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EMPLOYMENT LAW UPDATE

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“Window of Correction” Permits Employer to Escape Liability for Overtime

Classifying an employee as “exempt” and paying him a “salary” do not necessarily insulate your company from liability for overtime compensation under the Fair Labor Standards Act (“FLSA”). Improper deductions from an exempt employee’s salary void the exemption and expose the employer to liability for overtime. Losing the exemption on a highly paid employee or a group of employees, regardless of their pay level, could be very costly.

Employees who are subject to deductions for the following reasons may not be treated as exempt:

- Shut downs of less than a full week due to slow business conditions
- Absences due to jury duty, attendance as a witness or temporary military leave
- Disciplinary suspensions of less than a week
- Partial day absences occasioned by the employee for errands, doctor visits, etc.

How can you avoid substantial overtime liability if your practices are inconsistent with FLSA requirements? There is some good news from a recent decision by the United States Fifth Circuit Court of Appeals. Restaurant managers whose weekly salaries were improperly reduced because of cash register shortages sued their employer for overtime compensation. The employer was permitted to take advantage of a “window of correction” and escape overtime liability by reimbursing the managers for the improper deductions, paying them interest, and agreeing not to make such deductions in the future.

FLSA litigation is on the rise. Your company should audit its payroll practices to ensure compliance with the FLSA’s exemptions. If improper deductions are found, you may be able to take advantage of the “window of correction” to preserve the exemption and escape overtime liability.

Please contact Tommy McGoey or the Liskow & Lewis attorney with whom you regularly work if your company needs assistance with FLSA compliance.

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