

Exploring Wage Hour Laws in Cannabis: Salary Basis Test Explained

Wage-Hour Challenges in the Cannabis Industry: Salary Basis & Pay Rates

As the cannabis industry rapidly evolves, businesses in this sector face a variety of legal and operational challenges. One key area where cannabis employers must be especially diligent is in wage-hour compliance, which includes understanding the Salary Basis Test and calculating the Regular Rate of Pay for employees. With cannabis regulations differing greatly between states, navigating these wage laws can be especially complex for employers in this industry.

This article explores the crucial wage-hour issues that cannabis companies face, providing guidance on the salary basis test and regular rate of pay to ensure compliance and avoid costly legal mistakes.

The Importance of Wage-Hour Compliance in the Cannabis Industry

The cannabis industry is unique in many ways, particularly in how it intersects with employment law. In states where cannabis is legal—whether for medicinal or recreational use—businesses must comply with both federal and state labor laws, which govern wages, hours worked, and employee classifications. Since cannabis is still illegal at the federal level, employers face complex legal challenges when it comes to wage-hour issues.

As a cannabis business grows, it's essential to correctly classify workers, calculate pay, and comply with wage and hour laws such as the Fair Labor Standards Act (FLSA). Misclassification of employees can lead to serious consequences, including penalties, back wages, and even lawsuits.

What is the Salary Basis Test?

The Salary Basis Test is a critical factor in determining whether an employee is classified as exempt or non-exempt under the FLSA. In simple terms, employees who meet the salary basis test are considered exempt from overtime pay, while those who don't meet the test are entitled to overtime pay for any hours worked beyond 40 in a workweek.

Under the salary basis test, employees must meet two criteria:

They are paid on a salary basis (not hourly).

Their salary meets the minimum threshold established by the FLSA

For cannabis employers, the salary basis test plays a key role in determining whether certain employees—such as managers or supervisors in cultivation or dispensary operations—are exempt from

overtime laws. Misclassifying employees as exempt when they don't meet the salary basis test can lead to back pay liabilities and penalties.

Understanding the Regular Rate of Pay

The **Regular Rate of Pay** is another critical aspect of wage-hour compliance, especially for **non-exempt employees**. This rate is used to calculate overtime pay, which is typically **1.5 times the regular rate** for any hours worked over 40 in a workweek.

The regular rate is not always as straightforward as simply dividing an employee's salary by the number of hours they work. In some cases, it can involve additional considerations, such as:

Bonuses: If an employee receives a performance-based bonus, this must be included in the regular rate of pay calculation.

Commission-based pay: Many positions within the cannabis industry (especially in dispensaries) are commission-based, and the commission earnings must be factored into the regular rate.

Non-cash benefits: Some employers offer benefits like housing, meals, or transportation, which can also affect the regular rate of pay.

For cannabis businesses, accurately calculating the regular rate of pay for non-exempt employees—particularly those working in dispensaries or retail—is crucial to ensuring compliance and preventing wage disputes.

Common Wage-Hour Issues in the Cannabis Industry

The cannabis industry faces unique challenges when it comes to wage-hour issues. While businesses operating in other industries can face similar challenges, cannabis employers must navigate additional complexities. Below are some of the most common wage-hour challenges cannabis businesses face:

Employee Misclassification

One of the most common wage-hour issues in the cannabis industry is **employee misclassification**. Cannabis employers may classify certain workers as exempt from overtime pay when they don't meet the salary basis test or other criteria for exemption. Misclassifying employees can lead to wage disputes, penalties, and lawsuits.

For example, many employees in management positions within cannabis cultivation centers or dispensaries might be misclassified as exempt from overtime. If they don't meet the salary threshold or their job duties don't align with the requirements for an exempt position, employers could be required to pay them overtime wages.

State-Specific Regulations

Because cannabis is still illegal federally, many states have implemented their own labor laws that can complicate wage-hour compliance. States like California and Colorado have unique requirements regarding overtime pay, minimum wage, and employee classification that cannabis employers must adhere to.

For instance, while federal law mandates that salaried employees must earn a minimum of \$684 per week to be considered exempt, **some states have set higher salary thresholds** for certain exempt employees.

California's salary basis threshold, for example, is higher than the federal standard. Cannabis employers must be careful to comply with both federal and state regulations.

Overtime Pay Calculations

Many cannabis employers—especially those operating in dispensaries and cultivation facilities—face challenges calculating overtime pay. The FLSA requires that non-exempt employees be paid 1.5 times their regular rate for hours worked over 40 in a workweek, but accurately calculating that rate can become complicated.

Employees who work a combination of regular hourly and commission-based jobs or receive bonuses and other non-cash compensation might have more complex pay structures. Failing to properly factor these into the regular rate of pay can lead to incorrect overtime calculations, which could result in legal penalties.

Impact of Tips and Commissions

Many cannabis employees, especially those working in retail or dispensaries, rely on tips and commissions as part of their overall compensation. While tips generally don't need to be included in the regular rate of pay for non-exempt employees, **commissions** often must be included.

This can be particularly challenging for employers in states that have specific **minimum wage** laws for tipped employees. If a dispensary employee's commission-based earnings make up a large portion of their compensation, it's important for cannabis employers to ensure they're calculating their regular rate of pay correctly.

Best Practices for Cannabis Employers

To ensure compliance with wage-hour laws, cannabis employers should:

Review Employee Classifications Regularly: Regularly assess whether your employees meet the criteria for exempt or non-exempt status under both state and federal laws.

Implement Clear Pay Policies: Establish clear guidelines for overtime, commissions, and bonuses to avoid confusion or discrepancies.

Consult with Labor Experts: Given the complexity of wage-hour issues, it's important to seek legal advice or consult with labor experts to ensure your business is fully compliant with wage and hour laws.

Maintain Accurate Records: Keep detailed records of hours worked, pay rates, and employee classifications to avoid disputes and ensure accurate overtime pay.

Wage-hour compliance is an ongoing challenge for cannabis employers, especially as the industry navigates both evolving state laws and federal regulations. Understanding the Salary Basis Test and how to calculate the Regular Rate of Pay is essential for businesses to avoid costly legal issues.

By implementing clear policies, conducting regular audits, and staying informed about local and federal regulations, cannabis employers can better navigate the complexities of wage-hour laws and ensure they remain compliant, fair, and legally secure.

Email: info@cannabisriskmanager.com | Phone: +415-226-4060

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