

Ernst Enterprises Newsletter



HONEST MISTAKES CAN LEAD TO DEVASTATING LAW SUITS

There is growing litigation for misclassified employees and many employers are finding honest mistakes can cost them plenty. Under the Fair Labor Standards Act ("FLSA") and many state laws, employees are classified as exempt or non-exempt: they are either exempt from overtime pay or **not** exempt from overtime pay and therefore must receive overtime pay for hours worked over 40 in a week or over 8 hours per day in California.

We find many employers mistakenly believe that if they classify an employee as "salaried" they don't have to be paid overtime. That mistake can make employers liable for damages in several areas: back overtime, penalties for failure to keep time sheets and related records, legal fees, disruptions to the work force, and more. Unfortunately, many employers find out about this mistake after an employee quits or is terminated and the claim is filed for back overtime pay. And sometimes the claim is made for more than one employee---a potential class action case.

For most non-retail businesses, the FLSA defines five exemptions from the act that most typically apply to your business. They are: the executive, administrative, professional, outside sales, and IT. Whether your employees meet the requirements of a particular exemption is not a matter of agreement between you and the employee, their compensation level, or your desire to classify an employee in a particular way. The classification of an employee is based upon their actual duties and the percentage of time doing particular work. A good-faith mistake won't excuse you from the liability of misclassifying an employee. Your back pay liability may extend back for several years and you may have the burden of proving past overtime claims made by employees are not accurate---a tough burden indeed.

The only way to protect yourself is to know if your employees are properly classified and the only way to know if they are properly classified is to have a professional review conducted of your employees and their current classifications.

Some telltale warning signs that should alert you to potential problems include:

- More than 50% of your employees are classified as exempt or "salaried"
- Some of the employees who perform the same job are classified as exempt or "salaried"
- Employees who perform inside telephone sales are classified as exempt or "salaried"
- Employees complain about working overtime and not being paid
- Employees in other companies who do similar work get paid overtime
- Computer help-desk support employees are classified as exempt or "salaried"
- Some people who perform the same work are classified as employees and others are contractors

The benefits of a thorough audit of your Human Resources policies and practices cannot be overstated.

Call Dawn Bremer today at 847/456-6334 to schedule your appointment--the first step in assessing your risk for unintended litigation. We have the expertise and experience to assess your current practices and implement practical and effective corrective plans that can help minimize your risk for litigation

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Sincerely,

Mark

Mark Ernst
Ernst Enterprises, LLC

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