



DO YOUR PAYROLL PRACTICES ADD UP?

Unbeknownst to you, there could be holes in your payroll and record-keeping practices.

BY MEGAN PIERCE

ARE YOUR PAYROLL PRACTICES COMPLIANT WITH state and federal regulations? You probably think so, but being wrong could have huge financial consequences. A wage-and-hour lawsuit cost one dairy more than \$400,000. "We paid our employees a salary that was 140 percent of minimum wage, offered a good benefit package, including health insurance, retirement, vacation and a host of other fringe benefits," says one California dairy producer who wishes to remain anonymous. What this dairy didn't know, was that it was paying its employees incorrectly — a preventable mistake that came with a hefty price tag.

This dairy is not alone. There were several six-figure settlements against dairies in California in 2009. If you think this is only a California issue, think again. Wage-based lawsuits have also reared their ugly heads in Washington and Oregon.

Every dairy could be at risk for a wage-and-hour lawsuit, says Anthony Raimondo, agriculture labor law attorney with McCormick Barstow in Fresno, Calif.

Here's a look at why you might be a vulnerable target.

Salaries and overtime

Many dairy producers pay a salary and believe that this takes care of overtime. And, you may argue that this is the way

IT'S NOT GOING AWAY

Until recently, wage-and-hour laws weren't enforced very aggressively. But California, like many other states, is broke and needs to collect revenues, says Anthony Raimondo, agriculture labor law attorney with McCormick Barstow in Fresno, Calif.

In 2009, the California Labor Commissioner became increasingly aggressive about pursuing penalties for technical record-keeping and check-stub violations. These penalties can very quickly rise to tens of thousands of dollars.

A growing threat to the entire industry comes in the form of wage-and-hour class-action lawsuits. In these cases, a single employee can sue the dairy on behalf of current and former employees, even if the employees cannot be found. Typically, these cases will seek a large amount of unpaid wages, as well as a wide range of statutory penalties, says Raimondo.

More private attorneys are pursuing these cases against dairies. The attraction, says Raimondo, is if the lawyer can prove unpaid wages or a right to statutory penalties, he can often force the dairy to pay the plaintiff's attorney fees.

And, these types of lawsuits will continue as long as the industry is seen as vulnerable to these types of wage-and-hour claims, says Raimondo.

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A variety of resources are available to help you comply with wage-and-hour laws. A short list of online tools is available at: www.dairyherd.com/management.

you've always done it and it's worked for you. But Raimondo argues that the potential liability that a dairy operation faces, particularly in California, could be catastrophic.

Even a salaried employee (except certain supervisors) is entitled to overtime above his salary, says Raimondo. Under California law, a salary cannot pay for both regular hours and overtime hours. If a dairy employee works more than 10 hours in a day, or on the seventh consecutive day in a single work week, the employee is entitled to overtime wages on top of the daily rate or salary wage. "The single biggest problem for dairies is the failure to pay these overtime wages," says Raimondo. And, many dairies unknowingly incur overtime due to overnight milking shifts.

From what Raimondo sees, 80 to 90 percent of dairies pay overtime incorrectly. "It's almost unheard of to get a wage-and-hour case where the dairy has a strong defense," says Raimondo, who sees two to five labor litigation cases per month.

Overtime hours and rates must be stated on the check stub. If they are not, the dairy could be penalized. The penalties for not having the check stub correct are severe.

Housing

Many dairies continue to offer housing, but too few have written agreements.

Dairies that want to credit the value of housing towards minimum wage must have a written agreement to do so. In the absence of a written agreement, the dairy is liable for minimum-wage claims.

In addition, if housing is used towards minimum wage, you must understand the math involved to compute the value of the house to pay wages and overtime correctly. The value of the house needs to be reflected in the overtime pay.

Written agreements are essential to protect the dairy from liability, as well as provide a tool for eviction if an employee refuses to leave.

Time-keeping practices

There is no required way to keep time records.

But, you must keep time records. Raimondo says that more dairies are keeping time records, but too many still do not.

Under California law, a clock time must be recorded for the following events: started work, stopped for lunch, started after lunch, and time left for the day.

Many dairies use outdated technology to keep their time records, says Raimondo. The old-fashioned punch-style stamp time clocks are messy and prone to mechanical failure.

"I would recommend either a hand-kept time sheet that the employee fills out or to use an electronic time clock that downloads into your computer," says Raimondo. An electronic time clock does not require you to store a ton of paperwork.

Mary Kraft, owner of Quail Ridge and Badger Creek dairies in Fort Morgan, Colo., made the switch to a biometric time clock five years ago. The time clock reads an employee's knuckles to identify them, and the employee must also enter a code to clock in and out. This eliminates employees from punching a friend in because he or she is running late. "The time clock made a big difference for us; it cleaned up our payroll practices," says Kraft.

If you are faced with a lawsuit, and you have no time-keeping records, then you may be at the mercy of what the employee says he or she worked in terms of hours.

Rest and meal breaks

Employees are allowed to skip meal and rest periods, but the dairy must provide notice that the employees are allowed to take them.

Notices should be posted by the time clock in English and in the languages spoken by the employees. A notice should also be included in the employee handbook.

"If there is a posted notice that says the employee has free choice to take rest and meal-periods, the employer is OK as long as the employer does not interfere with the opportunity to take meals and breaks," says Raimondo.

The dairy is not required to provide

an eating area for employees, but Raimondo recommends doing this anyway. Don't let employees keep food in the same refrigerator as the cattle medications. "It looks bad and could cause problems," adds Raimondo.

Tools and equipment

You must provide employees with the necessary tools and equipment to do their jobs.

Employers cannot require employees to purchase tools, goods or services. And, employers (and supervisors) should not sell anything to employees. Employees could claim that they were forced to make the purchases due to the supervisor's or employer's control over their job, which can result in liability to the employer. Uniforms must be supplied by the employer, if required.

"The biggest complaint I receive is that dairies do not provide rubber boots," notes Raimondo. At a minimum, provide milkers with rubber boots and aprons.

"If you require the employee to wear it, provide it," advises Raimondo. It is important to note that loss or damage of such items becomes a disciplinary issue and not a payroll issue.

Vacation

An employer is not required to offer paid vacation. If you do offer paid vacation, it is illegal in California to have a "use-it-or-lose-it" vacation policy. If the employee does not use up all of his or her paid vacation by the end of the year, you can legally pay out the vacation, if you do not want employees to carry over vacation. Within certain limits, California employers can "cap" the maximum vacation accrual to avoid employees stockpiling vacation time.

It is recommended for dairy operations to have a written vacation policy.

There is no insurance to protect your dairy from wage-and-hour lawsuits. The only way to protect your dairy is to comply with the law.

Check regularly to ensure your dairy is compliant with your state and federal regulations.

THE FINAL WORD
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JANUARY 2010 | FINAL WORD
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