Triggering Minimum Wage and Overtime with the Swipe of a Credit Card

If your employees use credit cards on the job, be aware of the risks. Here's how to avoid costs and penalties.

By Christine Lambrou Johnson

You may not realize it, but your credit-card policy determines whether your organization is required to pay minimum wage and overtime. An employee's use of a credit card to process a client or customer's payments may transform that employee into a "covered individual" under the Fair Labor Standards Act (FLSA). That means the employee must be paid minimum wage and time-and-a-half for overtime hours.

Nonprofits are typically exempt from the FLSA because they don't engage in "business." This means they're not subject to the Act's "enterprise coverage" and needn't pay their employees minimum wage or overtime. With tight budgets and shoestring operations, many nonprofits find this exemption vital.

However, employees may still be covered by the FLSA under what's called "individual coverage" if they engage in "interstate commerce." And interstate commerce can appear in the most curious of forms.

"Interstate commerce" may bring to mind trucking or shipping across state lines. But the Department of Labor doesn't limit its definition to physical cross-country operations. Interstate commerce includes "transacting business via interstate telephone calls or the U.S. mail," "ordering or receiving goods from an out-of-state supplier or handling the accounting or bookkeeping for such activities," or "handling credit card transactions" (Department of Labor Factsheets #2 and #3). So an employee who processes credit cards may qualify for individual coverage under the FLSA even though the nonprofit is exempt.

In the nonprofit context, church bookstores and coffee shops, camp snack shops, and nonprofit gift stores all employ individuals who process credit card purchases; these individuals are potentially engaging in interstate commerce and need to be paid minimum wage and overtime where applicable. This rule likewise applies to the employee ordering supplies, books, or curricula. (Note that under a separate rule – the "ministerial exception" – individuals engaging in ministry, such as church music directors, child or youth ministers, etc., may be exempt.)

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The Department of Labor does acknowledge that "isolated, sporadic, or occasional" commerce isn't covered by the Act. But if the activity is "regular and recurring, even though small in amount," it is covered.

Once an employee engages in interstate commerce, the FLSA's coverage extends beyond just the hours worked at the register. If an employee works some hours in the church coffee shop, for example, and additional hours elsewhere, all the employee hours are governed by the minimum wage and overtime rules. So the nonprofit would have to pay the employee minimum wage for all hours worked and overtime for hours over 40.

There are some options for nonprofit employers to avoid coverage under the FLSA:

Opt for a "cash only" policy.

Assign only "exempt" employees (those who are paid a salary and are already exempt from overtime regulations) any functions that involve credit cards.

Pay minimum wage, and strictly limit overtime hours.

Use volunteers. Establish a clearly written policy that those who serve are doing so as volunteers without any expectation of compensation.

The Department of Labor's enforcement of the FLSA is fraught with traps for the unwary. Be sure you review your employee job classifications and the activities their employees engage in to ensure that you don't run afoul of the minimum wage and overtime requirements. A quick review by legal counsel at the outset can save costs, penalties, and headaches later on.

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