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Attempting To Maintain Payroll Flexibility?

Beware of Wage and Hour Pitfalls

As the economy slowly recovers, employers are scouring their options to maintain payroll flexibility. Two common practices—hiring independent contractors instead of employees and maintaining reduced workweek schedules—may inadvertently expose employers to legal liability under the Fair Labor Standards Act (FLSA).

Michigan employers are covered by the FLSA and/or the Michigan Minimum Wage Law (MMWL). Both laws require that employees receive no less than the current minimum wage and not less than one and one-half times their regular rate of pay for all hours worked in excess of 40 hours per workweek (overtime). Exempt executive, administrative, and professional employees who meet certain tests regarding their job duties and are compensated on a salary basis are not subject to minimum wage and overtime requirements.

"I hire workers who sign independent contractor agreements, so they are not employees."

Scheduling flexibility, benefits, and overtime savings are among the advantages of hiring independent contractors. However, characterizing, labeling, or calling someone an independent contractor does not make the worker an independent contractor under the FLSA. And, while there might be a contract that describes the worker as an independent contractor, this is not definitive. Instead, whether an employment relationship exists under the FLSA depends on several factors comprising an "economic reality" test:

- Whether the worker's services are an integral part of the company's business
- The permanency of the relationship
- The amount and extent of the worker's investment in facilities and equipment
- The nature and degree of a company's control over the worker
- Whether the worker has an opportunity for profit or loss
- Whether the worker's services are available to the open market

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"My employees enjoy the flexibility of a reduced workweek."

Employers implementing or maintaining reduced workweek schedules risk jeopardizing salaried employees' exempt status. Salaried employees are entitled to their full salary for any week in which they perform services. Additionally, deductions are allowed for full day absences, but not if the absence is caused by the employer. Thus, deducting one day's pay when a salaried employee is shifted to a four day workweek may be viewed as an improper deduction, making the employer liable for overtime in weeks where the employee works more than 40 hours.



Despite these inherent risks, an employer can legally adopt a reduced workweek under certain circumstances due to economic conditions. It is important, however, to proceed cautiously and avoid frequent or haphazard adjustments to the employee's schedule. If reducing an employee's salary is viewed as an attempt to circumvent the requirement that the employee is to be paid a full weekly salary, then the employee's exempt status may be lost.

Payroll flexibility is a great asset for any company, but without a well-executed, legally sound plan, the cost-savings may be offset by increased payroll liabilities. Call us if you'd like some help.

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If you would like your name added to our mailing list, please call Heather Willis at 313.496.7902.

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