



# Human Resources Committee

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Las Vegas Nevada

Let's play....

*Is it legal?*

1.

Employee is injured riding dirt bikes on his day off. Brings in a note from his doctor saying he needs 6 weeks off to recover.

Can you just terminate the employee?

Yes / No

No.

How many employees do you  
have?

FMLA applicable?

ADA Compliance!

Must engage in the  
“Interactive Process”

2.

An employee has been out on a workers compensation leave of absence for a year. We have been paying his medical insurance the whole time.

Can I stop paying his medical insurance premiums?

Yes / No / It Depends

It Depends.

Covered by FMLA?

If so, is FMLA LOA  
exhausted?

ERISA-approved plan?

COBRA!

### 3.

John, your underperforming estimator, goes “out on disability.” The “fill-in” employee, Mary, has been doing fantastic. You know you can’t *fire* John without a discrimination lawsuit, but you really want Mary doing the job. You decide you won’t *fire* John, instead you will “downsize” and “eliminate the estimator position.” You give Mary the title “Customer Service Representative” to cover your tracks. When John returns you tell him “sorry, we downsized and eliminated the estimator position.”

**Legal? Yes / No**

# Nice Try, but NO!

This is called a “pretext”...

And you likely will lose the disability discrimination claim John will file!

This is why you discipline when necessary and deal with termination issues head-on or they will bite you later. You're a manager – act like one!



4.

John's regular hourly rate is \$20/hr, but we have a training rate of \$10/hr. This week John worked 44 hrs, which included 4 hours at a mandatory training class on Saturday morning.

This is how I figured his pay:

$$40 \text{ hrs} \times \$20/\text{hr} = \$800.00$$

$$4 \text{ hrs} \times \$15 = \$60.00$$

*[The training put him into OT, so I based his OT on his training rate.]*

$$\text{Total Wages} = \$860.00$$

Legal?

Yes / No / It Depends

# It Depends....

Absent a statutorily compliant written agreement to the contrary (get legal counsel!), when an employee is paid two or more different hourly rates in an overtime workweek, the “regular rate” for calculating overtime is determined using the “weighted average method” (most states, check yours):

$$40 \text{ hrs} \times \$20/\text{hr} = \$800.00$$

$$4 \text{ hrs} \times \$10/\text{hr} = \underline{\$ 40.00}$$

$$\text{Straight Time Pay} = \$840.00$$

$$\text{Weighted Average Regular Rate: } \$840/44 = \$19.09$$

$$\text{Overtime Rate: } \$19.09 \times .5 = \$9.55$$

$$\text{Overtime Pay: } 4\text{hrs} \times \$9.55 = \$38.20$$

$$\text{Total Wages Due: } \$840.00 + \$38.20 = \$878.20$$

5.

My techs are paid flat rate,  
qualify for the commission/flat-  
rate exemption, and I have them  
punch the clock.

Do I have to worry about  
minimum wage issues?

Yes / No

It depends on your jurisdiction!

In “federal/FLSA”  
jurisdictions, you can average  
the \$\$ over the clock hours to  
determine if min. wage is  
satisfied.

It depends on your jurisdiction!

Beware in California

Employer *cannot* average the \$\$ over the clock hours for min. wage compliance. Flat-rate or commission is only designed to pay for time repairing/selling, so must pay separate wages (at least min. wage) for non-productive time AND must pay separately for the mandatory rest periods!

Solutions exist – see me after...

Thank You!  
Human Resources  
Committee

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