

# Employers Have Rights, Too

Understanding Employment Law is Crucial to Good Business

## Marla Merhab Robinson

has devoted her 20 plus-year career to business and corporate law. She specializes in employment law with an emphasis on employers' rights. She graduated in the top 20 percent of her class from Western State University College of Law in Fullerton and has since been a well-regarded voice, leader and teacher in the area of business law in Orange County, where she is a fourth-generation resident. She was voted 2009 "Woman of the Year" by the Orange County Association of Health Underwriters.

**Q: What are the top three issues that challenge employers?**

**A:** First are wage and hour issues, which cover everything from minimum wage to restrictions on the number of hours people can work. The combination of California and federal laws produce a very confusing scheme. Most employers don't intentionally violate them; it's just that they're very hard to navigate. The second concerns disability leave and what "reasonable accommodation" requires, which is not strictly defined. Third is

sexual harassment. This is difficult for employers because it's often only one person's word against another's, and it can involve same-sex harassment, too.

**Q: What are the most common legal issues that a novice business owner doesn't expect with regard to employees?**

**A:** There are many, but probably the biggest is that employers don't know they need an I-9 form, required by the federal government to show an employee's identity and right to work in the United States. Also, employers often are surprised to learn that in California, overtime is required if the employee has worked more than eight hours in a day; most employers think overtime is only due when the workload exceeds 40 hours in a week, which is incorrect.

**Q: What are the most common ways employers make themselves vulnerable to legal problems involving employees?**

**A:** The biggest mistake is the misclassification of an employee as exempt from overtime. Most employers believe that if you pay an employee a salary, you don't have to pay overtime. In a very brief nutshell, there are only

three ways to make an employee exempt: if the employee is a licensed professional, like a doctor, a CPA, or a teacher; if the employee is in a managerial position where 51 or more percent of the time is spent managing people; or if the employee performs an administrative function, such as finance controller. Every one of those exemptions requires that the employee be working independently, using his/her independent judgment. Punishment for improper classification of overtime exemption is not just a slap on the wrist. There are very serious monetary consequences.

**Q: What can employers do to protect themselves?**

**A:** They can train themselves and their supervisors in what the law is, and it is very complex. The posting of state and federal regulations, discipline, meal period requirements, sick leave, holidays, vacation – and vacation is not required by law, by the way – these are the kinds of things employers need to know, and a good employment law attorney will help.



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For example, we provide employment audits, where we review all of a business's employment documents and practices, and we either revise or prepare a handbook for them, and go through each policy with them so they fully understand which policies are required by law and which policies they have by choice.

**Q: If you could change one employment law, what would it be?**

**A:** I'd adopt a law that provided that if you pay an employee a certain set dollar amount, then that employee is not entitled to overtime. Pay would increase across the board to avoid the potential misclassification and huge penalties for the error. As it is, employers are so intimidated by the convoluted and confusing laws regarding overtime exemption, that they're less inclined to give a higher wage.