



Employment Case Studies: 2024 Wage and Hour Violations

Provided by Employco USA, Inc.

Introduction

The U.S. Department of Labor's (DOL) Wage and Hour Division (WHD) is tasked with enforcing federal minimum wage, overtime pay, recordkeeping and child labor requirements of the Fair Labor Standards Act (FLSA), as well as the Family and Medical Leave Act (FMLA), the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), and a number of other employment standards and worker protections.

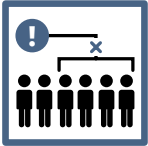
Generally, the WHD will initiate an investigation after a current or former employee files a complaint. A WHD investigator may visit an employer to provide information about the application of and compliance with laws administered by the WHD. An investigator may also visit an organization to conduct interviews, examine time clocks and ensure all employment notifications are available to employees. Additionally, they may review up to three years of wage and hour records to determine whether there are any violations in an employer's payroll practices.

In addition, the WHD selects certain businesses and industries for investigation. For example, the WHD often targets low-wage industries due to high rates of violations, the employment of vulnerable workers and rapid industry changes, such as growth or decline. Occasionally, several organizations in a specific geographic area are examined.

In fiscal year 2023, the WHD collected more than \$212 million in back wages owed to over 163,000 workers, an average of \$1,296 for each employee. The WHD also collected more than \$25 million in civil monetary penalties in fiscal year 2023, an almost 20% increase compared with penalties collected in fiscal year 2022 and an increase of over 100% compared with penalties collected a decade ago in fiscal year 2014.

This report contains case studies published in 2024 that explore the most recent, real-world examples of employers found to be in violation of wage and hour laws. These case studies include snapshots of violations and general guidance on how employers can prevent similar issues. Employers can examine these case studies to learn from the mistakes of others in comparable industries and avoid DOL violations.

Real-world Case Studies



MIAMI—After a [WHD investigation](#), a Florida grocery store enterprise was required to pay over \$900,000 in back wages and damages for misclassifying employees as exempt and failing to pay them required overtime wages. Employers are required to pay workers overtime pay for all hours worked in excess of 40 hours per week unless they qualify for an overtime exemption.

What went wrong:

- WHD investigators found that 75 employees were misclassified as exempt because they did not meet certain criteria to qualify for an overtime exemption, including being paid a salary of at least \$684 per week; conducting managerial duties, such as regularly directing the work of two or more full-time employees; and having the authority to hire and fire employees.
- The employer failed to pay the misclassified employees the required overtime wages for hours worked in excess of 40 per week.



SEATTLE—A holiday wreath producer was ordered to pay \$1.8 million in back wages and damages after a [WHD investigation](#) found that the employer violated migrant and seasonal workers' rights and failed to pay them required overtime wages. Federal law requires employers who hire workers from outside the United States on temporary nonagricultural H-2B visas to ensure safe working conditions, pay the prevailing wage rate (including overtime), and accurately represent the terms and conditions of the job.

What went wrong:

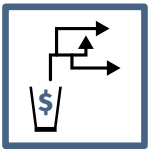
- The employer submitted, under penalty of perjury, fraudulent information about wages, housing and transportation to bring workers to the United States.
- The employer failed to inform workers of employment conditions, furnish wage statements, pay wages on time, ensure safe and healthy housing, and provide temporary workers with safe transportation, all of which are in violation of the MSPA.
- The employer denied hundreds of H-2B workers their required overtime pay for hours worked in excess of 40 in a workweek, in violation of the FLSA.



NORTHERN VIRGINIA—A [WHD investigation](#) found that a restaurant franchise operator violated child labor regulations at four locations and was required to pay over \$100,000 in civil monetary penalties. Under the child labor provisions of the FLSA, 14- and 15-year-old employees may only work during legally permissible hours, and employees under age 18 are prohibited from working certain hazardous jobs.

What went wrong:

- The employer allowed more than a dozen employees under the age of 16 to work outside of the permissible work hours for their age.
- The employer also allowed 14 employees under the age of 18 to operate power-driven meat slicers, which is considered a hazardous occupation under federal child labor laws.



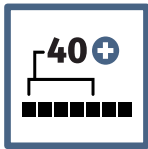
LEXINGTON, SC—A [WHD investigation](#) found that a restaurant operated an invalid tip pool by distributing earned tips to traditionally nontipped employees and was required to pay over \$125,000 in back wages for 23 workers. Under the FLSA, employers are required to pay tipped workers a minimum cash wage of \$2.13 per hour and maintain a record of tips earned and hours worked. Employers are also prohibited from distributing tip-pool money to nontipped workers.

What went wrong:

- The employer failed to pay its tipped employees the required minimum cash wage of \$2.13 and instead used the earned tips to cover most of the servers' gross pay.
- The employer operated an illegal tip pool by distributing earned tips with traditionally nontipped employees, such as dishwashers and cooks.
- The employer failed to maintain accurate records of tips earned and hours worked by employees.

Avoiding Violations

As illustrated by these case studies, it can be difficult to comply with the varied and complex requirements of employment laws. These laws also change frequently, making compliance an ongoing challenge for employers. Therefore, employers should regularly review their wage and hour obligations and ensure their businesses remain compliant. Below is general guidance related to the case studies, categorized by violation type.



Overtime Exemptions

Under the FLSA, employers are required to pay employees overtime—at a rate of 1.5 times their regular rate of pay—for all hours worked in excess of 40 hours in a workweek unless they qualify for an exemption. The most common FLSA exemptions are known as the “white-collar” exemptions, which apply to workers in certain executive, administrative, professional, outside sales and computer-related occupations as well as certain highly compensated employees. In general, employees must be paid on a salary basis at a rate at least equal to the salary threshold to qualify for the exemption and perform the duties that the FLSA assigns to the exemption.

In the Miami, Florida, case study, the grocery store incorrectly classified 75 workers as exempt from overtime pay, which resulted in penalties of over \$900,000 for back wages and liquidated damages. The WHD found that these employees did not earn the minimum salary of \$684 per week or perform the requisite duties (including managing two or more full-time employees or having the ability to hire or terminate employees) to qualify for an exemption.

Misclassification is one of the most common FLSA violations and can result in significant penalties, including unpaid overtime, civil fines and other damages. For example, in fiscal year 2023, [the WHD collected over \\$130 million in back wages](#) owed to more than 100,000 employees for overtime violations. To avoid a potential violation, employers should carefully review federal, state and local exemption requirements and ensure their employees are properly classified. Employers should also ensure that nonexempt employees are appropriately compensated for any overtime.



H-2B Visa Program

The DOL oversees a number of temporary work visa programs, including the H-2B visa program. This program allows employers to hire nonimmigrant workers to perform temporary nonagricultural work on a one-time, seasonal, peak load or intermittent basis. Employers may seek out temporary workers as an effective way to fill labor gaps during peak seasons. To hire employees in accordance with the H-2B visa program, employers must satisfy certain requirements, including but not limited to ensuring safe transportation and working conditions, paying the prevailing wage rate (i.e., the average wage paid to similarly employed workers in a specific occupation in the area of intended employment) and overtime, and accurately representing the terms and conditions of the job.

Noncompliance with the visa program requirements can lead to sizeable penalties, including back pay and civil monetary damages. In the Seattle, Washington, case study, the WHD ordered the employer to pay over \$1.8 million as a result of violating nonimmigrant worker laws. Therefore, employers who take advantage of the H-2B visa program should ensure they comply with all of their obligations under the program, including paying appropriate wages and overtime when due, providing safe working and transportation conditions, furnishing wage statements, and accurately conveying the terms and conditions of the position.



Child Labor

The FLSA provides greater employment protections to minors than adult workers. Under the child labor provisions of the FLSA, employees generally must be at least 14 years old; 14- and 15-year-old employees may not work more than three hours on a school day, 18 hours in a school week, eight hours on a nonschool day or 40 hours in a nonschool week; and may not begin work before 7 a.m. nor end after 7 p.m. (or after 9 p.m. from June 1 through Labor Day). The child labor law provisions also prohibit workers under the age of 18 from performing certain hazardous jobs.

Child labor laws can be complicated, and noncompliance can result in significant penalties. The restaurant franchise in the northern Virginia case study was required to pay over \$100,000 in civil monetary penalties for permitting 14 workers under the age of 18 to operate power-driven meat slicers, which is considered a hazardous occupation under child labor laws, and allowing over a dozen employees under the age of 16 to work outside legally permissible hours.

The DOL has emphasized its focus on investigating potential child labor law violations; in 2023, it launched the National Strategic Enforcement Initiative on Child Labor. In fiscal year 2023, [the WHD identified 955 cases](#) with child labor violations and collected over \$8 million in civil monetary penalties, almost double the child labor civil monetary penalties collected in fiscal year 2022. Given the enhanced scrutiny on child labor, businesses that choose to employ minors should ensure that they understand the requirements applicable to young workers, including whether they are old enough to work or perform certain jobs and which hours they are legally permitted to work.



Tipped Employees

In some businesses, such as restaurants or bars, tips may constitute a significant portion of employee wages. Under the FLSA, employers must pay tipped workers at least \$2.13 per hour in cash and may apply earned tips to satisfy the difference between such cash wage and the federal minimum wage, currently \$7.25 per hour (states and municipalities may have higher minimum wage requirements). Some employers may choose to pay tipped workers from a tip pool, where employees combine their tips and divide them evenly among the tipped staff, including servers, bartenders, food runners or other front-of-house staff. Employers must also keep records of tips earned and hours worked.

Federal law prohibits employers from tipping out managers (including those paid on an hourly basis) or other traditionally nontipped workers, whether directly or through a tip pool. The restaurant employer in the Lexington, South Carolina, case study illegally distributed earned tips to traditionally nontipped employees, such as dishwashers and cooks. The employer also failed to pay its required share of tipped workers' income (i.e., \$2.13 per hour) and instead used tips to cover a portion of the employer's required share. Moreover, the employer failed to keep accurate records of earned tips and hours worked. The restaurant was required to pay over \$125,000 in back wages due to these violations.

Noncompliance with federal tipped worker requirements can result in substantial penalties, including back wages and damages. In fiscal year 2023, [the WHD collected over \\$4 million in back wages](#) owed to more than 6,000 employees in connection with tip-related violations. Employers who choose to rely on earned tips and tip pools to satisfy their minimum wage requirements should carefully review the applicable legal requirements to ensure they are implementing compliant pay practices.

Conclusion

As these wage and hour violation case studies illustrate, employers are subject to a wide range of wage and hour regulations, and noncompliance can result in significant financial penalties. Therefore, it's vital that employers seek professional guidance before making costly employment decisions. Learning from the mistakes made in these case studies may allow employers in similar industries to avoid major violations and prevent DOL audits.

*The information in this article is not intended to be construed as legal or professional advice. Employers seeking legal advice should speak with legal counsel.
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