

Overtime dilemma: Should you continue with planned changes?

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Q *With the halting of the new overtime rules, what should we do if our company has already spoken with the employees who would have been affected by the changes? We have already processed the necessary paperwork for the changes to be entered into our systems. Do we continue with our changes, or should we retract them and leave the employees in their exempt status?*

A Whether you continue with the planned changes or not will likely be a business decision at this stage. With the halting of the new overtime rules, you are not required to convert your exempt employees to hourly or raise their salaries to the new threshold, but there may be business reasons for proceeding anyway. Many employers are sending memos to their employees advising them that the changes are on hold while the courts resolve the legal challenge to the rules.

Q *We work in a medical setting, and we want to require all employees to receive flu shots. Is that legal?*

A Mandatory vaccination laws are complicated and vary state by state. Enforcing a blanket policy that all employees must receive flu shots is most likely going to violate federal law if you have any employees with medical conditions that would make flu shots dangerous. Some states have passed laws preventing employers from forcing vaccinations. To be on the safe side, employers should craft policies that encourage vaccinations but leave the final decision optional.

Q *One of our employees was injured at work, and in accordance with a note from his doctor, we adjusted his duties and lowered his hourly rate. His doctor now says he is fully recovered and can go back to his previous position. However, someone else has already taken over his original duties and has been delivering better performance. Do we have to return the injured employee to his previous position, or can we leave him in the modified position?*

A Federal workers' compensation laws do not require an employer to restore an injured worker to his previous position if it is no longer available. However, you should be cautious of retaliation or discrimination lawsuits if you normally restore workers to their prior position when an injury occurs. If workers' compensation is not applicable here, federal law does not require an employer to reinstate an employee when the position is already filled.

Q *We have an employee who is retiring. The final date of work is at the end of a pay period. Can we deliver her final check and vacation time payout through direct deposit, or do we have to provide her a physical check?*

A The answer varies from state to state. Under Texas law, an employer must pay a retiring employee all due wages on the next scheduled pay date and may do so via direct deposit. In California, however, an employer would need to pay those wages immediately and would need additional authorization from the former employee to pay via direct deposit.

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