

## Ernst Enterprises Newsletter



### **RISKS THAT CAN COST YOUR BUSINESS - BIG!**

There are two significant risks that most owners don't recognize because they don't understand what the law and regulations require.

#### **THE FIRST RISK**

The first risk occurs when you decide to terminate an employee because your supervisor/manager said the employee must go. How can you be certain that the contemplated action won't lead to a costly lawsuit?

Recent court decisions and EEOC rulings recommend that the ultimate decision maker conduct an independent review of the facts by talking to witnesses, reviewing documents, and allowing the employee to tell their side of the story before taking action.

Also, you need to document the review process to show you did conduct an independent review to reduce the risk the recommending supervisor is taking action for an improper reason.

These simple steps can help protect the owner from making a serious and avoidable mistake. Are you prepared to provide that independent review? Would you know how to conduct and document the review?

#### **THE SECOND RISK**

The second risk occurs when you decide an employee is eligible for, or exempt from, overtime; or that an individual is an independent contractor. When I conduct a Business Dashboard Review (1), business owners frequently tell me that their employees (or most of them) are "salaried" and therefore don't qualify for overtime. They also say they have both independent contractors and employees performing a particular job, and they leave it up to the workers to decide which they want to be. **Both of these answers are red flags that signal the need for closer review.**

## STATE LAW, FEDERAL LAW & THE IRS

Whether an employee is exempt from overtime is determined by both state and federal laws and is based upon the job duties, not on the desire of the owner to not pay overtime. Likewise, whether someone is properly classified as an independent contractor or an employee is NOT based upon an agreement between the worker and the company; rather the classification is based upon the work to be done and must meet the requirements outlined in the IRS code and state law.

***Errors in mis-classification are often discovered after many years leaving the owner liable for years of back taxes, unpaid overtime, penalties, and more.*** Why risk costly errors? We at Ernst Enterprises are experienced at providing pre-termination and serious discipline independent reviews. We are also experienced at reviewing employee wage-hour classification and independent contractors to ensure they meet legal requirements.

Call today to learn more and obtain that peace of mind we provide. Our [getHRanswers®](#) program can provide that help-desk approach to HR issues when needed.

Mention this article and receive a one hour complimentary assessment of your HR policies and practices.

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(1) The Business Dash Board Review is a complimentary service provided to prospective clients to help them find overlooked opportunities for cost-savings, productivity increases and risk-reduction in their businesses. The Business Dash Board Review is ideal for business owners whose focus is on the daily demands of their companies, and can use the help of a business advisor to see often overlook opportunities.

Sincerely,

*Mark*

Mark Ernst  
Ernst Enterprises, LLC

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