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Wage & Hour Tip: Employee Compensation

Employers Cannot Pay Employees With Stock or Equity In Lieu of Cash

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A company with a bright future but a temporary cash shortage might be tempted to compensate employees with an ownership interest in the company (stock or equity) instead of with cash.

But, is this practice legal? Generally, the answer to this question is no. Under state and federal law, employees must be paid at least the minimum wage in cash. Providing equity, no matter how much the equity is worth, does not fulfill this requirement.

An exception to this rule is made, however, if the employee comes within the exemption for executive-business owners provided for in the federal Fair Labor Standards Act ("FLSA"). An individual who comes within this exemption is exempt from the FLSA's minimum wage and overtime requirements.

To be exempt as an executive-business owner under the FLSA, an individual must (1) be employed in a bona fide executive capacity, (2) own at least a 20% bona fide interest in the business and (3) be actively engaged in the management of the business.

Unless an employee meets each of these requirements, paying in equity alone will run afoul of wage laws, and could result in significant liability for the employer, as well as possible individual liability for the president, treasurer, and individual "officers and agents" of the employer's corporate entity.

For further help in determining whether your employee comes within the executive-business owner exemption or questions about paying employees with equity, contact a member of our Employment Law Group.