EXEMPT OR NOT - ENSURING EMPLOYEES ARE PROPERLY CLASSIFIED TO AVOID EXPENSIVE CONSEQUENCES

Most employers believe that paying a consistent salary every pay period is easier than tracking time and calculating hourly employee pay. Salaried employees also don’t receive overtime pay, so controlling payroll costs by making employees salaried seems like an attractive alternative.

Misclassifying employees, however, can cost far more than occasional overtime pay.

It’s important to use correct terminology when discussing classification. We frequently interchange salary and hourly terms, which can result in unpaid wages, overtime, and liquidated damages and attorney fees. In addition, failure to properly classify positions can result in unpaid wages, overtime, and liquidated damages and attorney fees. Recently, a federal judge in Alabama approved an $8.3 million settlement because Dollar General allegedly failed to properly pay store managers for overtime.

Immigration laws and policies are changing daily, compliance has become even more challenging. In order for a non-US citizen to work in the United States, one must have either a permanent resident card or employment authorization document. A permanent resident card is issued for 10 years, and the permanent resident can apply for extensions or for naturalization after five years.

A permanent resident is an individual who is authorized to live and work permanently in the United States. A permanent resident card is allowed to legally work in the US. In these situations, the card may or may not be extended. Before hiring a person with an employment authorization card, potential employers should consult immigration professionals to determine whether the card can be extended. This can save the employer from hiring a person whose work permit either expires soon or does not allow extensions.

The most commonly known temporary employment-based visa category is the H-1B visa. The H-1B program allows companies in the United States to temporarily employ foreign workers in occupations that require the theoretical and practical application of a body of highly specialized knowledge (i.e., college education or higher). The H-1B visa may be approved for three years and can be extended for an additional three years. This is subject to quota and must be filed by April 1 for an Oct. 1 start, unless the employer is affiliated with a college or university.

A HISTORY OF HATE: Civil Rights Symposium 2019

Hate has crept into our society affecting education, the LGBTQ community and immigration. This program examines how the 1st and 14th amendments deal with hate and concludes with one man’s efforts to erase hate. Register: www.cbalaw.org or (614) 221-4112

EMPLOYMENT AUTHORIZATION: HOW CAN YOU STAY COMPLIANT?

Employment authorization can be granted in various situations, including a person in refugee or asylum status; a fiancée of a US citizen who has permission to work must file for authorization (an EAD card); and a person in temporary protected status. The expiration date on the EAD determines how long the card holder is allowed to legally work in the US. In these situations, the card may or may not be extended. Before hiring a person with an employment authorization card, potential employers should consult immigration professionals to determine whether the card can be extended. This can save the employer from hiring a person whose work permit either expires soon or does not allow extensions.

The Department of Labor Wage and Hour Division provides a great deal of guidance on determining if a position is exempt or non-exempt. The first threshold is that “the employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than $455 per week,” or $11.37 per hour or less. If compensation does not surpass this weekly amount, then the employee is non-exempt. Please note that states may have separately set higher amounts.

If the employee’s wages exceed this minimum amount, then the employer must evaluate the position’s primary duties based on the DOL’s Fact Sheets. If both the wage threshold and the duties tests are met, the position is probably exempt. While there are benefits to classifying every employee as non-exempt regardless of compensation or duties, an employer would be wise to maximize the benefits of the exempt status.

Failure to properly classify positions can result in unpaid wages, overtime, liquidated damages and attorney fees. Recently, a federal judge in Alabama approved an $8.3 million settlement because Dollar General allegedly failed to properly pay store managers for overtime.

Non-exempt:
• Pros for employers: Easy to calculate (set salary every paycheck), “Salary” can be psychologically motivating. No need to worry when an employee works over 40 hours in a week.
• Pros for employers: Pay is consistent
• Cons for employees: No overtime for time worked over 40 hours
• Cons for employers: No allowable wage deductions (with a few exceptions), “Work a minute, work a day” pay

Exempt:
• Pros for employers: Easy to calculate (set salary every paycheck), “Salary” can be psychologically motivating. No need to worry when an employee works over 40 hours in a week.
• Pros for employees: Pay is consistent
• Cons for employers: No allowable wage deductions (with a few exceptions), “Work a minute, work a day” pay
• Cons for employees: Pay is variable, must be closely managed to avoid overtime

Cons for employees: Can be psychologically de-motivating

Cons for employers: Payroll will be variable, must be closely managed to avoid overtime

Cons for employees: No overtime for time worked over 40 hours

Cons for employers: No allowable wage deductions (with a few exceptions), “Work a minute, work a day” pay

Overtime:
• Pros for employees: Overtime is paid at a premium
• Cons for employers: Payroll will be variable, must be closely managed to avoid overtime

Pros for employees: Pay is consistent

Pros for employers: Easy to calculate (hourly rate X number of hours), wage deductions for missed time

Pros for employers: No allowable wage deductions (with a few exceptions), “Work a minute, work a day” pay

Pros for employees: Pay is consistent

Pros for employers: Easy to calculate (hourly rate X number of hours), wage deductions for missed time

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