



Division of Specialty
Program Group, LLC



What a Rise in Wage & Hour Claims Means for Moving & Storage Employers

Wage & hour claims are a growing problem in the moving & storage industry. They affect companies with employees, as well as companies utilizing independent contractors and owner-operators. Between 2013 and 2015, there was a 58 percent increase in specific wage & hour insurance claims, including 20 percent in 2015 alone. The transportation industry (which includes moving and storage companies) accounts for 27 percent of all wage & hour claims, second only to the health care industry with a 30 percent share of all claims.

These claims are also costly. Statistics show that more than 20 percent of wage & hour cases cost in excess of \$1,000,000, while around 50 percent cost employers more than \$100,000. These numbers paint a clear picture: the occurrence of these claims is rising steeply, and moving and storage companies need to take heed.

How does wage & hour coverage work?

By wage & hour claims, I mean insurance claims related to settling alleged wage & hour violations. Scenarios that can trigger wage & hour claims include:

- An employee alleges their employer has not allowed them to take their legally mandated breaks.

- A person hired as an independent contractor is later classified as an employee due to new 2015 Department of Labor classification, which means they should have been eligible for breaks and overtime pay.
- An employee alleges their employer failed to pay minimum wage and proper overtime compensation.

Wage & hour insurance coverage is a defense-only coverage available as a sublimit on a Employment Practice Liability policy (EPLI). This means it covers only the defense of a lawsuit, not settlements or judgments. Because coverage is a sublimit, the available limits vary between \$50,000 and \$200,000. Higher limits were historically available but the rise in the number of claims has limited the availability of coverage as well as the amounts of coverage that can be purchased.

Why are these claims rising?

There are several factors contributing to the increase in wage & hour claims, many of them related to the classification of independent contractors. Employers, especially large ones, have typically relied on arbitration agreements in their contracts with independent contractors, but this

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practice does not always hold up in court.

There has also been more wage & hour litigation due to a few regulatory changes that have made an increasing number of employees and employers subject to more labor laws. In 2015, interpretations of the National Labor Relations Act and the Fair Labor Standards Act (FLSA) changed how employers define an independent contractor. Plus, in 2016, the Department of Labor formalized rules under the FLSA that will make an additional four million workers eligible for overtime pay.

The moving and storage (and broader transportation) industry is particularly susceptible to wage & hour claims due to many of the reasons it appeals to employees: the workforce is mobile and the work is flexible. Many employees are self-employed, independent contractors, but many of them do not meet the IRS's definition of a true independent contractor. The contractor may then claim they meet the definition of an employee and sue for the benefits that come with that status, like breaks and overtime.

Additionally, the work is time sensitive. The goods need to be on the truck before dark, or the homeowner needs their furniture by a certain date. As a result, employees are often tempted to push through their breaks; they simply don't take them or make scheduled rest stops. If employees assert they were not permitted to or



discouraged from taking their breaks, the result may be a wage & hour claim.

How can moving and storage companies reduce the risk of these claims?

Moving and storage companies can prevent these claims by simply following established labor rules: pay minimum wage and ensure employees take their required breaks. But even careful risk management cannot prevent all claims of unpaid overtime or lost breaks—which is why every employer needs EPLI coverage with wage & hour. Employees do file frivolous or fabricated claims, and businesses need to defend against them. Wage & hour coverage helps provide the resources you need to defend your reputation.

For guidance on the finer points of determining who is an employee and who is an independent contractor, seek help from a transportation attorney and your insurer. Since the regulatory changes of 2015,

wage & hour claims cannot be overlooked. Find out if wage & hour coverage is appropriate for your business.

Additional sources:

<http://www.wagehourlitigation.com/overtime/another-year-another-high/>

<https://www.dol.gov/whd/overtime/final2016/>

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