

Re-check your assumptions about Exempt v. Non-Exempt Classifications

One of our good clients recently forwarded a lawsuit to be submitted to their Employment Practices Liability (EPL) carrier, wherein they were being sued by a handful of former employees for violations of the California Labor Code.

The crux of the suit is they were allegedly improperly classifying some employees as Exempt, when the nature of their work made them Non-Exempt. If the employees were misclassified, they would be entitled to compensation, plus penalties, for uncompensated overtime, and for breaks and mealtimes not allowed.

Furthermore, the attorney for these employees was filing on behalf of other unnamed employees in the same category, seeking to certify this suit as a class action—Ouch!

The claims manager for this national insurance company based in New York that provides the EPL policy said this is becoming an epidemic in California, as he sees one of these a week coming from our State.

As an aside, adding insult to injury, typically Labor Code claims are excluded from coverage on the EPL policies.

Key take-away—Review your classifications of Exempt v. Non-exempt, and be prepared to support them.

We have attached three articles to help your thought process.

The first is authored by Maureen Clark, an HR Consultant and long-time friend of Archway. Her article is entitled “Wage and Hour Violations Can Sneak Up on You.” She makes the important point that some managers who were formerly properly classified as Exempt may no longer be so, as downsizing has them performing work that might throw them into the Non-Exempt class.

The second article is provided by Lisa Aguiar, an Attorney for the San Jose office of Ropers Majeski, and a new friend of Archway. Her article is entitled “How To Protect Your Business From A Wage And Hour Class Action Lawsuit.” While providing a checklist of 6 key items for lawsuit prevention, she makes the point that an employment audit performed by an HR consultant or knowledgeable attorney can be very helpful as a preventive measure.

The third item is a checklist from HR Specialist (www.theHRSpecialist.com). It provides a checklist for a basic self audit to test your compliance.

Bottom Line: This type of claim is apparently the latest “fad lawsuit” in California; furthermore, it seems to be a target for Labor Dept officialdom to make these a priority. (See the Chubb article entitled, Wage and Hour Settlements Rise 43% in 2009). It’s expensive to defend them, and most often you are without insurance help. If a company has been careless in its classifications and recordkeeping, it can bankrupt a business with an adverse judgment.

We recommend you pay renewed attention to his issue. While a self audit is a good first step, you may also consider an audit from qualified professionals. You may already have such resources, and if not, both Maureen and Lisa would be happy to help.

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