



## EMPLOYER REPORT: COMMON EMPLOYER MISCONCEPTIONS

**Just because an employee is salaried, I do not have to pay them overtime. WRONG!** Under the Fair Labor Standards Act, only “exempt” employees (as defined under the Act) are exempted from minimum wage and overtime payment requirements. To qualify for the exemption, employees must meet certain tests regarding their job duties and be paid a salary not less than \$455 per week. Job titles and the nature of how an employee is paid (hourly/salary) do not determine exempt status. Thus, employers must ensure their employees are properly classified.

**I have to pay out unused vacation pay upon termination of employment. WRONG!** Under Michigan law, an employee must receive compensation for “benefits” (i.e. vacation) pursuant to the terms of a written contract or policy. Accordingly, vacation must be paid out only if an employer’s written policy or contract provides as such.

**If an employee gives me their two weeks notice, I have to let him work those final two weeks. WRONG!** As employees are “at-will”, they may be terminated at any time with or without cause. Accordingly, if an employee provides two weeks notice, you may accept their resignation effective immediately. However, if you require an employee to provide two weeks notice, they could claim the detrimental reliance upon the policy and allege a reasonable expectation that they would have worked in the two week period and received compensation during that time and claim he should be paid for the two week notice.

**I can hold an employee’s final paycheck until he returns company property. WRONG!** An employer must pay an employee voluntarily or involuntarily leaving employment all wages earned and due on the regularly scheduled pay day for the period in which the termination occurs. If the amount due an employee working under a contract, cannot be determined until the termination of the contract, the employer shall pay the employee all wages earned by the employee as nearly as they can be estimated and final payment shall be made in full upon termination of the contract.

**I can require an employee to undergo a medical exam before an offer of employment is made. WRONG!** An employee may only be required to undergo a medical examination after a preliminary offer of employment has been made which can be contingent upon the successful passing of a medical exam. However, the medical exam must be reasonably related to the job’s essential functions.

**I have to pay an employee if he works through his lunch period. YES!** Meal periods do not need to be counted as work time if they are at least 30 minutes long and the employee is relieved from active duties during the meal period. However, an employee who works through lunch is considered “working” and that time must be paid.

**I taught my employee everything he knows and now that he is going to work for my competitor, I can stop this. MAYBE!** Under the Michigan Anti-Trust Reform Act, non-compete agreements are enforceable if they reasonably protect an employer’s legitimate business interest. This means that a non-compete agreement must be reasonable with respect to time, geographic location, and type of employment. An overtly broad non-compete restriction may not be enforceable.

**I can treat anyone as an independent contractor and issue them a 1099. WRONG!** Michigan employs a common law test to determine whether an employee/employer relationship exists or if an individual is an independent contractor. Under this test, a relationship exists if the person contracting for services has the right to control not only the result of the service but also the means by which the result is accomplished. Whether the control exists is determined by an examination of all relevant facts and circumstances and must be analyzed on a case by case basis. Issuing a 1099 is irrelevant to the analysis.

**If an employee tells me that her supervisor is harassing her, but she doesn’t want me to investigate, I do not have to. WRONG!** Managerial employees are considered agents of the employer. If a managerial employee has notice of potentially unlawful harassment or discrimination, he has a duty to investigate the claim. Allegations cannot be ignored because employers are required to investigate and, as warranted, take prompt remedial action in connection with any complaints of harassment or discrimination. However, employees should be assured that no confidential personnel or investigation information will be released other than as necessary in order to conduct an investigation.

**We are experienced, proactive and aggressive legal counsel providing superior service in all areas of employment law. If you would like further information regarding the issues raised in this newsletter or any other employment related issues, please contact Heather G. Ptasznik at (313) 259-8586 or John T. Below at (313) 259-8597. For more information about Kotz Sangster, please visit us at [www.kotzsangster.com](http://www.kotzsangster.com). This newsletter is provided as general information service and should not be construed as and does not contain legal advice on any specific matter, nor does this message create an attorney-client relationship.**