Payroll Pitfalls: Don’t Fall Into the Trap for These Five Areas of Payroll

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Housekeeping

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Questions

Today’s topic

Speaker
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Our Focus For Today

- Travel Pay
- Auto Allowances
- Regular Rate of Pay
- Abandoned Wages
- Taxing Prizes, Gifts, Awards and Cell Phones
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As an adjunct faculty member at Brandman University, Ms. Lambert is the creator of and instructor for the *Practical Payroll Online* payroll training program, which is approved by the APA for recertification credits.
Pitfall #1 Travel Pay

When is travel pay hours worked?
The principles which apply in determining whether or not time spent traveling is working time depend upon the kind of travel involved.

These are contained in §785.34 to 785.41 of the FLSA/Portal-to-Portal Act

Applies to nonexempt employees only
An employee who travels from home before his regular workday and returns to his home at the end of the workday is engaged in ordinary work travel which is a normal incident of employment.

This is true whether he works at a fixed location or at different job sites. Normal travel from home to work is not work time.
There may be instances when travel from home to work is work time. For example, if an employee who has gone home after completing his day’s work is called out at night to travel a substantial distance to perform an emergency job for one of his employer’s customers, all time spent on such travel is working time. Section 785.36

And no before you ask we don’t have an definition of “substantial distance” to give.
Where an employee is given prior notice (for example Friday night) that he will be required to work at a customer’s place of business on Saturday it will not be considered as an emergency call outside of his regular working hours.
Problem arises when an employee who regularly works at a fixed location in one city is given a special 1-day work assignment in another city.

Considered hours worked for the travel as the employee is traveling for the employer’s benefit.
Travel spent by an employee in travel as part of his principle activity, such as travel from job site during the workday, must be counted as hours worked.
Travel Away From Home Community

- Travel that keeps an employee away from home overnight is travel away from home.
- Travel away from home is clearly work time when it cuts across the employee’s workday.
- The employee is simply substituting travel for other duties.
Travel pay can be paid at a different rate if that rate is equal to the applicable minimum wage and the employee is clearly informed of the different rate before the travel occurs. That is why the written policy is needed.
The states can vary widely on travel pay requirements. Some may match federal others will be stricter or the state may not even address the issue.
Pitfall #2: Auto Reimbursements

When is reimbursing for business use of a personal vehicle taxable wages?
Handling Auto Allowances

- Handling auto allowances correctly—when is it taxable and when it is not
- Accountable and nonaccountable plans and how they apply to auto allowances
Auto Reimbursements

- Falls under Per Diems or Accountable Plans
- 2016 per diem rate:
  - is 54 cents per mile
- Must have a log
- Must list all requirements
  - Nature of trip
  - Actual Mileage
- Auto allowances fall under same rule
Acme Tile Company has 20 employees on its sales staff. Each sales person must call on 20 to 30 customers per week. The sales staff uses their own personal vehicles to make these calls. Acme pays each sales person a $500 per month auto allowance to cover the costs of using their own vehicles. This payment is made on the 15th of each month and paid through the accounts payable department.
Examples

John Levy

- Logged 1,457.3 miles
- \(1,457.3 \times 0.54 = 786.94\)
- Greater than $500—payroll does nothing

Joe Bumble

- Logged 435 miles
- \(435 \times 0.54 = 234.90\)
- Since $234.90 is less than the monthly payment of $500, the difference will be taxable to the employee
- Therefore, accounts payable must submit $265.10 ($500.00 – $234.90) to the payroll department as taxable income
Example 3: Totally Taxable

- Acme does not require its sales staff to submit logs or any backup for the auto allowance that is paid each month

- That is a nonaccountable plan under IRS rules—no paperwork

- Therefore the entire $500 per each sales staff member is taxable income for that month and must be reported to payroll
Pitfall #3: Regular Rate of Pay

When do I calculate overtime using the employee’s file rate and when do I calculate using another rate?
What is regular rate of pay and how is it calculated

The eight narrowly construed exceptions to inclusion of payments in the regular rate

How to calculate the overtime premium
Definition of Overtime

Overtime pay under the Fair Labor Standards Act is computed at 1 1/2 times the **regular rate of pay** for all hours worked in excess of the 40 hours in a workweek.
Regular Rate of Pay

- It is a calculated rate and not just the file rate
- The employer must consider many different payments in accurately calculating the correct rate of pay for overtime hours.
In addition to the contract or file rate, any additional amounts paid for:

- shift differential,
- non-discretionary bonuses
- promotional bonuses
- cost of living adjustments
Sums paid as gifts, such as payments in the nature of gifts given during holidays or on other special occasions, or as a reward for service. The amounts of the gifts or payments may not be measured by or dependent on hours worked, production or efficiency. (29 CFR 778.212)
2. Does Not Include Nonworking Hours...

Payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause.
Reasonable payments for traveling expenses, or other expenses an employee incurs while furthering the employer’s interests and that are properly reimbursable by the employer (such as laundering uniforms or buying supplies or materials on behalf of the employer); and other similar payments to an employee which are not made as compensation for the employee’s hours of employment.
4. Does Not Include Discretionary Bonuses...

Sums paid in recognition of services performed during a given period if one of the following three conditions is met: both the fact that payment is to be made and the amount of the payment are at the sole discretion of the employer at or near the end of the period and not according to any prior contract, agreement, or promise causing an employee to expect such payments regularly.
The payments are made pursuant to a bona fide profit-sharing plan or trust or bona fide thrift savings plan, which meet additional requirements set forth in the regulations.
6. Does Not Include Health or Life...

Contributions irrevocably made by an employer to a trustee or third person according to a bona fide plan for providing old-age, retirement, life, accident, or health insurance or similar benefits to employees.
Extra compensation paid at a “premium rate” for certain hours worked by an employee because such hours are hours worked in excess of eight in a day, or in excess of 40 hours in the week, or in excess of the employee’s normal working hours or regular working hours, as the case may be. Such extra compensation may be creditable toward overtime compensation. (29 CFR 778.202)
Extra compensation provided by a “premium rate” for work by the employee on Saturdays, Sundays, holidays, or regular days of rest, or on the sixth or seventh day of the workweek. The premium rate may not be less than one and one-half times the rate established in good faith for work performed in non-overtime hours on other days. Such extra compensation may be creditable toward overtime compensation. (29 CFR 778.203, 29 CFR 778.205)
Regular Rate of Pay...

- Is an hourly rate
- Employers not required to pay employees by the hour but may pay by the hour, piece, salary, commission or other type of payment
- Overtime must be computed on an hourly basis
Regular Rate of Pay...

Computation of the hourly “regular rate of pay” is calculated as follows:

_The total remuneration for the employee (except those excluded by law) in a workweek is divided by the total number of hours actually worked in the workweek._
• Employee is paid $8.00 an hour
• Works 46 hours in the workweek
• Receives a $10 commission for the week

Step 1: 46 x $8.00 = $368.00 + $10.00 = $378.00

Step 2: $378.00 / 46 = $8.22

Step 3: $8.22 x .5 = $4.11

Step 4: $4.11 x 6 = $24.66—Overtime Premium!

Step 5: $378.00 + $24.66 = $402.66

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Pitfall #4: Abandoned Wages

What do I do with wages that have not been claimed by employees?
Names and Definitions

- Abandoned wages
- Unclaimed property
- Escheat

- Consists of various types of personal property including intangible. Items such as checking and savings accounts, uncashed checks, insurance refunds and wages are examples of unclaimed property.
More Definitions

**Holder**
- Holders include financial institutions, business corporations and retailers
- The one who is “holding” the money has the liability to report the wages
- As the employer you are the “holder” for the wages

**Dormancy Period**
- Period of inactivity
- Governed by state law

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Each state is involved in unclaimed property as a service to the citizens of its state.

There is one place to look for the property.

State attempts to find the owner.

Money held forever until owner found.

Citizens benefit since earned interest is used to fund public programs.
Each state has its own laws. These include:

- When considered abandoned
- When to report or remit
- Is due diligence required
Finding Those Laws

- Google “abandoned property”
- or Link to states’ websites
  http://www.unclaimed.org/reporting/  part of NAUPA (National Assoc. of Unclaimed Property Administrators)
- Look for “holder reporting”
When Considered Abandoned

- Wages are generally one year after becoming payable
- Example: California, Florida and Louisiana

But the states can be different.
- Example:
  - Kentucky, Maryland and Massachusetts: Three years after becoming payable
  - Delaware: Five Years after becoming payable
When to Report/Remit

Each state again has their own rule:

- Typical: Before Nov 1 of each year for any wages unclaimed as of June 30 that year
- AZ, HI follow this rule ...but...
- CA requires 2 reports—one by Nov 1 and 1 in June
- CT: Before March 31 of each year for wages abandoned as of the preceding Dec 31
- NY: by March 10 for the period of January 1 thru December 31 of the preceding year
State usually has a report you can complete
States allow electronic filing or internet
Some require electronic filing only of reports
Some only diskette or CD
Some want paper with electronic filing
Some still allow paper for small reporting of less than a certain amount of checks
UPExchange is one of the free common software
Another is HRS Pro Software
How to Report

- Some states may have reciprocal agreement filing such as Massachusetts and Wisconsin—usually not to California
- Negative reports may be required—example OH—Yes; MA—No
- Aggregate reporting: may be allowed for small dollar amounts such as under $100 for MA—be careful some states don’t allow—CT
- Due Diligence Reports may have to be filed with the state
Remit can be electronic as well

Some states require EFT if over a certain amount

Example: CA required if over $20K

Example: MA required if over $10K
What is Due Diligence?

- Required to notify owners that their property is in danger of being escheated to the state
- This is known as due diligence
- May not be required by state
- May have threshold before required
- Example WI’s threshold is $50
What Happens If a Company Doesn’t Comply?

- Most every state does have penalties.
- These economic times, states are turning to revenue where they can get it.
- Can range from $100 per report to up to 6 months in prison! Depends on the state.
- In addition the interest on the monies that should have been turned over.
What do I do with everything and anything paid out of accounts payable to an employee?

Pitfall #5: Taxing Prizes, Gifts, Awards and Cell Phones
What to tax and when if you give out employee achievement awards for length of service or safety

How to handle prizes, awards, and gift cards given to employees

The latest on company supplied cell phones—when to tax

The latest on business use of a personal cell phone—what to do with reimbursements
Employee Achievement Awards

- Length of Service and Safety only
- Tangible personal property
- Not disguised compensation
- Meaningful presentation
- No more than specific dollar amounts
  - $1600 qualified plan
  - $400 nonqualified plan

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Will qualify only if either of the following apply:

- The employee receives the award after his or her first 5 years of employment
- The employee did not receive another length-of-service award (other than de minimis) during the same year or in any of the prior 4 years
Qualifies unless one of the following applies:

- Given to a manager, administrator, clerical employee or other professional employee
- During the tax year, more than 10% of your employees have already received a safety achievement award (not counting de minimis)
Bonuses, Prizes and Awards

- Cash is taxable!
- So are all other types of payments
- Trips, tangible personal property or whatever!
- Doesn’t matter what it is-if given as a prize, bonus or award it is taxable income
- Doesn’t matter what you call the “award”
- Can be De Minimis
- Cash or cash equivalent is taxable
  - This includes gift certificates to supermarkets!
- Turkey rule applies
  - Turkey, ham or similar item of nominal value at holiday time.
  - Must be for the actual turkey not to store
Company Supplied Cell Phones

The value of an employer-provided cell phone, provided primarily for noncompensatory business reasons, is excludable from an employee's income as a working condition fringe benefit. Personal use of an employer-provided cell phone, provided primarily for noncompensatory business reasons, is excludable from an employee's income as a *de minimis* fringe benefit.
You provide a cell phone primarily for noncompensatory business purposes if there are substantial business reasons for providing the cell phone. Examples of substantial business reasons include the employer's:
Noncompensatory Business Purposes

- Need to contact the employee at all times for work-related emergencies,
- Requirement that the employee be available to speak with clients at times when the employee is away from the office, and
- Need to speak with clients located in other time zones at times outside the employee's normal workday.
You cannot exclude from an employee's wages the value of a cell phone provided to promote good will of an employee, to attract a prospective employee, or as a means of providing additional compensation to an employee.
If the employer requires the employee to maintain and use their personal cell phones for business purposes and reimburses the employee for the business use of their personal cell phones the following rules apply:
Reimbursement for Personal Cell Phones

Must have substantial business reasons for requiring employee’s use of personal cell phones in connection with employer’s trade or business

Definition same as for business cell phones
Reimbursement for Personal Cell Phones

- Employee must maintain cell phone coverage that is reasonably related to the needs of the employer’s business
- Reimbursement must be reasonably calculated so as to not exceed actual expenses the employee incurs
- Must not be a substitute for a portion of the employee’s wages
Acceptable Reimbursement Arrangement

- Employee’s basic coverage plan charges a flat-rate per month for a certain number of minutes for domestic calls
- Employer reimburses employee for the monthly basic plan expense to enable employee to maintain contact with business clients after hours
Unacceptable Reimbursement Arrangements

- Reimbursement for international or satellite cell phone coverage for technician whose clients are in local geographical area
- Pattern of reimbursement that deviates significantly from a normal cell phone use in the employer’s business
  - Example: employee is reimbursed $100 per quarter in quarters 1-3 of the year but receives a reimbursement of $500 in quarter 4
Accounts Payable Payments

- Payroll must determine if an employee has been paid anything out of accounts payable whether or not it is taxable income
- Outside of straight business expenses reimbursements any payment may have tax ramifications
- Reporting on 1099-MISC does not qualify as taxing and reporting
Are There Any Questions?
How Can Ascentis Help Me?

Process payroll
- Real time flexible processing
- 100% accuracy
- Reduce processing time by up to 30%

Employee portal
- Paycheck data
- Paystubs
- Tax forms
- Paycheck simulation tools
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