



Care In Drafting Pay Documents Is Essential

Insights

11.22.10

In all her 20 years in human resources, Janice has never seen anything like it. Bigtime Electronics fired its Production Manager Fred Smith last week, and now his lawyer has sent Janice a letter demanding that Fred be paid more than \$20,000 for overtime worked during his employment. Fred clearly met the requirements for exemption from overtime under federal and state wage-hour laws.

But the attorney refers to a sentence in Fred's hiring letter saying, "For payroll and withholding purposes, Bigtime Electronics will comply with all federal and state compensation laws and regulations." The lawyer says that, even if Fred was otherwise exempt from overtime, this was a contract in which Bigtime nevertheless agreed to abide by those requirements.

Janice picks up the phone to call Bigtime's employment lawyer so that they can share a good chuckle. Unfortunately, Fred might have the last laugh; at least one court has ruled that a similar sentence meant an employee was entitled to overtime under state law.

So What /s The "Deal"?

Increasingly, employees and former employees are invoking the words of a hiring letter, a compensation policy, a bonus memo posted on the bulletin board, and so on to make pay claims. These contentions are often based, *not* upon minimum-wage or overtime laws, but instead upon things like contract law or state wage-payment statutes requiring employers to pay what they say they will. For example, some courts have said that an employer's meal-break policy could be interpreted to mean that employees are *contractually* entitled to pay for unworked meal periods, even if an applicable wage-hour law would not require this.

Cases like these typically allege that management has failed to do something it said it would do or has done something different from what it committed to do. Also, employees often try to exploit ambiguities, vagueness, or inconsistencies in compensation plans or policies in making their allegations. It is not unusual for them to contend after-the-fact that words or phrases meant something different from what the employer believed everyone understood them to mean.

The Bottom Line

Employers should think carefully about what they are saying in documents that cover compensation matters or that could arguably affect employees' pay. Management should be sure that these materials say things as clearly and as accurately as possible, and that they neither say nor imply anything different from what the employer intends.

These documents should be drafted to give the employer maximum control and flexibility, including with respect to the interpretation of the terms used. This doesn't mean that pay documents have to be "lawyered-up"; being clear and accurate does not necessarily translate to being longer and more-complicated.