in fact, advised the employer to have the CPA meet with the employee and explain the mistake and resolve the issue. The CPA got very upset and hung up the phone. We then received an email from him advising us to revise our staff recommendations regarding the requirement to pay overtime on commissions and other wage and hour recommendations that we provided. He felt that we were not correct in the advice given. I simply emailed the client and recommended that he find a new CPA. Soon thereafter the CPA apologized blaming search engines. I then advised the employer on the calculation to make the employee whole. I then received a call



from the employee who complained stating that his check was incorrect. Again, this CPA made a mistake even after we explained how to make the calculation.

The point is, your payroll processing firm, your CPA who conducts tax audits or processes payroll and, frankly, general counsel business attorneys do not understand and are not informed.

SESCO can audit your payroll very quickly to include:

- Through our Professional Service Agreement at a fixed monthly fee to include an audit as well as ongoing telephone and email support on all human resource and employment matters.
- Remote audit at a flat fee based on the number of positions to be reviewed.

It is worth your peace of mind to ensure that your compensation practices are compliant. Historically, employers were not overwhelmed by compliance as if audited by the Department of Labor their liability typically went back two (2) years from the date of the audit.

Now, the younger generations, as with this client noted above, are more aware of

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WAGE-HOUR CASES

their "rights" through the internet, AI and search engines. They may not be disgruntled but expect compliance. And the trend over the past many years has been that these employees or ex-employees contact attorneys. This is very critical in that if an attorney is contacted employers face the following:

1. Two (2) years back wage liability for non-compliance, typically overtime not paid correctly.
2. Liquidated damages which doubles the fines and back wages in Number 1.
3. The most scary is that the employer is responsible for the attorney fees of which many times we see the attorney fees to be much more expensive than the actual overtime or back wages due.

Further, unlike EEOC charges to include discrimination and harassment and complaints, employees can go directly to an attorney and file a lawsuit versus having to go through the federal government. Also, know that employment liability insurance policies typically do not cover wage and hour violations due to the expense. If your policy does include wage and hour violations, the deductible is probably very high.

The bottom line is that it behooves you to conduct a quick audit. Ensure that you are aware of not only federal Department of Labor, Wage-Hour Regulations but also state Wage-Hour Regulations which most states have enacted and are more strict than federal regulations. Also, ensure that you understand special full as well as partial exemptions from overtime for certain industries and professions to include:

- Motor Carrier Exemption (soft drink, beer and wine, parcel and other distribution where the product and/or truck is moving across state lines)
- Dealership Exemption (automotive, airplane, equipment)
- Retail 7(i) Commission Exemption (applies to any retail business who compensates an employee primarily through a commission)
- Other specific industry exemptions

There is one fact that we are extremely proud of here at SESCO and that is since 1945 we have not had one client found in non-compliance by the Department of Labor or an attorney where we audited and the client heeded our advice.

We look forward to hearing from you to conduct this most important compliance assessment.

Your Employees Are Using AI

Have You Established Workable Ground Rules?

AI may already be part of your workplace, even if the organization has never formally approved its use. A supervisor may be using it to polish a performance review, a recruiter may rely on software that ranks applicants, or an employee may upload a client document to obtain a summary. In each case, the intention may be to save time, but the employer needs to understand what information is being shared and how the resulting work is being used.

Before writing a policy, find out which tools employees use and what they use them for. Include features built into existing software, such as meeting transcription and writing assistance, because employees may not think of those features as separate AI tools. That inventory will help you establish rules that fit the work being performed, including which products are approved and what information employees may enter. Personnel records, medical information, compensation details, and confidential client materials should not be uploaded without specific company approval and a review of the protections involved.

Responsibility for the finished work must remain clear. If a manager uses AI to help draft a disciplinary notice, that manager still needs to confirm that the events occurred, the expectations are accurate, and the language reflects the situation. A document that sounds professional can contain incorrect facts or policy language that the employer has never adopted, which is why reviewing the substance matters just as much as reviewing the wording.

Tools that influence hiring, promotions, or other employment decisions require closer attention to their operation and the laws that apply. Illinois, for example, has enacted provisions addressing discriminatory use of AI in employment and employee notice. Employers should ask vendors how their systems evaluate people, what testing has been performed, and what notice requirements may apply where employees work. A useful policy brings these questions into the open and gives employees someone to consult before using a tool in a way the company has not reviewed.

Special Thanks to New SESCO Clients!

Jones Road and Bridge, Inc.
Abingdon, VA

Wynne Ford-Volvo
Hampton, VA

Tates Auto Body
Traverse City, MI

Connelly Funeral Home of Dundalk PA
Dundalk, MD

West Chevrolet
Alcoa, TN

Royal Oak Nursing Center
Dade City, FL

Top HR Compliance Mistakes Businesses Make

Running a business comes with countless responsibilities, and HR compliance can easily become an afterthought. Unfortunately, even an unintentional HR mistake can lead to employee complaints, costly penalties, legal claims, or unnecessary disruption.

The good news is that many compliance problems are preventable. By establishing consistent HR practices and reviewing policies regularly, businesses can significantly reduce their risk.

1. **Misclassifying Employees -** One of the most common HR mistakes is incorrectly classifying workers as exempt, nonexempt, independent contractors, or employees. Classification can affect overtime eligibility, payroll practices, benefits, and tax obligations.

   Practical step: Review employee classifications regularly and seek professional guidance when a position's duties or compensation changes.

2. **Incomplete Employee Records -** Employers are required to maintain certain employment records, but businesses often fail to keep documentation organized and up to date. Missing personnel records, incomplete employment applications, or inconsistent documentation can create problems during an audit or employee dispute.

   Practical step: Establish a standardized personnel-file checklist and conduct an annual HR records audit.

3. **Inconsistent Policies and Practices -** A handbook is only effective if managers and employees follow it consistently. Applying workplace rules differently from one employee to another can create employee-relations problems and increase legal risk.

   Practical step: Train supervisors on company policies and require HR consultation before taking significant disciplinary or employment actions.

4. **Poor Documentation of Performance Issues -** Employers sometimes delay documenting attendance, performance, or conduct concerns. When documentation finally occurs, it may be incomplete or inconsistent.

   Practical step: Encourage managers to document concerns promptly, objectively, and consistently. Documentation should focus on facts, expectations, and the employee's opportunity to improve.

5. **Failing to Review Required Employment Posters and Notices -** Federal, state, and local employment requirements can change. Businesses that fail to display or provide required notices may face compliance issues.

   Practical step: Assign responsibility for reviewing required workplace notices and update them whenever regulations change.

6. **Ignoring Employee Complaints -** Complaints involving harassment, discrimination, retaliation, safety, pay, or other workplace concerns should never be dismissed as "just an employee problem."

   Practical step: Establish a clear process for reporting concerns and ensure complaints are promptly reviewed, documented, and addressed.

A Simple Compliance Checkup

Businesses can reduce HR risk by conducting a regular compliance review that includes:

- Employee classification and payroll practices
- Personnel and employment records
- Employee handbook policies
- Required workplace notices
- I-9 and employment eligibility documentation
- Wage and hour practices
- Disciplinary and performance documentation
- Leave and accommodation processes



- Manager training
- Employee complaint procedures

The Bottom Line

HR compliance does not have to be complicated, but it does require consistency and attention. A proactive HR review can identify potential problems before they become costly issues.

Don't wait for an employee complaint, audit, or government investigation to uncover a problem. A regular HR compliance checkup can help protect your business, strengthen your management practices, and create a more consistent workplace.

SESCO Client Feedback

"Jamie, it's always a pleasure working with you! You definitely make learning fun." **~ Sara Moss, MS, FT, LFD, Associate Director of Education - National Funeral Directors Association - Brookfield, WI**

"Bill, thank you so much for your kind words you always have - and your support for my work. You keep me motivated and your support means more than you know! Everyone needs a cheerleader on their team like you." **~ Beth D. Rhinehart, CCE, IOM, MBA, President & CEO - Bristol TN/VA Chamber of Commerce - Bristol, TN**

(Feedback concerning Background Checks) *"Tonya, WOW!!!! That was really fast! Thank you! You're the BEST!!!"* **~ Alison Parsell, Chief Operating Officer - Parsell Funeral Homes**

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RETURN SERVICE REQUESTED

SESCO Service Spotlight

Help With the HR Work That Keeps Getting Postponed



A handbook update or a review of pay practices can be difficult to fit into the workday, especially when the same person is also handling hiring, employee questions, and daily operations. If those projects have remained on your list, contact SESCO to discuss the concerns you want to resolve and the services that would fit your organization.

The work may involve updating policies, reviewing job descriptions and classifications, improving performance evaluations, or helping managers address employee issues more consistently. Discussing the priorities first allows you and your consultant to establish an appropriate scope and a practical plan for completing the work. To begin that conversation, contact your SESCO consultant about your year-end HR needs.