

# Managing Employee Time & Pay: Seven Lies Employees Tell You - And the Truths You Need to Protect Your Rights

Presented by Alison Green, author of Ask a Manager blog



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# About Alison

- Author of Ask a Manager
- Weekly columnist for *U.S. News & World Report*
- Author of *Managing to Change the World: The Nonprofit Manager's Guide to Getting Results*
- Former Chief of Staff for a successful nonprofit organization

# Learning Objectives

- The seven most common misconceptions employees have about time and pay
- Find out your legal obligations - and rights - surrounding these issues
- Balancing compliance with fairness

“You have to give me breaks.”



# Break Rules and Laws

- The federal Fair Labor Standards Act doesn't require you to give breaks
- FLSA requires you to pay for breaks that last less than 20 minutes
- Breaks that last longer than 20 minutes are unpaid **only if** employees are completely relieved of all duties and breaks are uninterrupted
- While not required, giving employees breaks helps them refresh and recharge

“You have to give me time off.”



# How Did You Do?

1. B: Yes, the ADA applies here
2. C: No, no federal laws apply
3. A: Yes, you must give the employee time off
4. B: No, no federal laws apply

# You DO Have to Give Time Off

- Typically only for medical, religious or military-related leave
- FMLA and ADA apply to medical leave
  - FMLA applies to businesses with 50+ employees and covers “serious health conditions”
  - ADA applies to businesses with 15+ employees and requires employers to make reasonable accommodations for employees with disabilities (including major illnesses)
- FMLA also applies to certain military-related leave
- Title VII of the Civil Rights Act of 1964 applies to religious leave
  - Applies to businesses with 15+ employees, requires employers to make reasonable accommodations for sincerely held religious beliefs or practices



# You DON'T Have to Give Time Off

- The federal FLSA does not require you to give time off for:
  - Holidays
  - Vacations
  - Sick leave
  - Volunteering
  - Voting
  - Jury duty
  - Family obligations



# State and Local Laws

- State laws tend to afford employees more rights and time off
- Many states have their own versions of the FMLA and ADA, which may apply to smaller employers or include more employee rights
- Local laws may cover other common leave requests, such as childcare, blood donation, voting, serving as a witness, or even paid sick leave

# You SHOULD Give Time Off

- Consider employment best practices, not just laws
- Time off allows employees to rest and recuperate, which improves employee productivity and morale



“You can’t make  
me work on holidays.”



# Working on Holidays

- You aren't required to give time off for holidays unless the employees requests to celebrate a religious holiday or cultural event
- You also aren't required to pay premium for working holidays
- Most common holidays in the US: New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving and Christmas

“You have to  
give me a raise.”



# What You Owe

- No law requires you to pay more than the minimum wage
  - Federal minimum wage: \$7.25
  - Minimum wage for federal contractors: \$10.10
  - If your area has a higher wage, you must pay that
- Raising the minimum wage is **the** employment law trend of 2015, so be aware of your local laws
  - Minimum wage in New York State, Los Angeles and Seattle: \$15
- Raises are critical to engaging employees and retaining top talent

“You have to put me on salary.”





# Salaried vs Hourly

- You don't have to make employees salaried
- “Salaried” and “hourly” only refer to how employees are paid
- Making employees salaried may be easier and cheaper, depending on the job
  - Jobs with fluctuating demand: hourly pay
  - Jobs with steady demand: salaried

# Exempt vs Nonexempt

- Nonexempt employees:
  - Must receive at least the minimum wage for all hours worked
  - Must receive overtime for any hours over 40 they work in a week
- Exempt employees:
  - Almost always paid a set salary, regardless of hours worked
  - Not entitled to overtime pay
- Exemption is determined by the FLSA, based upon salary and primary duties

“You have to pay me overtime when I work late.”



# When to Pay Overtime

- The federal FLSA requires overtime pay for any hours worked over 40 per workweek
  - State laws may vary
- DOL considers a workweek any seven consecutive 24-hour periods, which can start on any day and at any time of day
- Employers can define their own workweeks, including different workweeks for different employees, to suit their needs

# Misclassification and Overtime

- Remember: nonexempt employees are entitled to overtime pay
- If a nonexempt employee is misclassified as exempt, you could owe back wages for unpaid overtime
- Look beyond job titles and examine primary duties before classifying employees as exempt



# New Overtime Rules?

- The DOL recently proposed changes to exemption regulations
- If adopted, the salary requirement for exemption would jump from \$455/week (\$23,660/year) to \$970/week (\$50,440/year)
- This number will be tied to 40<sup>th</sup> percentile of weekly earnings and may increase year-over-year
- Changes could affect nearly 11 million workers

“You have to pay me for that.”



# Work-Related Activities

- FLSA requires employers to pay for certain work-related activities:
  - Changing into uniforms or other clothing, if integral to work
  - Commuting to work if employee picks up other workers or supplies
  - Travel between worksites
  - Business travel
  - Required training or meetings
  - Time spent waiting to work
  - Pre- and post-work activities that are necessary to the job, such as cleaning equipment or showering



# Off-the-Clock Hours and Overtime

- Nonexempt employees must be paid for any time spent checking or responding to voicemails, emails or text messages, even if doing so is voluntary or unauthorized
- You can ban this practice or discipline employees who work unauthorized overtime - but you **must** pay them overtime for hours worked



# Final Notes

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# Final Notes

- Most employee “lies” are just misunderstandings
- Keep your eye on:
  1. Paid sick leave
  2. Minimum wage increases
  3. Proposed changes to FLSA exemption criteria
- Use handbooks to communicate company policies and labor laws to employees
- Track time and attendance using software that employees can access
- Strike a balance between what the law requires and what employees want

# Thank you!

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