Are you breaking the law?

Pay your people correctly, or pay the price

By Pat Brown

It would be so simple to do business without all of the rules, regulations and general interference from the government. Every day, you face problems in your business — increase sales, decrease expenses, manage employees, etc. — so how can anyone keep up with the ever-changing regulations? And, even more important, how do know that you comply?

Every business owner knows about the Internal Revenue Service (IRS) and we know if we make a profit we must pay income taxes. In addition, you need to keep an eye on the Environmental Protection Agency (EPA), the U.S. Equal Employment Opportunity Commission (EEOC), the Occupational Safety and Health Administration (OSHA), just to name a few.

There's another regulation that might be the most important one you should know about to keep your business out of trouble. Most tire dealers are not familiar with the 1938 wage and hour regulations that govern how you pay overtime to your employees. This law was put into place to protect employees who work more than 40 hours per week.

There are two key elements of the wage and hour regulations that many tire store owners are violating every day.

Problem #1

It is common knowledge that if an employee works more than 40 hours per week then you must pay that employee time-and-one-half of his wages for all of those extra hours worked. Many of you are also paying your hourly employees a spiff, commission or a bonus for some performance base that you set up for these same employees. The "wage and hour" law requires you to also pay time-and-one-half for all extra

wages earned (spiffs, commissions or bonuses) for any employee who works more than 40 hours per week. Oftentimes you set up a program for your counter (or other departments) that if they hit a target of increased sales, improvement of gross profit or decreasing overtime you will pay a bonus on this performance.

As an example, let's say you have three people on the counter and you have a performance bonus in place for them that if they increase gross profit then you will pay each of them a $100 bonus.

At the end of the month they hit your target and each counter person earns the bonus. All three of them worked 45.5 hours that week and you paid them time-and-one-half of their regular wages. So far so good; however, now you must pay time-and-one-half on the bonus of $100. Many dealers ignore this step and are blatantly breaking the law. (The U.S. Department of Labor created the "coefficient table for computing extra half time for overtime." For a look at the table and the correct method for compliance, see www.moderntiredealer.com.)

We must take the $100 times the rate of .060 and pay them an extra $6 per person. For many of you this will be a shock that you have to pay your employees a bonus on top of the bonus. However, it's the law.

The penalty if you are caught:

Ignorance is no excuse. If you choose to not pay this extra pay and you have an audit by the wage and hour people they will go back two years for each hourly employee and calculate the amount underpaid by the bonus amount and the hours worked. I'll discuss later how you can get caught.

As an example, let's assume that in one of your five stores, your three counter guys worked 46.5 hours every week. They met your target and earned an additional $100 bonus every week. Here is the calculation:

Hours worked: 46.5
Bonus: $100
Underpaid: $6 each employee

$6 x 3 = $18 due employees for each week
$18 x 104 weeks = $1,872 penalty to be paid to your employees in one store
$1,872 x five stores = $9,360 penalty to be paid to employees in all five stores

And the problem is, you did not even know that you were not complying with the law.

Problem #2

There's another regulation that routinely catches store owners unaware. It's pretty typical for store owners to put key employees on "salary," meaning they don't get overtime.

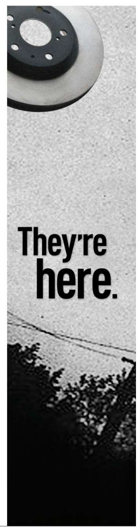
These employees work longer hours and they like to be a part of management. To have the "salary employee" status is a symbol which separates them from your hourly workers who punch a time card. However, you may be breaking the law.

Based on the wage and hour laws, people can be on salary only if they:

A. Supervise at least two or more full-time employees or the equivalent.
B. Have the authority to hire and fire assigned employees, or at least the responsibility to effectively recommend hiring, firing, advancement, promotion, or other change in the assigned employee status.
C. Make at least $455 per week.
D. Spend 50% or have as the primary duty of his/her time in a management role not working the counter or working in the back as a service writer.

Do not take this lightly. Many owners try to justify putting their people on salary because it's easier to have them work 50 hours a week and pay them $600 or $700 per week. We recommend that only one person per store should be on salary and that should be the store manager.

The exception to this rule is if you have an outside salesperson who spends 50% of



his time outside, then he/she is exempt. The only other people who may be exempt are: any person who makes more than 50% of their weekly pay in commissions, bonuses or spiffs. These positions would fall into the federal wage and hour provision called the 7 (I) rule.

All other employees should be on hourly with overtime and they should always punch a time clock so that you have an exact record of their hours worked. This is really important if you have an audit.

The penalty if you are caught:

If you have a wage and hour audit and they find that you have four people on salary and they do not meet the above criteria, this is what may happen to your company.

Let's say you have four employees who routinely work 50 hours per week at varying salaries:

Employee #1 earns $600 per week working 50 hours
Employee #2 earns $700 per week working 50 hours
Employee #3 earns $800 per week working 50 hours
Employee #4 earns $800 per week working 50 hours

Here's how the penalty would be calculated:

Employee #1
$600 divided by 40 equals $12 per hour, so his weekly pay would be calculated as follows:

$12 per hour for 40 hours = $480
$18 per hour for 10 hours = $180 (overtime pay)
Total weekly pay should be $660

The employee was under-paid by $60 per week

Using this example, your employees would have been under-paid as follows:

#1 $60 per week
#2 $70 per week
#3 $80 per week
#4 $80 per week

$290 per week x 104 weeks = $30,160 penalty. If you have four stores, then the total penalty could be $120,640!

How you could get caught

Josh Smith was your best counter guy who worked 50 hours per week on salary. He never complained about the hours and seemed satisfied with the $800 per week that you paid him. Recently, you noticed that your books weren't adding up and your store profits were not reaching the levels that you were expecting. Good old Josh was helping himself to your cash drawer and had been stealing from you for several months. You fire him and say "good riddance."

The only problem is that Josh heard an ad on the radio from a slick lawyer that said the law firm could help get back pay for employees who weren't paid overtime for working more than 40 hours. Josh called the lawyer who notified the Department of Labor and an auditor appears on your doorstep.

They do an audit on all of your stores and assess you a penalty of $120,640 in back pay which you must give to current employees and any employee who has left your company in the past two years, including those who were discharged with cause: stealing, incompetence, sexual harassment, etc.

Don't wait another day

You need to make these changes immediately! We are being told that the U.S. Department of Labor, Wage & Hour Division has more than doubled its staff this year and has targeted the tire retailing industry.

Contact your human resource department and make the above changes or call SESCO Management Co. in Bristol, Tenn., (423) 764-4127. These human resource professionals know the law and can help keep you out of trouble. ■

Pat Brown is vice president of marketing for Dealer Strategic Planning Inc. (DSP), which has formed multiple 20 Groups made up of non-competing independent tire store owners in the U.S. and Canada. Its goal is to help them improve bottom line profits through idea sharing, financial benchmarking and best practices. DSP and Modern Tire Dealer *formed a strategic alliance in 2010 to better serve the tire industry by sharing resources. For more information, see www.dsp-20group.com.*