



# **Stay Out of Court: Ten Ways a Small Business Can Avoid Legal Trouble**

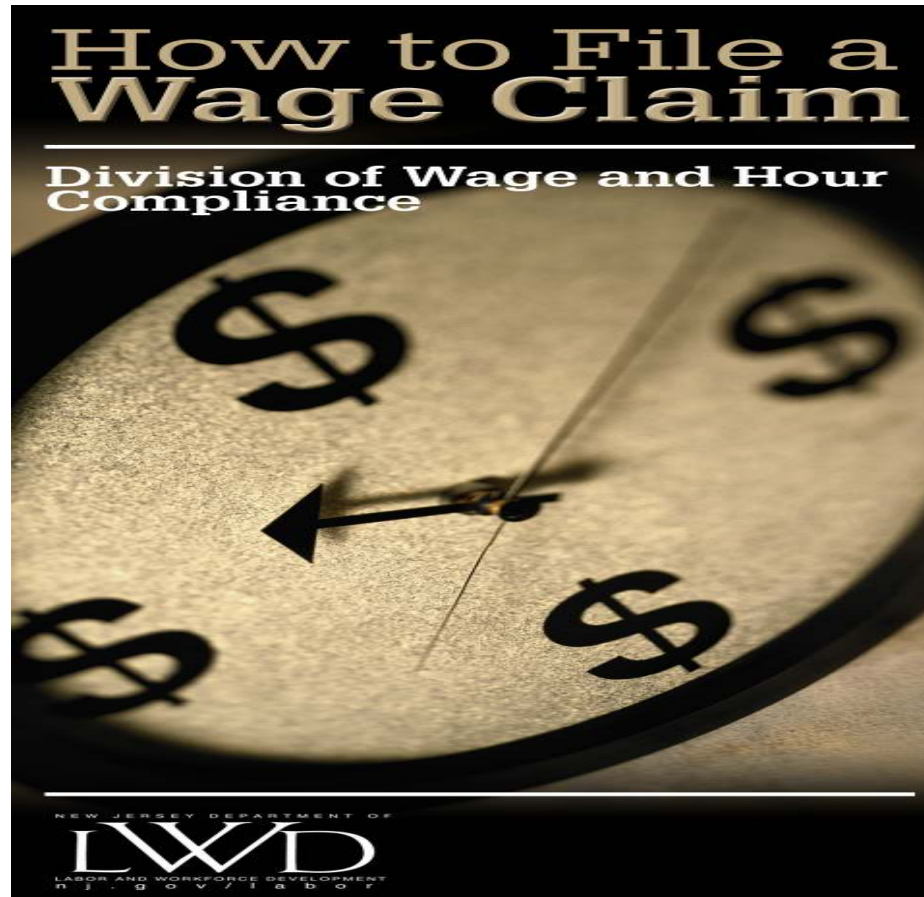
*The NFIB Small Business Legal Center is the voice for small business in the courts and the legal resource for small business owners nationwide.*

*While the information provided in this webinar is intended to be accurate, it should not be considered legal advice. The Legal Center cannot be held responsible for any errors or omissions.*

# Why We're Here



# Why We're Here



**NFIB** | Small Business  
The Voice of Small Business.® | Legal Center

# Why We're Here

There's a new sheriff in town!



# Why We're Here

## The Perfect Storm

1. Higher unemployment means more lawsuits.
2. Individuals are more aware of their rights.
3. Greater emphasis on enforcement.



# Litigation Statistics

- U.S. tort system costs over \$260 billion per year – a staggering \$880 per person!
- 70 percent of the world's attorneys are located in the United States
- 94 percent of all lawsuits in the world are filed here
- Small businesses bear significant tort costs

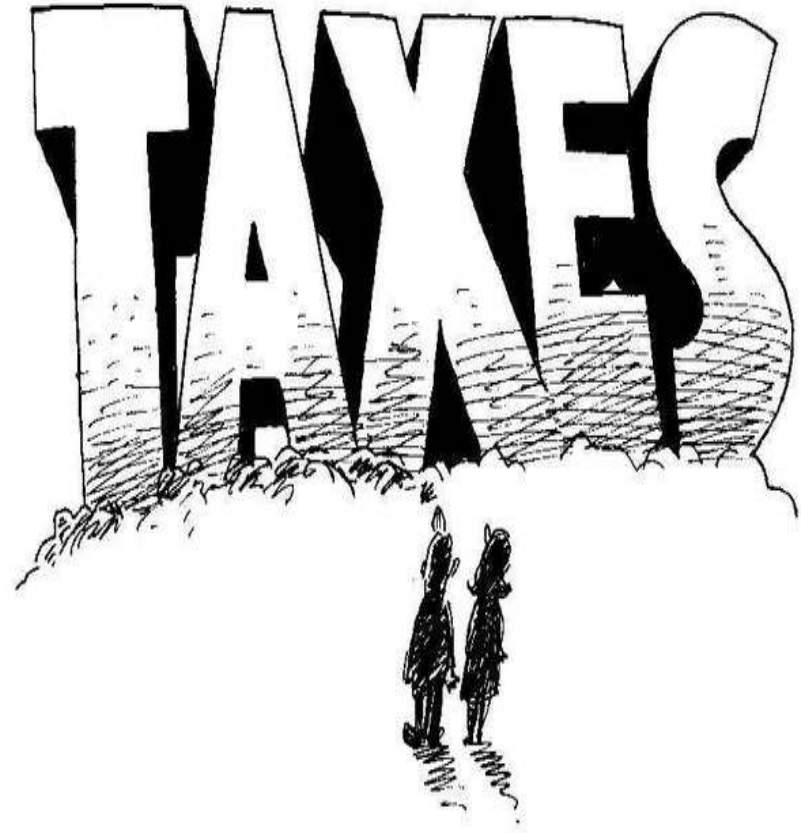


# Rule #1: Incorporate

- Going alone often provides poor asset protection and poor tax benefits
- Be sure to follow corporate procedures
- Have your attorney or accountant review your corporate records once a year

# Rule #2: Taxes - Stay Alert!

- Keep good records!
  - Deposit all business receipts in a separate account
  - Avoiding writing “cash” checks
  - Carefully record transactions you make with your business



# Rule #3: Maintain *Adequate* Insurance



- Read the fine print!
- Comparison shop – specialty broker might help
- Don't be cheap – increase liability coverage, consider umbrella, business interruption, disability, and employment practices liability insurance

# Quiz Time



# Quiz Time

How many employment-related claims are filed on an average each day?

1. 50
2. 450
3. 2,000
4. 10,000



# Rule #4: Hire Smart

- Make good hiring decisions
- Require job applications from all candidates
- Check references



# Rule #4: Hire Smart

- Hiring: The Interview
  - Prepare! List of standard questions
  - Ask appropriate questions
  - **Don't ask** questions that could reveal whether the person belongs to a protected group (questions about sexual orientation, religion, race, etc.)
  - **Don't ask** questions about the employee's medical history



# Rule #4: Hire Smart

- Don't Ask
  - Do you have any medical conditions that would interfere with your ability to perform this job?
  - Have you ever been treated for drug abuse?
  - Have you ever been arrested?
  - Are you taking any prescription drugs?
  - Have you ever been a member of a union?
  - Do you have small children?
  - Have you ever filed for workers' compensation?

# Rule #4: Hire Smart

- Hiring: Background Checks
  - Get applicant's permission in writing
  - Clearly identify the information you will be checking



# Rule #4: Hire Smart

- Hiring: Immigration Laws
  - I-9 for all new hires
  - I-9 penalties range from \$275 to \$2,200
  - If your business has established a pattern or practice of hiring illegal workers, you may face jail time



# Rule #4: Hire Smart

## Form I-9

### Section 1 filled out by the employee

<b>Section 1. Employee Information and Verification</b> <i>(To be completed and signed by employee at the time employment begins.)</i>			
Print Name: Last	First	Middle Initial	Maiden Name
Address <i>(Street Name and Number)</i>		Apt. #	Date of Birth <i>(month/day/year)</i>
City	State	Zip Code	Social Security #
<p><b>I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.</b></p>		<p>I attest, under penalty of perjury, that I am (check one of the following):</p> <p><input type="checkbox"/> A citizen of the United States</p> <p><input type="checkbox"/> A noncitizen national of the United States (see instructions)</p> <p><input type="checkbox"/> A lawful permanent resident (Alien #) _____</p> <p><input type="checkbox"/> An alien authorized to work (Alien # or Admission #) _____ until (expiration date, if applicable - <i>month/day/year</i>)</p>	
Employee's Signature		Date <i>(month/day/year)</i>	
<b>Preparer and/or Translator Certification</b> <i>(To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.</i>			
Preparer's/Translator's Signature		Print Name	
Address <i>(Street Name and Number, City, State, Zip Code)</i>			Date <i>(month/day/year)</i>

# Rule #4: Hire Smart

Form I-9

Section 2 filled out by the employer

**Section 2. Employer Review and Verification** *(To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number, and expiration date, if any, of the document(s).)*

List A	OR	List B	AND	List C
Document title: _____		_____		_____
Issuing authority: _____		_____		_____
Document #: _____		_____		_____
Expiration Date (if any): _____		_____		_____
Document #: _____		_____		_____
Expiration Date (if any): _____		_____		_____

**CERTIFICATION:** I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on (month/day/year) \_\_\_\_\_ and that to the best of my knowledge the employee is authorized to work in the United States. (State employment agencies may omit the date the employee began employment.)

Signature of Employer or Authorized Representative	Print Name	Title
Business or Organization Name and Address (Street Name and Number, City, State, Zip Code)		Date (month/day/year)

# Rule #4: Hire Smart

- Hiring: Form I-9 Audit
  - If you find incorrect information, correct and initial or have employee fill out a new form and attach the old form
  - If information is missing, fill in the information and initial and date that section (don't backdate!)
  - Store all I-9s together

# Rule #5: Manage Fairly & Wisely



- Prohibit discrimination and harassment
- ALL employees should be aware of anti-discrimination laws
- Maintain written no discrimination policy

# Rule #5: Manage Fairly & Wisely

- Be aware of what goes on outside of your workplace
- Train all supervisors on good personnel practices
- Can be sued for “hostile” environment even if you are not personally involved



# Rule #5: Manage Fairly & Wisely

- Managing Well After Hiring
  - Set out expectations for new employees
  - Tackle poor performance early
  - Enforce company policies consistently

# Rule #6: Catch & Correct Wage & Hour Violations

- Fair Labor Standards Act (FLSA) = federal wage & hour law since 1938
- Enforced by U.S. Dept. of Labor (DOL)
- Requires minimum wage
- Requires overtime compensation for hours worked over 40 hours in a 7-day work week



*Roosevelt*

# Rule #6: Catch & Correct Wage & Hour Violations

Who is covered by the FLSA?

- **Employees** who are engaged in interstate commerce, or work in activities closely related to such work (includes use of e-mail, phones, credit cards and U.S. mail)
- **Employers** who are engaged in interstate commerce and have an annual gross income of \$500,000

# Rule #6: Catch & Correct Wage & Hour Violations

- State Laws
  - Follow the law that provides for the higher rate of pay



# Time to Vote



# Time to Vote

Are you concerned about your business's compliance with wage and hour laws?

1. Yes
2. No
3. Unsure



# State of the Nation

DOL estimates **70 percent** of employers are out of compliance.



**NFIB**  
The Voice of Small Business.®

**Small Business  
Legal Center**

# Rule #6: Catch & Correct Wage & Hour Violations



- Wage & Hour Risks
  - Misclassifying employees
  - Not paying employees correctly for work time

# Rule #6: Catch & Correct Wage & Hour Violations

## Nonexempt employees

- Paid for actual hours worked
- Must keep records of time worked, *e.g., timesheets or timecards*
- Must earn at least minimum wage for all hours worked
- Entitled to overtime for any hours worked over 40 in 7-day work week at rate of 1½ times regular rate of pay

# Quiz Time



# Quiz Time

Employees may volunteer to work extra hours, without overtime compensation?

1. True
2. False
3. Unsure



# Rule #6: Catch & Correct Wage & Hour Violations

An employee may  
**NOT** waive his or her  
right to overtime pay!



# Rule #7: Be Careful With Independent Contractors

## Minimize Risk

- *Require documentation* to establish that the consultant is truly an independent contractor, such as business cards, licenses, and certificate of insurance
- *Put your agreement in writing* – set forth the terms of your relationship with a consultant to show the IRS and state agencies that the consultant is an independent contractor
- *Do **not** treat contractors like employees*

# Rule #8: Watch Out for Workers' Comp Claims



Stop accidents before they happen:

- Be proactive in training
- Report claims immediately
- Maintain a drug free workplace
- Commit to return to work

# Rule #8: Watch Out for Workers' Comp Claims

- Be alert for:
  - Disgruntled employee
  - Employee on leave being hard to reach
  - New employee
  - No witnesses to accident
  - Varying accounts of accident
  - Accidents on Fridays or Mondays



# Rule #8: Watch Out for Workers' Comp Claims

- Get injured workers back to work:
  - Remind injured employees that you're committed to having them return to work
  - Send job description to physician
  - Create temporary light-duty assignments
  - Do not terminate injured employees without consulting an attorney and/or carrier

# Rule #9: Get Expert Help

- Consider hiring an attorney – it can be \$ well spent
- Don't be afraid to ask for clarification when hiring an expert
- Don't sign any contract until you have had time to review and ask questions



# Rule #10: Get it in Writing (& keep it)!

- Institute a document retention policy
- Keep tax-related records for at least eight years
- Document employment actions
- Retain employee records (under lock and key!) for term of employment plus five years
- Keep OSHA logs for five years

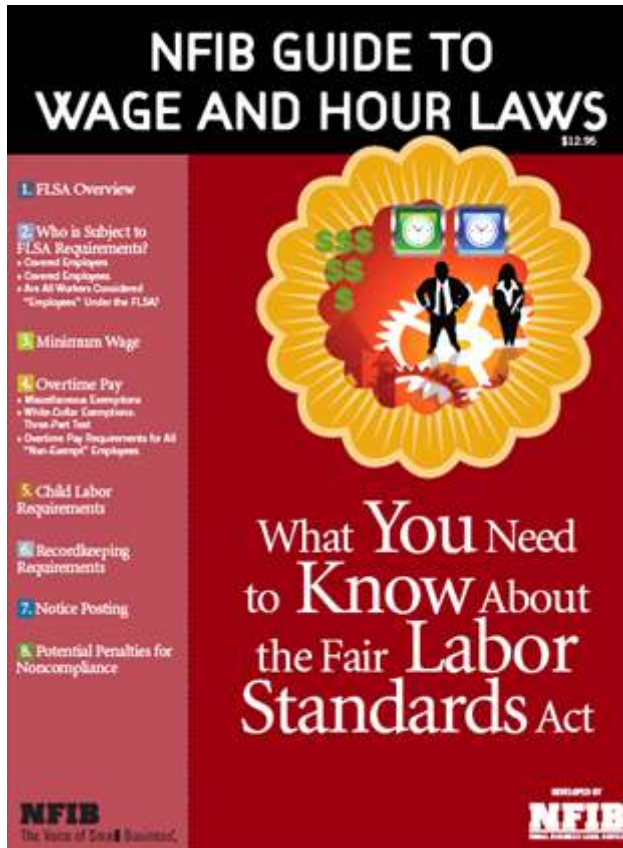
# Help is Available!



**NFIB Employment Law  
Hotline** provides NFIB  
members **FREE** legal  
Advice

Call **(866) 678-NFIB**

# Help is Available!



- **NFIB Small Business Guides**
  - Guide to Wage and Hour Laws
  - Model Employee Handbook for Small Business
  - Small Business Guide to Document Retention
- Available **FREE** to NFIB members at [www.nfib.com/legal](http://www.nfib.com/legal)

# Conclusion

- Lawsuits hurt small business owners, new business formation, and job creation
- Assess your risks to help minimize your liability exposure



# Thank you!

For more information about the Small Business  
Legal Center contact me at:  
[elizabeth.milito@nfib.org](mailto:elizabeth.milito@nfib.org)