



# HRxaminer

*Examining practical HR issues business owners  
and managers encounter every day*

## September 2014 - Wage Theft – A Two-Sided Issue



**Side One - Employee Wage Theft:** When clients call me about their issue with wage theft, the discussion may go like this:

- I've an employee who arrives at work before her starting time, clocks in and starts working without approval. The employee gets paid for more hours than we've scheduled or budgeted her for and it frequently puts her into overtime. – OR –
- My hourly employees clock in at their 8:00 start time, then they go to their locker to unpack their stuff, fix their hair in the restroom, get a cup of coffee and catch up with coworkers, then finally start work around 8:30. By that time we're already behind with patients/clients. – OR –
- I've an employee who doesn't clock out when scheduled at the end of the day. He roams around chatting, looking for minor non-urgent tasks to perform and ends up adding 10-20 minutes of unauthorized time to his daily pay.

Employee wage theft can create real issues for many organizations, may result in unnecessary costs and must be addressed assertively by managers and business owners. I've written clarifying statements for companies' handbooks defining how hourly employees are to work and track their hours. I've also visited organizations and helped them communicate this important work standard. But it is a common struggle.

**Side Two – Employer Wage Theft:** Sometimes when the message is communicated that employees cannot work when they arrive early, or they must punch in and out as scheduled (unless preauthorized), employees get a second implied message.

- “You're allowed to work, just don't punch in.”

While we all know it's against the law for employees to work without pay, remember that this is considered **Wage Theft**. Both state and federal governments are reacting to these issues directly and are aggressively initiating wage audits to make sure employers are following every nuance of the FLSA (Fair Labor Standards Act).

According to a SHRM (Society of Human Resource Management) article “FLSA claims have increased by more than 600 percent over the past 25 years.” And these claims and audits go much deeper than checking on your failing to pay employees for hours worked.

FLSA audits also look at whether you have properly classified your employees as exempt and

non-exempt. So that Receptionist who you classify as exempt because it's easier to pay on a salary basis, must be paid overtime for hours worked over 40.

And if employees have complained that they're not being paid appropriately, beware of taking any related action that may be considered retaliatory – for example, disciplining or terminating a “whistleblower.”

**Solutions:** There are many proactive behaviors organizations can undertake to avoid an FLSA violation and potential audit. For example:

- **Make sure your positions are accurately classified as exempt or non-exempt. When in doubt, pay the person as non-exempt.**
- **Don't classify someone as exempt because it's prestigious or you don't want to require the person to have to track work hours because it's “demeaning.”**
- **Track all non-exempt work hours specifically (start time, beginning and end of meal break, and ending time). Do not guess or round.**
- **Hold non-exempt employees strictly to their work hours. If they are not authorized to independently work extra hours, hold them accountable for any policy violation.**
- **Don't require an employee to work “off-hours” without pay. This includes bringing work or work-related activities home to do on their own time. Work is work and must be paid.**
- **Don't ignore your knowledge that employees are working without getting paid.**

There are many more issues and solutions in this area. The important point is that neither employees or employers are exempt from complying with “wage theft” laws and I hear from more and more organizations that are being audited for the above reasons. Don't be included in this growing list – the results are quite costly.

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## About Arlene Vernon

Arlene has provided HR consulting and management training services to over 300 organizations since starting HRx, Inc. in 1992.

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