

## **Protecting your business from overtime Claims**

The work world has drastically changed in the past 50 years but many of the nation's labor laws have not. Our basic labor laws, governing such things as compensation, hours of employment, and time away from work, were enacted when manufacturers were the dominant employers. Today, as we move from a manufacturing to service economy, some of the old laws can be a potential minefield for employers. This is especially true for the rules on overtime pay. Lawsuits alleging violations of the overtime pay rules have skyrocketed in the past few years, especially for white-collar workers.

### **The law**

The Fair Labor Standards Act (FLSA) governs, among other things, hours of work and overtime pay. One or more employees can bring a claim for violation of the Act's overtime provisions.

These suits are known as "collective actions." They are based on claims that employers have misclassified employees under the FLSA's "white collar" exemptions. The white-collar exemptions exclude salaried, administrative and professional employees from getting mandatory overtime pay for all hours worked in a week in excess of 40.

### **Salaried and hourly workers**

The FLSA was enacted at a time when distinctions between salaried and hourly workers were more evident than today. Businesses, especially in the manufacturing sector, were organized in a much more hierarchical manner and employees had distinct duties, which did not overlap with other workers or managers. Rank and file employees punched a time clock and any work over 40 hours was easily documented.

Today, businesses have streamlined their organizational structure and encouraged greater teamwork among employees. Duties among managers and workers frequently overlap. A salaried employee may perform some of the same duties performed by an hourly worker. This is often true for low-level supervisors in service businesses.

In determining whether an employee is exempt from overtime pay, the courts traditionally look at how much independent judgment and discretion the employee exercises on the job. This task is easy in a traditional, hierarchical work environment. The task is much more complicated in a less formal environment. For example, many technology jobs require independent judgment but the employee may not be a manager.

### **Avoiding problems**

The most common mistake many employers make is to assume that just because an employee is salaried or his or her job title or description seems to fall under one of the exemptions, the employee is exempt from overtime compensation. Under the law, job titles and descriptions of positions carry no weight and will not help you defend a claim.

To protect yourself from liability, you must make FLSA compliance a continuing responsibility. You should regularly review the actual work your employees perform to make sure that their duties are exempt from the overtime rules. Employees should document their daily tasks. You could request your employees to revise their own job descriptions based on changes in the workplace.

If your company has downsized or you are not hiring new employees, your current managers may have taken on some duties formerly performed by hourly workers. If they have picked up a significant amount of new duties, they may no longer be exempted from the overtime rules even if their job titles have not changed.