Count the Cost Before Waging the War

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When Sun Tzu wrote "The Art of War" in the sixth century B.C., he probably wasn't thinking about how his advice would apply to employment law litigation in the 21st century, but he might as well have. One of his most famous quotes from that epic military treatise is "Those who wish to fight must first count the cost." A recent example from Washington state shows the value of following this sage advice.

PPG considered Andrew Fiore an "exempt" employee, which means it paid him a flat annual salary and did not pay him any overtime. In PPG's view, Fiore's primary job responsibility was "promoting sales," which meant that he fit into one of the white-collar exemptions that let it pay him a fixed salary no matter how many hours he worked per week.

After his employment at PPG ended, Fiore brought a wage and hour lawsuit against the company, contending that his duties principally consisted of manual labor and conducting individual sales; thus, he should have been entitled to overtime pay. After calculating how much he thought he should have been paid, Fiore concluded that he had been shorted about $12,000.

This is not necessarily an uncommon scenario. For a variety of reasons, employers often far outspend in defense what it would have taken to settle a case early on. In PPG's view, this matter was a "test case" that would have national implications for many of its workers, which was one reason to go toe-to-toe all the way to the Supreme Court.

In many other cases, employers decide to draw a line in the sand and fight a particular case to set an example for other disgruntled workers (or former workers) who may be thinking about filing suit but will think twice if they know the company will fight forcefully.

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