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Correctly Classifying Assistant Store Managers to Avoid Wage and Hour Misclassification Claims

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Many retail employers incorrectly assume that simply because an employee has the word “manager” in his or her job title, he or she may be classified as exempt from federal and state overtime rules and regulations. The misclassification of assistant store managers in the retail industry is pervasive, and the potential consequences can be costly. Employees misclassified as exempt may be entitled to back overtime wages and an amount equal to the unpaid back overtime wages in liquidated damages” for a two- or three-year period, depending on whether the violation is found to be “willful,” as well as the employee’s reasonable attorney’s fees. In order to avoid such claims, retail employers must review the type of work that assistant store managers are performing to determine whether the employees qualify for the exemption.

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When Can Assistant Store Managers Be Classified as Exempt?

Assistant store managers may be exempt from overtime requirements pursuant to the executive exemption if:

i. they are compensated on a salary basis of over $455 per week (i.e., the “salary threshold”);
ii. their primary duty is management of the enterprise;
iii. they customarily and regularly direct the work of two or more other employees or their equivalent, e.g., four part-time employees; and
iv. they have the authority to hire or fire other employees, or their suggestions and recommendations on personnel decisions are given particular weight.

In their planning, retail employers should take note that Labor Secretary Alexander Acosta is on record as supporting raising the salary threshold to around $33,000. Employers that operate in California and New York also need to be mindful that the salary threshold in those states is higher than the federal $455 minimum.

Determining whether an assistant store manager is properly classified as exempt pursuant to the executive exemption can be particularly challenging because assistant managers oftentimes perform both exempt and non-exempt tasks. For instance, while assistant store managers may be involved in overseeing and disciplining employees, they may also be performing such tasks as assisting customers, performing price checks, operating cash registers, stocking shelves, and cleaning and erecting display stands, which are non-exempt tasks. The key question is whether the assistant manager is performing managerial functions as his or her “primary duty,” which, although not quantified by federal regulations or interpretive guidance, is usually interpreted to mean the majority of the employee’s work time.

Avoiding Misclassification

Employers should routinely conduct self-audits of each individual in their workforce who is classified as exempt. If an assistant manager does not regularly supervise at least two full-time employees, or their equivalent, and does not have the ability to hire, fire, promote, or discipline employees, or if the assistant manager’s recommendations are not given particular weight, it is likely that the individual is misclassified.

Employers should immediately address any misclassifications they find. Typically, this means either enhancing the job duties of the position so that it satisfies the primary duties requirement of the executive exemption or reclassifying the position as non-exempt. If reclassifying, the employer must ensure that the newly non-exempt employee records all of his or her work time and is paid for all hours worked, which usually requires paying the employees for hours over 40 each week at time-and-one-half the regular rate of pay. If the assistant store manager has a schedule that changes from week to week, retail employers may wish to consider classifying the employee as a salaried, non-exempt employee paid under the fluctuating workweek method. Under this classification, employees are paid a set weekly salary regardless of number of hours worked (up to 40), and then one-half time for overtime hours.

Employers must also be mindful that certain states, such as Alaska, California, Colorado, and Nevada, require the payment of daily overtime.