

Common Law Violations That Could Cost You

The logo for "Turf" features the word in a bold, black, sans-serif font. A green grass blade graphic is integrated into the letter 'T'.The logo for "Tree Services" is in a bold, black, sans-serif font. A small green leaf icon is placed above the 'e' in "Services". Below the main text is the tagline "Taking Tree Care to New Heights" in a smaller, italicized font.The logo for "Turf DesignBuild" features the word "Turf" in a small, orange, sans-serif font above the word "Design". "Design" is in a black, sans-serif font, and "Build" is in a large, bold, orange, sans-serif font.The logo for "PLOW" is in a large, bold, blue, sans-serif font. The letters are slightly slanted to the right.

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Employment law is a complicated topic and one that is very boring for a lot of people.

There are many different laws, rules and regulations that apply to green industry companies. Sorting through all of the red tape and legislation can be hard, even for attorneys. So here are the three most common employment law violations I see in the green industry.

Misclassification of workers

Misclassification of workers is a huge problem for the industry. Many companies do not want the extra work that comes along with hiring employees and figuring out payroll. So instead of hiring their workers, they treat them as "independent contractors" or "subcontractors." There is a common misconception that it is compliant to have a worker sign an independent contractor agreement and issue them an IRS form 1099 at the end of the season.

Unless a worker is truly an independent contractor, then taking these steps will not matter if the business is ever audited by the [Department of Labor](#). When DOL comes calling, they look at the circumstances under which the work was taking place. If the worker is paid by the hour, does not bring their own tools to the job site and their work is controlled by the business, chances are they will be classified as an employee by DOL. Then, the business will owe back taxes on the worker and possibly back overtime pay, in addition to any fines and penalties, which are assessed by DOL.

Not paying overtime

Time and again people say they don't think it is fair that they should have to pay overtime for seasonal work. Whether or not it is fair could be the subject of a very long discussion. What matters, however, is that it doesn't matter if it is fair, just that it is not legally compliant.

Even if the employees agree to not being paid overtime, that does not make it compliant. During a DOL audit, unpaid overtime will be assessed for any hours more than 40 in a given week, regardless of how well-paid the employee is at their regular pay rate. If the DOL audit is random, the assessment will go back two years. If the audit is triggered by an employee complaint, the audit can go back three years.

Bottom line is that employees must be paid overtime unless they qualify for an exemption from overtime. Employees whose job is performing labor are generally not going to qualify for any exemptions. While there are some exemptions, many times they are applied incorrectly.

Paying salary to foremen

Whether it is to provide financial security for their foremen or to avoid dealing with overtime pay, many companies believe it is legally compliant to pay their foreman a salary and not pay them overtime. Unfortunately, this is wrong. The [Fair Labor Standards Act](#) (FLSA) requires all workers who perform manual labor must be paid overtime. The definition of manual labor includes things like operating a skid-steer and on-site supervision of other workers. If a DOL audit takes place, they will assess back overtime pay for salaried foremen, no matter how well-paid the foremen are. They calculate back pay based on the hours which were worked in excess of 40 for all weeks that went over 40 hours. The assessed rates are generally time and a half, so with well-paid foremen, things can add up very quickly.

These are the most common violations of employment laws I see in the green industry. While there are some exemptions and special circumstances, which allow businesses to pay less in overtime, they are not a good fit for all companies. Before the season gets in full swing, take a look at the employment practices of your company. Do any of these issues look like they may need addressing? Take action now so you do not regret it later if you are audited by the Department of Labor.

This article is from the 2015 Green Industry Guide. Read the rest of the digital edition [here](#). You can find products, brands, companies and dealers in the industry on the main homepage [here](#).

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