Misclassifying Employees Proves to Be an Expensive Mistake

Insights
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A Massachusetts temporary-services company specializing in technical and manufacturing staff has learned a $1.8M lesson about the perils of erroneously classifying employees as exempt under the federal Fair Labor Standards Act.

A U.S. Wage and Hour Division investigation eventually led to a December 1 consent court judgment calling for 888 Consulting Group Inc. (doing business as "TAC Worldwide") to distribute this amount to more than 900 current and former employees. TAC was also permanently enjoined to comply with the FLSA in the future.

Many of the individuals involved had held positions entitled "Technical Support," "Field Engineer," "Electrical Engineer," "Help Desk Representative," "Technical Writer," "Software Tester," "Network Administrator," and "Telecom Engineer," and had apparently been treated as exempt computer professionals under the FLSA. Among the other positions affected were "Accountant," "Payroll Systems Analyst," "Project Engineer," "Financial Analyst," and "Sales Representative."

Despite the unprecedented explosion of wage-hour lawsuits in recent years, there remains a dangerous misconception that salaried, technical, managerial, or administrative employees may routinely be classified as exempt from the FLSA's minimum-wage, overtime, and timekeeping requirements. Instead, the truth is that only those employees who *clearly* fit within the definition of an FLSA exemption may be paid on a no-overtime basis. Labels, assumptions, and conventional wisdom about what "everybody does" are not reliable indicators of who may and may not be treated as exempt.

The FLSA exemptions most-often in dispute are those applying to "executive," "administrative," "professional," "outside sales," and "computer professional" employees. Strictly speaking, these exemptions are evaluated on an employee-by-employee basis. Whether an employee qualifies for one of them depends on the nature of the individual's work as compared to the detailed requirements of specific regulations and interpretations.

The legal burden to establish that a person is FLSA-exempt rests with the employer, who must be ready to prove if necessary that each exemption requirement is met. Position titles and job descriptions can assist in getting a general idea about whether employees might be exempt, but the question's ultimate answer will be decided against the background of what *each* individual *actually*

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does in his or her daily work.
It is more important than ever for employers to be sure that every FLSA exemption they rely upon is both legally justified and properly applied. This requires a detailed evaluation of specific facts â€“ vague overviews and shortcuts can lead to disaster. Employers should also look into the requirements of wage-hour laws in states and other jurisdictions where they employ people. Those laws might not contain the same exemptions as the FLSA, and the ones they do include might be different from or more limited than the FLSA's in important ways.

For more information contact your regular Fisher Phillips attorney.

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