



Wage and Hour Obligations of Texas Employers

If the Business Employs One Employee, the Federal Fair Labor Standards Act and the Texas Payday Law Apply

Almost every employer in Texas is subject to the wage and hour laws set forth in the federal Fair Labor Standards (FLSA), which dictates minimum wage and overtime provisions for most employees, and the Texas Payday Law (TPL), which requires timely payment of wages in full. These laws also determine for employers the legal deductions that can be taken from employees' wages.

Unlike the statutes designed to protect workers from discriminatory employment practices, these statutes do not require that the business employ a minimum number of employees before they apply. One person who hires one employee must abide by these laws.

Coverage under the FLSA and the TPL does not apply to independent contractors or volunteers. However, employees who "volunteer" to work off the clock are not volunteers under the statutes and must be paid.

While the FLSA dictates federal minimum wage rates, each state also has its own minimum wage guidelines. Texas follows the federal minimum wage rate. To determine if you employ workers in a state that has a minimum wage rate different from the federal rate, go to www.dol.gov/esa/minwage/america.htm.

The following changes to the federal minimum wage rate were approved by Congress and were signed into law in 2007:

- The Federal Minimum Wage starting July 24, 2007, will be \$5.85 per hour.
- The Federal Minimum Wage starting July 24, 2008, will be \$6.55 per hour.
- The Federal Minimum Wage starting July 24, 2009, will be \$7.25 per hour.

The Texas Payday Law Dictates Payment of the Employee's Final Paycheck

When an employee leaves your employment, whether voluntarily or involuntarily, the Texas Payday Law sets forth guidelines that must be followed regarding issuing the employee's last paycheck.

In the case of involuntary termination (discharge, termination, layoff, "mutual agreement," and resignation in lieu of discharge), the employer has six calendar days from the effective date of discharge to give the employee the final paycheck. If the sixth day falls on a day on which the employer is normally closed for business, the employer may wait until the next regular workday to give the employee the final check.

If the employment relationship separation is voluntary (the employee initiates the work separation, and continued work would have been available had the employee not chosen to separate, such as resignation, retirement, walking off the job, and job abandonment), the deadline for the final paycheck falls on the next regularly scheduled payday following the date the employee last worked.

Vacation Pay

Neither the federal laws nor Texas laws require employers to provide employees with vacation leave, whether paid or unpaid. Also, employers are not required to pay terminated employees for any accrued, unused vacation time, unless the written policy states otherwise.

If your company does grant such time off, it is important to provide employees with a written policy regarding this issue. The Texas Payday Law enforces leave pay according to the terms of the written policy. Topics that should be covered in the written policy are: amount accrued each month or year; whether leave can be carried over from year to year, and if so, how much can be carried over; the approval needed to take leave; how much advance notice is needed to take leave; what happens to accrued leave balances when the employee leaves the company, whether voluntarily or involuntarily.

Payroll Deductions

The FLSA dictates what types of deductions employers can make in employees' paychecks. A key issue when making deductions is whether or not the deduction will take the employee below minimum wage. Such practices are not allowed, unless the deduction is allowed under the FLSA. Below is the list of deductions from minimum wage allowed under federal law.

Each of these allowances involves specific rules and guidelines that must be followed, therefore, before making any deductions, contact an attorney or go the link below for more detailed information on this topic:

www.twc.state.tx.us/news/efte/texas_payday_law_basics.html.

Allowable deductions from minimum wage include:

- Meals, Lodging, and Other Facilities
- Tip Credits
- Voluntary Wage Assignments
- Loans and Wage Advances
- Vacation Pay Advances
- Uniforms and Uniform Cleaning Costs
- Employee-owed Payroll Taxes
- Union Dues
- Court Ordered Garnishments or Wage Attachments Required by Statute
- Cash Shortages Due to Misappropriation