

# Steps to Avoiding Litigation and DOL Audits

## What can you do to avoid litigation?

Conduct an internal audit

1

You'll preempt the DOL and discover your misclassifications before it is too late. As part of your audit, you should:

Review job descriptions to determine whether they are accurate, reflect the jobs being performed, and the skills necessary to perform the job.

4

Hang the required posters in the appropriate places at the workplace.

3

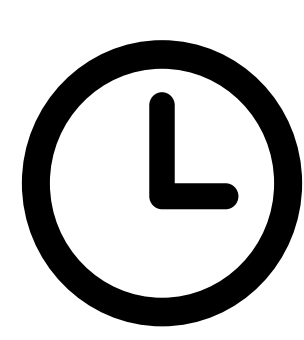
Properly calculate overtime for nonexempt employees. For instance, bonuses and shift premiums should be included in the calculation of the regular rate of pay.

2

Review exempt employees' actual job duties to ensure that they fall within the administrative, executive, professional, computer, or outside sales exemptions.



## In addition to conducting a internal audit, consider the following steps



**Take the time to understand the FLSA and the exemptions. Also, train your manager so they are fluent in the language of the FLSA**



**Determine whether the state's wage and hour laws conflict with federal law. Follow the law that is most beneficial to the employee**

## If you're still confused about choosing a status...

Call DOL's Wage & Hour Division to ask for an opinion. An employer's best defense in a DOL investigation or lawsuit is documentation of DOL's opinion regarding specific classifications.

- Document, document, document. List when an employee's job description was last reviewed to show diligence on your part. On the other hand, putting this in the file and then not revising it shows no diligence. If you only document one thing in the file about exemption status, let it be the reasoning behind the exemption to show the thought into your decision.
- Pay past overtime due to employees you have misclassified. Paying them now will be far less expensive than paying them in a DOL settlement or class action lawsuit.
- In the case of an audit by the DOL, assign a representative of your company, or perhaps legal counsel, to be the main point of communication between the company and the auditors. This person should have a complete understanding of the FLSA.