The Ultimate Labor Law Compliance Guide for companies with 100+ employees
A federal agent arrives at your place of business and asks to speak to your employees and see all your payroll records over the last two years. Her credentials prove she is an investigator for the U.S. Department of Labor’s Wage and Hour Division. What do you do?

It can happen. And for many large businesses like yours, it already has.

As your business grows, so do your compliance risks. Staying compliant becomes a major challenge when you have more than 100 or 500 employees and multiple job sites to track. And even small violations (in large numbers) can equal huge fines.

In order to reduce your risk of liability, it is your business’s responsibility to stay up-to-date and in compliance with all federal and state labor laws.

In this eBook, we will cover:

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When you have over 100 employees, staying wage and hour compliant is not simple. For example, confusion over state laws can come about due to the multi-jurisdictional reach of some larger businesses. Which state laws apply if divisions of your company are in multiple states? If your business employs across state lines, you will have overlapping compliance requirements, making things more complicated.

You’ve heard of the Department of Labor (DOL), which was formed in 1913 to foster and develop the welfare of working people, improve working conditions and enhance opportunities for profitable employment. The DOL oversees and enforces 180 federal labor laws that affect the workplace. In addition, some states have their own labor laws which must be adhered to. Difficulties in interpreting these federal laws and widely varying state requirements, as well as the difficulty of accurately tracking the regular and overtime hours of large groups of employees, combine to make compliance a struggle for many large businesses.

Government regulations like the Fair Labor Standards Act (FLSA) require precise record-keeping to track hours to prove compliance. Labor law and employment regulations can change every year at the state and federal level, and the onus is on business owners like yourself to be aware of these changes.

Another labor law that larger businesses need to know is FMLA, the Family and Medical Leave Act. The size of your business affects the status of FMLA coverage and the eligibility of your employees.

It is important to know and follow these laws because of the risk of large back-pay awards and penalties for certain violations. An employee can also bring a civil lawsuit if, for example, they are paid less than the required overtime rate of compensation. If proven correct, they may recover up to three times the amount of overtime pay, along with attorneys’ fees.
Most common wage and hour compliance risks

Here’s a refresher of common compliance risks for any size business that should already be on your radar.

**Timekeeping**
You should review your rounding procedure to be sure it is in compliance with state and federal regulations. For example, California state law says you need not round down an unpaid meal break for a non-exempt employee, as 30 minute meal breaks are required.

**Overtime**
You must abide by the new and ever-changing federal or state overtime rules, depending on which laws offer more protection or greater benefits for employees.

**Misclassification**
You must know the laws pertaining to exempt and non-exempt employee classifications. How employees are classified by the company is coming under scrutiny by FLSA, for example, incorrectly labeling an employee an independent contractor.

**Compensable and non-compensable hours**
You must be up-to-date on what the state and federal guidelines are for determining which hours spent on transportation and travel are to be considered working hours.

**Recordkeeping**
Your records must contain certain specific information—for example, wage information, meals and rest breaks for non-exempt employees. Also, the records must be kept for a certain number of years depending on your state’s laws.
What are considered working hours?

Did you know that certain state regulations count time spent traveling to the airport or to the bus station as work time, while others don’t?

Sometimes it’s the seemingly simple things that create the biggest headache in ensuring wage and hour compliance, like the case of workers commuting between job sites. Working remotely, taking business trips and traveling over time zones can all complicate compliance.

While your specific state may have its own regulations which you should make yourself aware of, the DOL has a few basic guidelines. Here’s some of what the DOL has to say about working hours:

**Waiting time**

Whether waiting time counts as hours worked depends upon the particular circumstances. Generally, the facts may show that the employee was engaged to wait (which is work time) or that the employee was waiting to be engaged (which is not work time). For example, a secretary who reads a book while waiting for dictation or a fireman who plays checkers while waiting for an alarm is still on the clock during such periods of inactivity. These employees have been engaged to wait.

**On-call time**

An employee who is required to remain on call on the employer’s premises is working while on call. An employee who is required to remain on call at home, or who is allowed to leave a message where he/she can be reached, is not working (in most cases) while on call.

**Rest and meal periods**

Rest periods of short duration, usually 20 minutes or less, are common in the construction industry and are customarily paid for as working time. These short periods must be counted as hours worked. Meal periods (typically 30 minutes or more) generally need not be compensated as work time.
TRAVEL TIME

The principles which apply in determining whether time spent in travel is compensable time depends upon the kind of travel involved.

Home-to-work travel
An employee who travels from home before the regular workday and returns home at the end of the workday is engaged in ordinary home to work travel, which is not work time. Special one-day assignment in another city. Let’s say an employee who regularly works at a fixed location is given a special one-day assignment in another city and returns home the same day. The time spent traveling to and returning from the other city is work time, except that the employer may deduct time the employee would normally spend commuting to the regular work site.

Travel that is all in a day’s work
Time spent by an employee in travel as part of their principal activity, such as travel from job site to job site during the workday, is work time and must be counted as hours worked.

Travel away from home
Travel away from home—overnight travel—is clearly work time when it cuts across the employee’s workday. But the time is also counted whether the work is done during normal business hours/days or not. The Division will not consider work time hours that are spent as a passenger on an airplane, train, boat, bus, or automobile.

Time zones
If an employee travels over two or more time zones, the time from the starting point of the trip should be used to determine compensable hours.
Test your compliance knowledge.

1. **True or False?** To determine whether an employee is exempt or non-exempt, look to the job title.

   *Answer: False. Salary and job duties determine whether an employee is exempt or non-exempt, not job titles.*

2. **True or False?** If a salaried employee works over 40 hours a week, overtime pay is not owed.

   *Answer: Not necessarily true. Salaried employees may be owed overtime pay. Some employees are still classified as non-exempt even if they are salaried employees.*

3. **You have a salaried, non-exempt employee who works 40 hours each week and a non-exempt, hourly employee who works 40 hours each week. You must keep records of hours for which employee?**

   *Answer: All non-exempt employees need to have their hours documented, including salaried employees.*

4. **True or False?** An eligible employee may take up to 12 work weeks of leave maximum to care for a sick service member in their family with a serious injury or illness.

   *Answer: False. An eligible employee may take up to 26 work weeks of leave to care for a covered service member in their family with a serious injury or illness.*

5. **Which takes precedence when it comes to following state versus federal labor laws?**

   *Answer: State. But when federal and state laws conflict, you must follow the law that provides the highest standard of protection for your employees.*

To summarize, for large businesses like yours it is especially vital to classify every single employee correctly as exempt or non-exempt to know which laws apply, and to avoid noncompliance and multiple fines.
States generally follow the FLSA when it comes to wage and hour regulations, but each state has its own set of laws that need to be considered.

Large businesses who have more remote workers and independent contractors in states other than where they’re headquartered may need to interpret and adhere to multi-jurisdictional laws.

Above are some examples of the most successful individual government prosecutions of wage and hour violations under the Fair Labor Standards Act (FLSA) since 1985.*

*Most of these cases involved claims from 1,000 or more employees. Data made available from the Department of Labor’s Wage and Hour Division (WHD).
New Laws

Are you keeping up with the latest policies and regulations for your growing business? Here’s a quick look at what’s new.

Supreme Court backs employers on forced arbitration, limiting employee class actions - May 2018
Read more

New PAID (Payroll Audit Independent Determination) pilot program offers self-audit option and reduces penalties for employers - March 2018
Read more

California Supreme Court imposes a three-part test to employers to establish independent contractor status - July 2018
Read more

What are the three factors? The employee must:

1. Be free from control and direction of the employer
2. Perform work that is outside the usual course of the employer’s business
3. Engage in an independently established trade, occupation, or business
Wage and Hour Division audits can be random, but often occur because employees report an alleged violation. Violations can result in back wages as well as multiple fines, depending on the auditor’s assessment. The WHD collected more than $1.2 billion in back wages from employers between 2012 to 2016. The most common violation is misclassifying an employee’s status.

Top 5 most audited industries by average number of prosecutions:
1. Food services and accommodations
2. Healthcare and social assistance
3. Retail
4. Construction
5. Manufacturing

Top 5 industries by average cost of prosecution:
1. Mining
2. Utilities
3. Public administration
4. Information
5. Finance and administration
The bigger the business, the bigger the risk. Accurate records are usually a company's only true defense, and the FLSA requires you to store employee records for a minimum of three years.

You must keep these records on all non-exempt employees in order to comply with federal regulations:

- Employee name, gender and birthdate
- Employee social security number
- Employee address
- Employee occupation
- Time and day when the employee's work week begins
- Number of hours the employee worked each day
- Total hours the employee worked each week
- How the employee was paid (hourly, salary, commission, etc.)
- Employee's regular hourly pay rate
- Total daily/weekly straight time earnings
- Total weekly overtime earnings
- Any additions to or deductions from the employee's wages
- Total wages paid to the employee
- Dates that the given pay period covers
Deal with it right away.
If you get notified of a coming audit, the worst thing you can do is nothing. There’s a chance that you can correct the problem immediately if you examine your practices—and get in a few good payrolls before the auditor appears.

Call the auditor in advance.
Find out who your auditor is and reach out to them. Then you can ask if they’ll push out the date, which will give you more time to amend any issues.

If you have a good defense, use it.
Companies who are able to show a good faith reason that they made a mistake are often able to avoid all fines and penalties. However, “ignorance of the law is never a good faith defense,” warned Murphy.

If the auditor plans to interview workers, reach out to them first.
Get the names, if you can, of any current or former employees your auditor plans to talk to. Then call and reassure them that they are not in trouble and that they only need to be honest (a task best handled by your lawyer).

Don’t wait for the DOL to do an audit.
“Don’t wait for the auditor to send you a letter,” Murphy advised. “Every employer should know if they are complying with wage-hour law or not—and if they’re not, they should fix it.”
Here are a few examples of U.S. businesses that have been audited and fined, and their offenses.

**Industry:** Construction  
**Company:** DCI/Shires Inc.  
**Offense:** The company failed to pay 19 employees the requisite time-and-a half when they worked more than 40 hours in a workweek. Furthermore, DCI/Shires Inc did not maintain and preserve time records for 40-hour weeks.

**Fine:** The DOL ordered the company to pay more than $47,476 in overtime back wages and damages to 19 affected employees.

**Industry:** Construction  
**Company:** Salinas Inc.  
**Offense:** Employees worked as much as 70 hours per week without earning the requisite time-and-a half pay for weekly hours exceeding 40.

**Fine:** The DOL ordered the company to pay $342,856 in back wages and damages for failing to pay overtime to 22 workers over two years.

**Industry:** Oil and gas  
**Company:** Citgo Petroleum Corp.  
**Offense:** The company failed to pay overtime to workers who stayed an additional 15 to 30 minutes following the completion of their shifts to brief incoming workers.

**Fine:** The DOL ordered the company to pay nearly $461,000 in overtime to more than 200 affected employees.

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**Case Studies**

Here are a few examples of U.S. businesses that have been audited and fined, and their offenses.
Lawsuit outcomes

What class actions can cost

If one of your employees pursues legal help, his or her lawyer may try to turn the alleged violation into a class action lawsuit—which could become much more time-consuming and costly for you.

Here’s a look at large businesses that have been faced with sizable wage and hour or status misclassification class actions.
What the experts have to say

“Wage and hour disputes seem to lead the pack relative to employment class-action litigation,” said Charles Krugel, a Chicago attorney. “These types of lawsuits are cash cows for plaintiffs’ attorneys because attorney fees are relatively easier to obtain than in other forms of commercial litigation and because liquidated damages may be included.” Even if the employer’s mistakes are minor, the business may still be liable for such fees and damages, he noted.

The dollar value of workplace class action settlements skyrocketed in 2017, according to the annual Workplace Class Action Litigation Report by law firm Seyfarth Shaw. The top 10 employment-related settlements in 2017 totaled $2.72 billion—up from $1.75 billion in 2016, the report showed. Workplace discrimination, employee benefits and wage and hour claims were among the top actions.

“Wage and hour litigation is the fastest-growing type of class action, according to legal experts.”

The courts and labor

In the coming years, class action lawsuits are apt to be influenced by U.S. Supreme Court rulings, and the impact of the Trump Administration’s labor and employment enforcement policies. In May, a 5 to 4 decision by the Supreme Court’s more conservative judges resulted in a ruling that companies can use arbitration clauses in employment contracts to prohibit workers from banding together to take legal action over workplace issues. Traditionally, statutes passed by Congress have governed arbitration, and there are policy arguments on both sides of the dispute. There is still some uncertainty about how much influence the court’s decision will have.
The point is clear: You can't afford to neglect wage and hour compliance. Relying on paper time cards or another fallible system to maintain accurate records for a large group of employees is obviously risky. Investing in the right technology to handle your large business needs is a change worth looking into.

The good news—maintaining foolproof, verifiable compliance for a large team can be simple, and it is within your reach.

A cloud-based time tracking software would ensure bulletproof accuracy and safe storage of your employee records, so your data is always available for easy retrieval when you need it. The ability to self-audit is also crucial and should be included in your compliance strategy.

Here’s what to look for in an enterprise time management solution, should you decide to go that route:

- Anytime, anywhere access to your labor tracking data
- Automatic data storage in the cloud
- Employee clock in and out app with activity codes
- GPS timestamps and geo-fencing
- Seamless integration with your payroll program
- Ability to apply sets of policies to work shifts
- Easy retrieval of exact records of regular and OT hours worked

Make the move from risky business to easy compliance so your large company can continue to grow, unhindered.
Sources

http://www.brownrudnick.com/practice/wage-hour/
https://www.dol.gov/whd/regs/compliance/whdfs22.htm
https://www.dol.gov/whd/data/datatables.htm
https://blog.capterra.com/how-to-avoid-an-osha-audit-in-your-construction-business/
ExakTime was developed to solve a costly problem: inaccurate and incomplete timecards. Our founders knew they were overpaying for labor and wanted a better way to manage their workforce, so they built it. Now, with close to 20 years experience in workforce management, we've grown to be construction's most used time and attendance system, tracking close to a million workers everyday with cloud-based mobile technology and rugged time-keeping solutions.

Our products are designed to be:

- Easy-to-use
- Efficient
- Secure

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