

## WAGE-HOUR EXPOSURE



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|-----------------------|----------|
| PROVISIONABLE PAY T/D | 22048.96 |
| PROVISION SCHEME REF  |          |
| <b>Tax</b>            |          |
| PREVIOUS GROSS        | 0.00     |
| PREVIOUS TAX          | 0.00     |
| TAXABLE PAY T/D       | 22048.96 |
| TAX PAID T/D          | 3201.80  |
| <b>NI</b>             |          |
| GROSS NI PAY T/D      | 22048.96 |
| EES NI TO DATE        | 1797.06  |
| SSP T/D               | 0.00     |
| SMP/SPP/SAP T/D       | 0.00     |

cases are good business for plaintiffs' employment lawyers. Therefore, it comes as no surprise that wage-hour litigation has been increasing year after year with no leveling off on the horizon.

Importantly, it's not just "big companies" that are the targets of wage-hour lawsuits. In fact, while large businesses certainly have their share of this type of litigation, it's actually the small-to-mid-size businesses that frequently are targeted. And it's not just single-plaintiff cases that the small-to-midsize companies are facing. Rather, these businesses also oftentimes are hit with class-action-type litigation involving multiple plaintiffs and with exposure that can sometimes reach seven figures.

## COMPENSATION COMPLIANCE— PROTECT YOUR BUSINESS!

Famous last words... 'My company isn't a likely target for that kind of lawsuit'

By Joe Shelton

In the labor/employment legal community, attorneys frequently hear the following type of comments when questions are raised about employee compensation:

- "Everyone in my industry pays their employees this way."
- "I pay that employee a salary so she isn't entitled to any overtime."
- "My employee asked to be paid this way and agreed to it in writing."
- "My company is too small for anyone to sue over wage-hour issues."

These comments are representative of "conventional wisdom" about wage-hour matters. Unfortunately, conventional wisdom usually flies in the face of wage-hour legal requirements. And that helps explain why it's the *rare* business that doesn't have wage-hour compliance issues. Stated differently, it's more likely than not that even the most well-intentioned employers will have at least some pay practices that are in violation of the federal wage-hour statute, the Fair Labor Standards Act (FLSA).

And guess who knows that fact better than anyone? Plaintiffs' employment lawyers. It is an undisputed fact that plaintiffs' employment lawyers *love* wage-hour cases for at least two reasons. One, they know that wage-hour compliance isn't easy for employers to get right (even employers who want and try to do everything right) and that violations exist in virtually every workplace. Two, the FLSA provides for mandatory attorneys' fees when a plaintiff prevails in a wage-hour lawsuit. In short, wage-hour

### PROACTIVE PROTECTION

So what should you do? Should you sit back hoping that conventional wisdom will prevail and that your business will not be on the wrong end of wage-hour litigation? Or is there something that you can do that can help insulate you from potential liability and yet be cost-effective? No, you shouldn't sit back and wait/hope for the best. And yes, there is cost-effective action you can take now.

The best solution is an assessment/audit of your company's pay practices by an employment attorney who specializes in wage-hour compliance. Audits of this nature will put a spotlight on the favorite target areas for plaintiffs' lawyers, including:

- **EXEMPTIONS**—are your employees who do not receive overtime being properly treated as exempt?
- **OFF THE CLOCK ISSUES**—are you engaging workers in ways that could trigger off-the-clock violations?
- **TIME RECORDS**—are your time-keeping records in compliance with what the law requires?

**EDITOR'S NOTE:** Attorney Joe Shelton led a breakout session on FLSA wage-hour compliance at TRSA's recent Workforce Management Summit in Chicago.

- **OVERTIME CALCULATIONS**—are you correctly determining the “regular rate of pay” when calculating your overtime payment obligations?
- **DEDUCTIONS**—are you lawfully handling deductions for things like uniforms, shortages and property damage?
- **INDEPENDENT CONTRACTOR CLASSIFICATION**—are your 1099 workers really going to survive scrutiny if they are put under a microscope?

Here’s the good news. If issues are discovered as a result of the audit, you can and should fix the problem areas so that the exposure is minimized and/or eliminated going forward.

There’s no question that the FLSA rules and related state wage-and-hour laws are complex. And the previously proposed changes to the FLSA regulations would add further complexity and necessitate

notable changes to compensation structures and practices. Specifically, the new regulations would double the current threshold for exemption from overtime pay from \$455 per week (\$23,660 per year) to \$913 per week (\$47,476). Moreover, under the new rules, salary levels will automatically adjust every three years (“the escalator provision”). The new regulations have no exceptions for small companies. While these changes were scheduled to take effect on Dec. 1, 2016, at press time the changes are still on hold by the courts who are waiting for direction from the Trump administration.

### ROUTE REP HAZARD

In the meantime, companies in the linen, uniform and facility services industry are urged to pay particular attention to one very specific job category that many companies have—route drivers/route salespersons. Many businesses with this type of position oftentimes treat those employees as exempt from overtime.

While it’s possible that this type of job will meet the requirements for an exemption from overtime rules, every company counting on exempt status should be careful and know exactly what exemption they’re relying on. For example, some businesses think that this position meets the “outside sales” exemption. However, that might not be the case, depending on the specific facts. Also, another potential tactic is known as the “motor carrier” exemption. But, again, an attorney or other qualified expert needs to carefully evaluate the facts to ensure that such an exemption is available. **TS**

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# ANSWER TO A HIGHER CALLING



Certifying your laundry through TRSA attests to your ability to deliver a higher level of clean. You maximize your customers’ confidence in your processing and handling. Bacteriological testing provides them with an additional measure of assurance beyond TRSA’s inspections of your engineering and best practices. Your goods, not just your process, are subjected to a standard, aligning with ISO criteria for product quality. No U.S. government agency or association has set a standard for an acceptable bacterial level for textiles. But TRSA certification rises to a new level, combining the international practice of microbial testing with independent inspection to provide the highest level of confidence.

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