



## Top 10 Management Mistakes *(and how to avoid them)*



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### #1. Meal & Rest Break Violations

- 30 min unpaid, duty-free meal break per **5 hr** work period
- 2<sup>nd</sup> meal period of 30+ minutes if work day longer than **10 hrs**
- Employee relieved of **ALL duty**, or pay penalty

## #1. Meal & Rest Break Violations

- Allow employees to leave premises for breaks
- Enforce clocking in / out policies for meal breaks

## #1. Meal & Rest Break Violations

- “Authorize & Permit” 10 min rest break for each 4 hr work period or “major fraction thereof”
- Taken mid 4 hr period, as practicable
- Rest breaks are paid – on the clock
- Rest and meal break penalty = 1 additional hr of pay for each day a meal or rest break not provided

## #2. Failure to Enforce/Pay OT

### CA Overtime Law

#### Pay 1.5x regular rate for:

- All hours worked beyond 8 in single day;
- First 8 hours worked on 7<sup>th</sup> consecutive day

#### Pay 2x regular rate for:

- All hours worked beyond 12 in single day;
- All hours worked beyond 8 on the 7<sup>th</sup> consecutive day

## #2. Failure to Enforce/Pay OT

### Federal:

- Paid on weekly basis
- 1.5 x regular rate for all hours worked over 40, per week
- No “pyramiding” of OT required

## #2. Failure to Enforce/Pay OT

### Penalties

- Waiting time under Labor Code: §203 – up to 30 days wages
- provide itemized statement: §226 – up to \$4,000
- PAGA (Private Attorneys General Act)

## #3. “Off the Clock” Work

### General Rules

- Employers have record keeping obligations / tracking all hours worked
- Record stop/start times, including meal periods
- Pay for all work known (& work employer should have known about)

### #3. “Off the Clock” Work

#### General Rules

- Employers often accused of pressuring employees to work off the clock to avoid OT premiums
- Management often accused of “shaving” time records to reduce costs / increase bonuses
- Honest mistakes may lead to false accusations

### #3. “Off the Clock” Work

- Include clear policies in company handbook
- Require employees to record start and end times of each work period, meal break, and when leaving premises for purposes other than work
- Consider carefully paid vs. unpaid time
- Require all employees to sign or acknowledge time records

### #3. “Off the Clock” Work

- Don't ignore signs employees are working off the clock
- Don't allow pressure to meet payroll, productivity or other goals let off the clock work slide
- Don't alter employee records without employee's signed approval

### #4. Ignoring Complaints

#### Supervisors:

- You represent the company
- Report complaints to HR immediately
- Company on notice when supervisor made aware of complaint

## #4. Ignoring Complaints

### Investigations:

- Prompt & thorough
- Essential to managing workplace and resolving disputes before lawsuits arise
- Employer legally required to investigate
- Properly conducted investigations may provide important defense

## #5. Unfamiliarity w/ Leaves of Absence

- Family & Medical Leave Act (FMLA)
- California Family Rights Act (CFRA)
- Pregnancy Disability Leave (PDL)
- Workers' Compensation Disability Leave
- Military / Military Spouse Leave
- Jury / Witness Leave
- Voting Leave
- Victims of Domestic Violence / Sexual Assault
- Crime Victims' Leave
- School Activities Leave
- Adult Literacy Time Off
- Sick Leave
- Kin Care
- Vested Time Off Requirements
- Reasonable Accommodations for Disabilities Leave

## #5. Unfamiliarity w/ Leaves of Absence

### General Tips:

- Develop, implement and administer compliant policies & procedures
- Audit, monitor, evaluate records, processes, postings
- Administer and retain all records, documentation

## #6. Unfamiliarity w/ Protected Activities

### Protected activities may not be used as grounds for termination or discipline:

- Wage garnishment
- Wage disclosures
- Rehab program participation
- Jury duty
- Political activity
- Military service
- Volunteer emergency services
- Refusing to patronize business
- Refusing to commit illegal act
- Time off to appear at school for child's suspension
- Taking victim of domestic violence time off (care, counseling, legal matters...)
- Taking other protected time off
- Refusing polygraph
- Literacy program enrollment
- Serving as election officer
- Disclosing info re law violations to government or enforcement agencies



## #7. Failure to Document

“If it’s not in writing, it didn’t happen.”

- Document everything, including **verbal warnings**
- May be handwritten, emailed, texted, or...

## #7. Failure to Document

- Note to file
- Letter to employee
- Memo to staff
- Email to management
- Minutes of meetings
- Have employee  
sign acknowledgement

## #8. Improper Documentation

“If it’s not documented well, better that it not be documented at all.”

- Important details:
  - Names of parties involved, including witnesses
  - Dates
  - Times
  - Reactions
  - Accommodations suggested
  - Verbal agreements, promises
  - Etc.

## #9. Email Blunders

Emails “make or break” a case in litigation.

- Don’t think emails are permanently removed when deleted
- Don’t think emails are confidential when only sent to management
- Don’t view emails as a conversation instead of formal letter
- Review carefully before sending

## #9. Email Blunders

- Think before typing
- Imagine email shown to jury
- Unlike conversations, they last forever & may be seen by more than the intended recipient
- Enforce rules re internet & email use
- Emails shouldn't replace written memos or face-to-face meetings
- Remember: shelf life = eternity

## #10. "Sugar-Coating"

### Reviews & Terminations

- Managers tempted to "be nice"
- Sugar-coating backfires if employee angry, tempted to sue
- Positive performance evaluations often used as evidence by plaintiffs

## #10. “Sugar-Coating”

### Reviews & Terminations

- Don't rush the meeting
- Plan conversation
- Briefly explain reasons
- Be honest & concise
- Explain final pay, benefits
- Explain continuing obligation to protect trade secrets

## #10. “Sugar-Coating”

### Reviews & Terminations

- Don't defend, justify, argue
- Don't bad mouth company
- Don't imply unfair decision
- Don't promise rehiring
- If termination is performance-related, don't suggest otherwise

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