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Wage and Hour Law in the Cannabis Industry – Know the Basics

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Federal courts have ruled that cannabis businesses must comply with federal wage and hour law (despite the fact that they operate in a field that is still considered illegal under federal law). It is vitally important that cannabis employers comply with wage and hour laws. The failure to do so will risk expensive litigation that could result in potentially significant damages awards to employees, along with heavy penalties and fines.

What is Wage and Hour Law?

Wage and hour law is comprised of federal and state (and sometimes even local) statutes and regulations. It is important for employers to understand federal wage and hour law as well as state and local laws that apply to the locations where employees work.

As mentioned, cannabis companies (like most employers) are covered by the federal Fair Labor Standards Act (FLSA), which governs wage and hour standards for most full- and part-time employees. The FLSA establishes minimum wage and overtime pay requirements, recordkeeping obligations, child labor restrictions, and other workplace standards. While the FLSA only applies to employees, the term “employee” has been broadly construed and may cover workers who are deemed by an entity to be independent contractors.

Highlights from the FLSA include:

- Employers must pay nonexempt employees the minimum federal hourly wage or higher (currently \$7.25/hour).
- Employers must pay overtime for all hours worked over 40 hours in a workweek at a rate of 1.5 times the employee’s regular rate of pay.

States also have statutes that contain wage and hour requirements, including minimum wage and overtime pay provisions. For example, in California, the California Labor Code and the Industrial Welfare Commission’s wage orders govern payroll practices for private employers. Importantly, California rules are more beneficial to employees than federal rules and therefore supersede federal regulations. So if a cannabis company employs workers in California, it is essential that it understands and follows California law.

Highlights from California wage and hour law include:

- California’s minimum wage and overtime requirements are more stringent than federal law. The California hourly minimum wage is \$14.00 for employers with 26 employees or more and \$13.00 for employers with 25 employees or less.

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- California employers must pay employees 1.5 times their regular rate of pay for all hours worked more than (a) 8 hours in a single workday, or (b) 40 hours in a workweek.
- Employers must pay employees *double* their regular rate of pay for hours worked in excess of (a) 12 hours in any single workday, or (b) 8 hours on the 7th consecutive day of work in a workweek.
- Unlike federal law, California law requires employers to provide meal periods and rest breaks to their employees. Generally, employers must permit nonexempt employees to take a rest break that occurs in the middle of each work period to the extent practicable, and rest breaks must be at least 10 consecutive minutes long for each 4-hour work period.
- Importantly, for employees working outside (such as in agricultural jobs), employers must provide a “recovery period” or “cool down period” of at least five minutes as needed.
- California law also dictates when employees must be paid regular and overtime wages.
- Also unlike federal and most other states’ laws, California requires (with limited exceptions) that all final wages, including all unused accrued vacation time, are due at the time an employee is terminated.

Wage and Hour Implications Differ Depending on the Worker

Whether—and to what extent—wage and hour laws apply to cannabis workers depends on the workers’ employment status, pay, and job duties.

Most fundamentally, a security guard who is working as (and meets the requirements of) an independent contractor would not be subject to wage and hour laws because he or she is not an employee.

Even for employees, federal and state laws may exempt certain employees from minimum wage, overtime, and other wage and hour rules. Thus, a dispensary manager may be treated differently under the law than an hourly worker, and cannabis executives may be treated differently than field hands.

At the federal level, the FLSA permits exemptions of certain employees from the minimum wage and/or the overtime pay rules if specific requirements are met. For example, employees who are considered highly compensated under the FLSA may be exempt from both minimum wage and overtime rules. Others who may be exempt depending on their specific circumstances include executive employees, business owners, administrative employees, computer professionals, and outside salespersons. Additionally, truck drivers and truck loaders may be exempt under the FLSA’s motor carrier exemption.

At the state level, California provides “white collar” exemptions from overtime pay for employees in certain executive, administrative, or professional positions who earn a high salary. Additionally, California excludes highly skilled computer software designers, engineers, computer systems analysts, and outside salespersons.

Therefore, workers within the cannabis industry must be analyzed on an individualized basis to determine whether federal, state, and local wage and hour laws apply to them, and to what extent. ●

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