Legal Matters®
Employment Law
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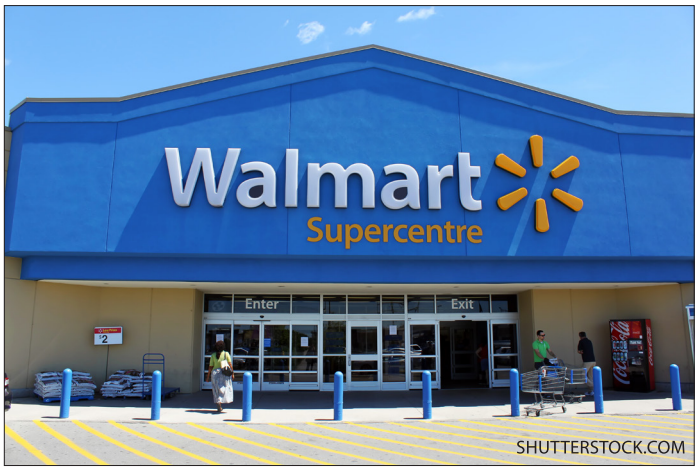
Wage-and-hour rules continue to trip up many businesses

Wal-Mart has more than 2 million employees, so you'd assume the company knows a lot about employment law. But the retailer was recently ordered by the Pennsylvania Supreme Court to pay more than $150 million to tens of thousands of workers for violating the federal wage-and-hour laws.



What did Wal-Mart do wrong? The workers claimed that many of the stores were understaffed, so the managers compensated by making employees work through their rest breaks, take shortened breaks, or work "off the clock" after hours.

The employees brought a class action lawsuit. A shortened work break here or there might not seem like much, but multiply that by many employees and many days, and the numbers add up quickly.

The wage-and-hour laws are very simple in theory, but they can sometimes be complex in practice, especially given the realities of the modern workplace. Although the basic rules have been around since the 1930s, it's surprising how often they continue to be broken.

For example, the overtime laws apply to employees unless they are "exempt." Generally, employees are "exempt" if they earn at least $23,600 a year, are paid a salary rather than an hourly wage, and perform managerial or professional tasks.

But some people you might think are exempt really aren't. For instance, the U.S. Supreme Court recently ruled that many mortgage loan officers are non-exempt. According to the court, mortgage loan officers may be exempt if their primary duty is sales and they do a lot of their work on the road. But if they're in the office most of the time – particularly if they're working in a call center – they may be eligible for overtime.

Another difficult case is truck drivers. You might assume that truck drivers are non-exempt, but the main federal wage

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‘Social anxiety disorder’ may be a protected disability

Christina Jacobs worked at a county courthouse in North Carolina. She suffered from “social anxiety disorder,” which makes it very hard for a person to handle certain situations involving interacting with others.

Christina was apparently doing okay when her job consisted of microfilming and filing. But when she was shifted to a deputy clerk position that required her to interact with the public, she started to have panic attacks.

She told her supervisor about her condition, and said she didn’t feel healthy working at the front counter. She also began treatment and made a formal request for the courthouse to accommodate her disability.

Meanwhile, she took a leave of absence, and was fired.

She sued under the Americans With Disabilities Act. Her employer argued that her social anxiety didn’t count because it wasn’t a real disability, like being in a wheelchair.

But a federal appeals court sided with Christina. It said she had presented enough evidence that her condition interfered with major aspects of her daily life that she should be allowed to go to trial and have a jury decide her case.

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Contractor isn’t liable for bias against subcontractor’s worker

When it comes to employment law, construction sites can be complicated places. That’s because there’s typically a general contractor who’s responsible for the whole project, but there are also a variety of subcontractors that are brought in to work on specific pieces of it. Inevitably, there’s a lot of interaction and coordination among everyone’s employees. And when something goes wrong, it’s not always clear who’s responsible.

Recently at a major public project in Wisconsin, a company called JP Cullen was the general contractor. One of its subcontractors was called EMI, and it hired subcontractors of its own. One of these was called UCI, and it employed a worker named Walter Love.

When Love got into a fight with an employee of a different subcontractor, Cullen banned him from the site. Since UCI had no other projects at the time, he was essentially fired.

Love sued Cullen for race discrimination. But Cullen argued that it couldn’t be held responsible because it wasn’t Love’s employer. And a federal appeals court in Chicago agreed, saying Cullen wasn’t Love’s employer because it didn’t control his work, train him, furnish his equipment, provide wages or benefits, or have any continuing relationship with him once the project was complete.

But it’s worth noting that the outcome could have been different if Cullen had exercised more control over Love’s work. And on many construction projects, that might be the case.

Hospital tech can’t be denied job due to meth conviction

A hospital couldn’t deny a radiology technician a job based solely on the fact that he had a prior drug conviction, the Hawaii Supreme Court recently decided.

The applicant had served time in prison for possession of crystal meth with intent to distribute.

While he was in jail, he earned a college degree. When he got out, he began a program to get certified as a radiology technician, and was placed in a clinical rotation in the imaging program at a hospital.

When the hospital discovered his conviction, it disqualified him from the program. He finished his clinical requirements at a different hospital and – once he graduated – applied for a job at the first hospital. It rejected him again.

He brought a lawsuit. The hospital claimed in court that it had every right to disqualify him based on past misuse of drugs, since radiology techs have access to pharmaceutical substances on carts and in storage areas.

But the court said that under state law, an employer can’t deny someone a job based on a criminal conviction unless the crime has a “rational relationship” to the job duties. In this case, since radiology technicians are responsible for medical imaging and deal with equipment, not drugs, there wasn’t enough of a relationship to justify disqualification.

Wage-and-hour rules continue to trip up businesses

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and hour law has an exception that says many drivers are exempt.

However, Congress passed another law that contains an exception to the exception. Recently, a federal appeals court in Philadelphia decided that a driver of an armored car was entitled to overtime because she fell within the exception to the exception.

Meanwhile, new regulations pending from the Department of Labor are expected to increase the minimum salary for exempt workers and make more types of jobs non-exempt. As a result, many store managers could become eligible for overtime, even though their work involves management.

Sometimes there's a question of whether someone is even an employee. For instance, a number of vocational and technical schools have their students perform work for which the school charges customers. The students get academic credit for the work – but are they also "employees" who need to be paid under the wage-and-hour rules?

Recently a federal court in New York said a group of cosmetology students had to be paid as employees when they provided beauty treatments to paying customers as part of their coursework.

The beauty school argued that the students didn't work in a real salon and weren't replacing actual employees. But the court said the school was making an unfair profit because it was in competition with other, real salons that had to pay minimum wage and overtime.

The court also noted that the students were asked to perform janitorial work in the beauty area, sell beauty products, and perform other duties that didn't relate to their coursework.

There can also be an issue when an employer puts so many restrictions on workers' breaks and rest time that their free time is no longer really "free."

For instance, a hospital in Wisconsin recently had to pay $3.5 million to 1,400 nurses who'd been told to stay within a designated area during their meal breaks so they could hear the PA system. Though they weren't being deprived of their breaks, the court said the hospital violated the law because the nurses weren't actually relieved of all their duties.

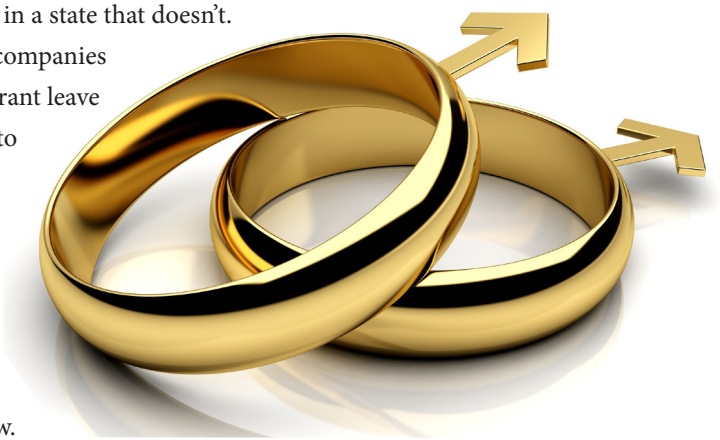
Other employers have run into trouble where they asked workers on break to be available for emergencies, but didn't give them a chance to punch back in before attending to an emergency.

Finally, some employers have tried to avoid the overtime laws by giving workers "comp time off" instead of overtime pay. This is illegal. If employees work more than 40 hours in a week, they must be paid overtime – even if they get an equivalent amount of time off the following week.

Family and Medical Leave law now covers gay marriage

The federal Family and Medical Leave Act allows many employees to take up to 12 weeks of unpaid leave to care for a spouse who has a serious medical condition. Recently, the U.S. Department of Labor approved a new rule saying that this includes spouses in same-sex marriages.

It's important to note that this rule applies even in states that don't recognize same-sex marriage. According to the Department of Labor, a marriage is valid for FMLA purposes as long as it was performed in a state that recognizes same-sex marriage – even if the employee lives or works in a state that doesn't.



Therefore, companies may have to grant leave to employees to take care of a spouse even though the person isn't recognized as a spouse under state law.

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Ban on discussing 'company business' with outsiders was illegal

Not many employers want their workers to criticize the company or gossip about the workplace with friends and acquaintances who don't work there. But can a business actually ban its employees from doing so?

One company that tried recently was found to have gone too far.

A transport agency called Battle's Transportation in Washington, D.C. required all its employees to sign a confidentiality agreement that prohibited them from talking about "company business" with anyone outside the organization. This included "human resources-related" information as well as many other matters.

The night before the employees' collective bargaining agreement was set to expire, a shuttle driver on a VA hospital route told one of the company's regular clients that the next day would be the "last day of his contract." As a result, some clients thought this meant the company would no longer be providing shuttle services.

In response, the company emphasized to its drivers that they were not to discuss any "company business" with outsiders.

But the National Labor Relations Board got involved, and found that the company's policy went too far because it could be understood as prohibiting workers from discussing any terms of their employment with anyone. This would be an illegal restriction on the workers' right to organize and try to improve their job conditions.

Of course, a company is well within its rights to prohibit workers from disclosing trade secrets and other legitimately confidential information. But a broad rule that prohibits any discussion of company business at all is simply too far-reaching to be okay.