



## TEN WAGE & HOUR MISTAKES YOU MIGHT BE MAKING

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Attorney Advertising

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1

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## WHAT RULES APPLY

- FEDERAL RULES
- STATE RULES
- UNION CONTRACT
- YOUR POLICIES



3

# TOP TEN

## Wage & Hour Mistakes You Might Be Making

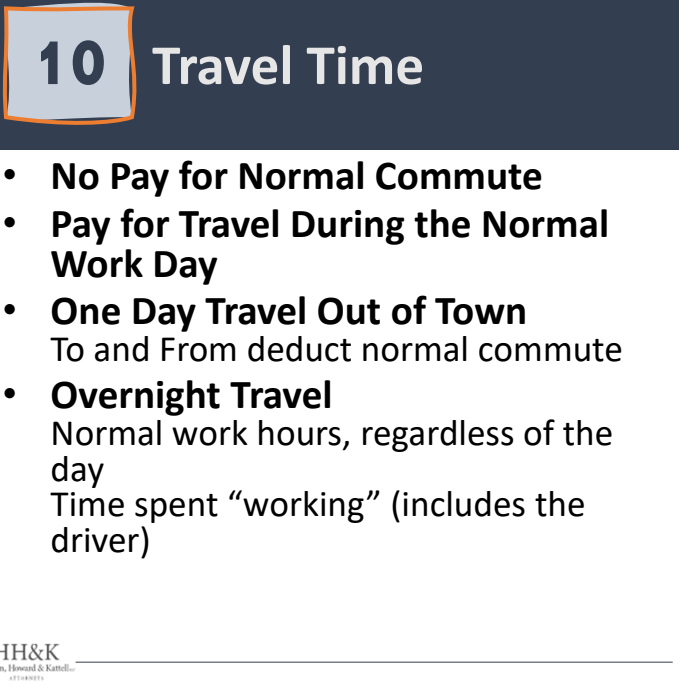
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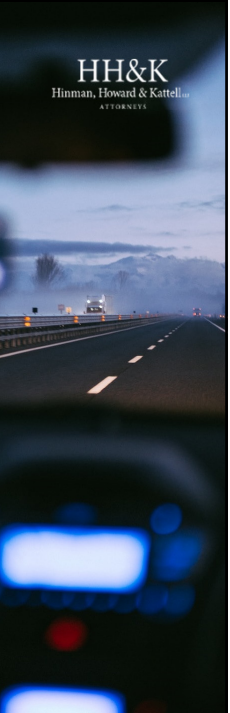
**You Aren't  
Paying for All  
Hours Worked**

5



**10 Travel Time**

- **No Pay for Normal Commute**
- **Pay for Travel During the Normal Work Day**
- **One Day Travel Out of Town**  
To and From deduct normal commute
- **Overnight Travel**  
Normal work hours, regardless of the day  
Time spent "working" (includes the driver)



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## 10 Break Issues

- **Meal Break**  
Usually-Half hour; unpaid **if** it is long enough
- **Other Breaks**  
Not Legally Required  
If less than 21 minutes, they are paid breaks



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## Can Employees Volunteer?

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- **For Profit Employer—NO**
- **Non-Profit Employer-MAYBE**
  - Cannot Require It
  - Cannot Do Their Normal Jobs or the Jobs of Others
  - Outside of Regular Work Hours
  - Typical “Volunteer” Work



8



9

## 4 Hour Rule



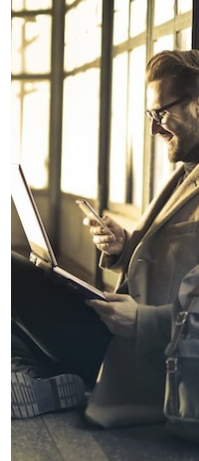
- An employee who by request or permission of the employer reports for work on any day shall be paid for at least four hours, or the number of hours in the regularly scheduled shift, whichever is less, at the basic minimum hourly wage.

10



## Waiting to Work or Working while Waiting

- **Can the Employee Have Fun?**
  - Where Can the Employee Go?
  - What Can the Employee Do?
  - How Fast Must They Respond?

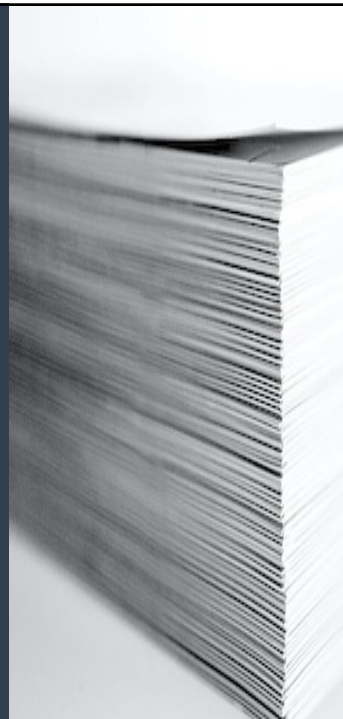


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## You Don't Have The Right Paperwork



12

## Records of All Hours Worked

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- “Contemporaneous, true, and accurate payroll records”

13

## Wage Theft Prevention Forms

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- On Hire
- When Status Changes
- If Pay Decreases

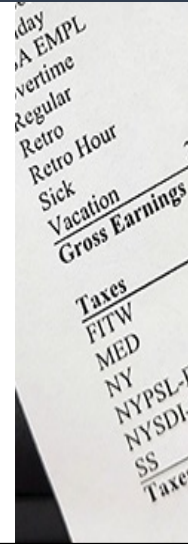
<https://dol.ny.gov/notice-pay-rate>

14

## 8 Pay stubs

- **Hours Worked**
- **Rates of Pay**
  - Regular Time
  - Overtime
  - Shift Differentials
  - Bonuses
- **Time Off Accruals**
- **Must Be Able to Print on Employers Time**

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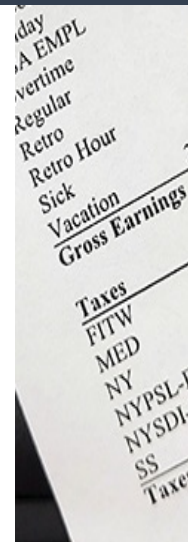


15

## 8 Pay Date, Work Week, PTO

- **Pay Date Must Be in Writing**
- **Work Week Must Be in Writing**
- **Sick/Vacation/Personal Time Must Be in Writing**

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17

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## Labor Law 193

- **No Deductions for**
  - Breakage
  - Failure to Return Items

**Only Deductions Allowed by Statute**

18

## What about Overpayments?

7



- **Must Have an Overpayment Policy before you deduct**
- **Must follow policy and time lines**
- **Limited time frame—pay attention**

19

6

**You Are Not  
Rounding Correctly**



20

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## The Rule

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- Rounding is permissible up to 15 minutes BUT
- Rounding has to be equally advantageous to employer and employee
- Question: Why Round These Days?

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21

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## You Are Not Paying Spread of Hours / Split Shift



22

## Spread of Hours

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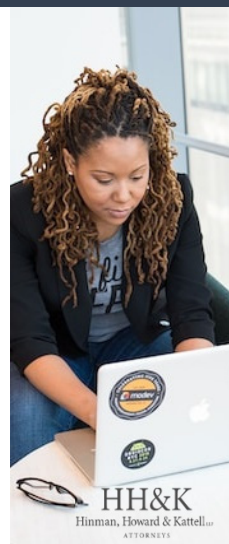


- **Over 10 hours between first minute worked and last minute worked**
- **Employee entitled to 1 hr. at minimum wage UNLESS already covered**
- **NO exception for hospitality**

23

## 5 Split Shift

- **If Hours of Work are split by a break, employee paid 1 additional hour at minimum wage**



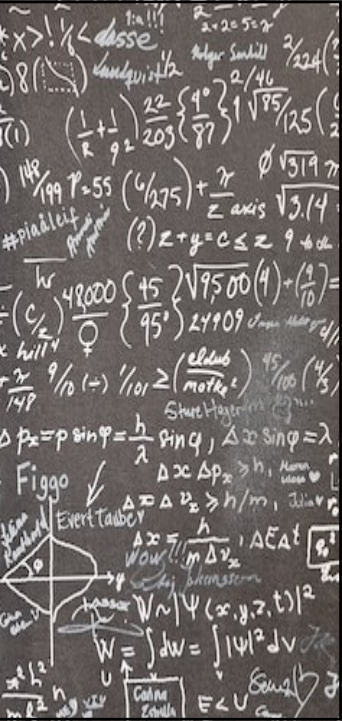
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## You Are Not Paying Overtime Correctly



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## You Aren't Paying on "Regular Rate"

- **Overtime Is Based on the Regular Rate**
  - Includes ALL shift differentials
  - Includes ALL Bonuses



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## **4** You Are Using “Comp Time” for Non-exempt Employees

- **Can flex hours within the work week (NOT pay period)**
- **Cannot allow employee to have time off instead of paying overtime**



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## **3** You Are Not Paying Weekly (and You Should Be)

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### 3 Rules

- **Every Non-Clerical Worker Must Be Paid Weekly**
- **Manual Laborer**
  - Physical Labor more than 25 percent of the time



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29

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**Everyone is a Contractor (Misclassification)**



30

## 2

## What Is an IC?

- Independent contractors are free from:
- Supervision
- Direction and
- Control in the performance of their duties.



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## Considerations:

- Has an established business
- Advertises in the electronic and/or print media
- Buys an ad in the Yellow Pages
- Uses business cards, stationery, and billheads
- Carries insurance
- Keeps a place of business and invests in facilities, equipment, and supplies
- Pays their own expenses
- Assumes risk for profit or loss
- Sets their own schedule
- Sets or negotiates their own pay rate
- Offers services to other businesses (competitive or non-competitive)
- Is free to refuse work offers
- May choose to hire help

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## Penalties

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- **Back Wages**
- **Taxes**
- **Worker's Comp**
- **Penalties**

33

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**Everyone  
is Exempt  
(Misclassification)**



34

## Exempt Employee

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- **Salary Threshold**  
Administrative and Executive:  
\$55,341 annually  
  
Professional, Computer:  
\$684 /wk (\$27.63 hr. for computer)
- **Duties Test**

35

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## Professional

The employee's primary duty consists of the performance of work that:

- Requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study; or
- Is original and creative in a recognized field of artistic endeavor, and produces a result that depends primarily on the invention, imagination, or talent of the employee
- The employee's work:
  - Requires the consistent exercise of discretion and judgment in its performance
  - Is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical or physical work)
  - Is of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time

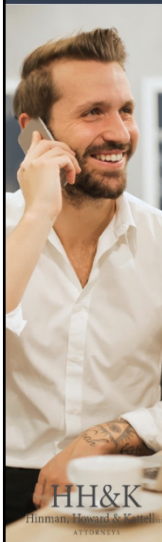
<https://dol.ny.gov/system/files/documents/2021/03/professional-employee-overtime-exemption-frequently-asked-questions.pdf>



36

## Executive

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- The Employee's primary duty consists of the management of the enterprise
- The Employee customarily and regularly directs the work of two or more other employees
- The Employee has the authority to hire or fire other employees OR the Employee's suggestions and recommendations as to the hiring, firing, advancement, promotion, or any other change of status of other employees have particular weight
- The Employee customarily and regularly exercises discretionary powers

37

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## Administrative

- The Employee's primary duty consists of the performance of office or non-manual field work directly related to management policies or general operations
- The Employee customarily and regularly exercises discretion and independent judgment
- The Employee regularly and directly assists an employer, or an employee employed in a bona fide executive or administrative capacity or who performs under general supervision, work along specialized or technical lines requiring special training, experience or knowledge



38

## Outside Sales v. Inside Sales

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- **Inside Sales**-works at the employer's location
- **Outside Sales**-primarily engaged away from the employer's location

<https://www.dol.gov/agencies/whd/fact-sheets/17f-overtime-outside-sales>

39

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## Computer Professionals (Hint: NOT Helpdesk)

- The employee must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties described below;
- The employee's primary duty must consist of:
  - The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
  - The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
  - The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
  - A combination of the aforementioned duties, the performance of which requires the same level of skills.



40

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## WHAT NOW?

- **Changes coming from Department of Labor**
- **Increases coming from NYS**
- **Consider Audits—Use the Changes as the Reason to Make Changes**

41

# TOP TEN

## Wage & Hour Mistakes You Might Be Making

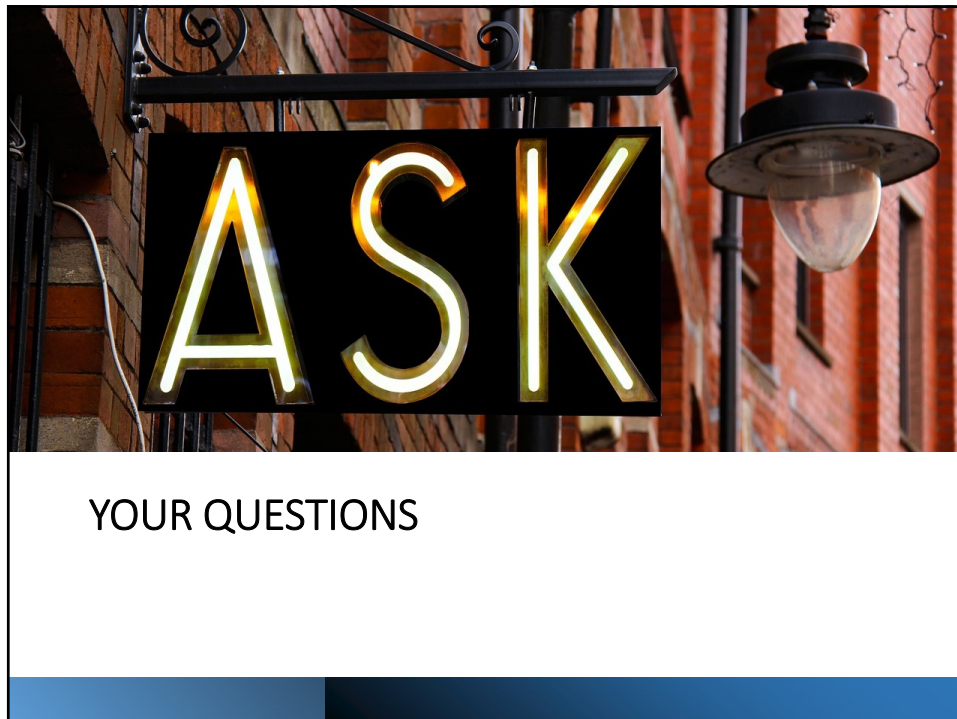
42

## TOP TEN

### Wage & Hour Mistakes You Might Be Making

10. You Aren't Paying for All Hours Worked
9. You Don't Know The Rules for Call-in Pay and On-Call Pay
8. You Don't Have the Right Paperwork
7. You Are Making Illegal Deductions from Employees
6. You Aren't Rounding Correctly
5. You Are Not Paying Spread of Hours/Split Shift
4. You Are Not Calculating Overtime Correctly
3. You Are Not Paying Weekly (and You Should Be)
2. Everyone Is a Contractor (Misclassification)
1. Everyone Is Exempt (Misclassification)

43



44

## UPCOMING LABOR & EMPLOYMENT EVENTS

Oct  
18

**Greater Binghamton Chamber of Commerce  
35th Annual Labor & Employment Law Update**

This Event is often referred to as "crucial" for small businesses and there's a reason the Chamber has been offering it for over 30 years. If you are a small business, this is a must attend event.

Location: Traditions at the Glen, Johnson City, NY | Time: 7:30-11:00am  
For more info/RSVP: [mhoblitz@greaterbinghamtonchamber.com](mailto:mhoblitz@greaterbinghamtonchamber.com) or (607) 772-8860

Nov  
9

**Southern Tier Association of Human Resources (STAHR)  
Topic: Diversity, Equity & Inclusion**

Human Resource is continually evolving, join this upcoming seminar to find out more about how to develop a Diversity, Equity and Inclusion Initiative in the Workplace and the latest changes in HR.

Location: Security Mutual Building, Binghamton, NY | Time: 3:30-6pm  
For more info/RSVP: at <https://stahrshrm.com/calendar.php>

Dec  
7

**HH&K - Lunch with a Lawyer Webinar  
Topic: What to Know as You Go Into the New Year**

December is a hectic time, but smart business owners participate in this annual event to review their policies and prepare for upcoming changes they need to make. Event includes hot topics from salary disclosure laws to changes in non-compete agreements.

Location: Via Zoom | Time: 12-1pm  
For more info/RSVP: email [cgunter@hhk.com](mailto:cgunter@hhk.com)

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