

## January 2003 What Would You Do?

*Your Company has a strict policy that forbids employee overtime. Wendy Worksalot tells you that her manager routinely requires non-exempt employees to punch out after 8 hours but remain and complete tasks. The manager justifies this action by telling employees that it is their fault if they didn't get everything done in the 8 hours. What Would You Do?*

Uh-oh! Wendy Worksalot believes that she should be paid (and she is probably right). But, your management is legitimately concerned about employee efficiency and policy compliance. What do you do? First, determine whether your manager has violated wage and hour requirements. Second, evaluate your overtime policy. Finally, consider how to best address employee inefficiency and related performance issues.

- **Have you violated wage and hour requirements?**

Federal wage and hour law requires employers to pay non-exempt employees one and a half times their regular hourly rate for all hours worked over 40 in a workweek. This requirement applies even if the overtime is expressly forbidden. Thus, if Wendy is correct, the manager's actions violate the law. If you ever learn that your company has violated wage and hour laws, even inadvertently, you should immediately correct the mistake. In this situation, you should reimburse Wendy and the other employees for the overtime that they should have been paid. You should also discipline your manager and clarify that she may never refuse to pay employees overtime for hours worked.

- **Do you have a wise overtime policy?**

Many companies have policies designed at controlling employee overtime. The policy generally provides that employees must get manager approval prior to working overtime and that employees may be disciplined, up to termination, for working unapproved overtime.

From both a business and a legal perspective, there are good reasons for this type of policy. It helps you monitor overtime and gives your managers the opportunity to evaluate whether the extra work is worth the extra compensation. It also helps you satisfy requirements regarding documentation of hours worked. The policy, however, can backfire if it is used to deny employees overtime pay for hours worked. Therefore, your policy should never say or be that the company will not pay overtime.

There is also concern about policies that strictly forbid overtime or provide that employees will be disciplined if they work overtime. If an employee must work overtime, these policies might cause an employee (or worse a manager) to misrecord time. For example, in December, an Oregon jury found that Wal-Mart had violated wage and hour laws because a policy that forbid overtime led managers to misrecord employees' time worked. According to the lawsuit, Wal-Mart employees were required to clean up the stores at the end of their shifts. To avoid forbidden overtime, managers would require the workers to clock out before they started cleaning and would delete any overtime hours from their time records.

In light of Wendy's complaint you should review your overtime policy. If the policy forbids overtime or provides that employees who work overtime will be disciplined, you should consider revising it. A better option is a policy that requires manager approval for overtime and that allows for discipline if employees do not obtain approval.

- **What if employee inefficiency led to the overtime?**

Wendy's manager, however, had an explanation for not allowing employees to claim overtime. These employees were slacking off during their shifts and, then, had to stay late to get the job done. Isn't that a good enough reason? The answer is a resounding no. If the employee works, you must pay him, irrespective of the reason for the overtime.

Still, you are not without recourse. If Wendy works a lot because she is inefficient, you have a disciplinary issue. You should instruct the manager to counsel Wendy about her work performance and inform her that, if she does not improve, she might be terminated.

*The What Would You Do? is based on a fictional situation. The response is not intended to provide legal advice but only to provide a general discussion of potential issues. Individual situations may require different action.*

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