

Don't Delay! Are Your Employees Correctly Classified For Overtime Purposes?

*Sarah S. Pillen, Esq.
Rembolt Ludtke LLP*

In this difficult economic climate could your business afford an unexpected expense of \$11.7 million? Likely not. As one business recently learned the hard way, it is far better to have your employment policies in order rather than waiting for a large judgment that may be on the horizon.

On May 8, 2009, Casey's General Store, Inc. ("Casey's") a well known Midwest convenience store chain, announced that it settled two separate class action lawsuits for \$11.7 million. These two lawsuits were filed by current and former employees alleging various wage and hour violations under the federal Fair Labor Standards Act (the "FLSA").

The first class action was filed against Casey's in 2007 by current and former assistant managers alleging that Casey's violated the FLSA and state laws by failing to pay approximately 7,800 current and former assistant managers overtime. The Plaintiffs alleged that they were not exempt under the FLSA "executive" or "administrative" classifications. As a result of this first class action suit, Casey's agreed to settle these claims for \$5 million.

The second class action was filed against Casey's in 2008 alleging the company violated the FLSA and state labor laws by failing to pay approximately 76,000 non-management employees overtime and minimum wage. As a result of this second class action suit, Casey's agreed to pay \$6.7 million to settle these claims. Neither settlement includes Casey's attorneys' fees to defend these lawsuits.

LESSON: The FLSA requires covered employees to be paid at least the federal minimum wage (currently \$6.55 per hour, and rising to \$7.25 per hour, effective July 24, 2009) for all hours worked. The FLSA also requires covered employees be paid overtime at time and one-half their regular rate of pay for all hours worked exceeding 40 hours in a workweek. However, the FLSA does provide employers with a minimum wage and overtime exemption if an employee can be classified as one of the following: executive, administrative, professional, or outside sales employee. To qualify for one of the exemptions, an

Employment/Labor Law Practice Group

David J. A. Bargaen
dbargaen@remboltludtke.com

Mark A. Fahleson
mfahleson@remboltludtke.com

Sarah S. Pillen
spillen@remboltludtke.com

Rembolt Ludtke LLP Attorneys at Law

MAIN OFFICE

**1201 Lincoln Mall, Suite 102
Lincoln, NE 68508
Fax: 402 / 475-5087
402 / 475-5100**

BRANCH OFFICES

**125 South 6th Street
Seward, NE 68434
Fax: 402 / 643-3969
402 / 643-4770**

**3280 Woodridge Boulevard
Suite 160
Grand Island, NE 68801
308 / 384-6888**

www.remboltludtke.com

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employee generally must meet certain tests regarding their job duties and be paid on a salary basis at not less than \$455 per week. It is imperative that employers realize that job titles alone do not determine exempt status. Rather, employers must examine each employee's specific job duties for each position.

In the Casey's lawsuits, the plaintiffs, all assistant managers, alleged that they were incorrectly classified under the "executive" and "administrative" exemptions. In order to qualify for the "administrative exemption," all of the following criteria must be fulfilled:

- Employee must be compensated on a salary or fee basis at a rate not less than \$455 per week;
- Employee's primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and
- Employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

Another means of being exempt under the FLSA is to qualify under the "executive exemption." In order to qualify for the "executive exemption" all of the following criteria must be fulfilled:

- Employee must be compensated on a salary basis at a rate not less than \$455 per week;
- The employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
- Employee must customarily and regularly direct the work of at least two or more full-time employees or their equivalent; and
- Employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

Unless your organization has \$11.7 million laying around that it doesn't need, it is imperative that you take proactive measures to ensure your "FLSA house" is in order. Employers should make a definitive determination for each position, in accordance with FLSA regulations, as to whether each position is exempt or non-exempt in accordance with the FLSA.

Sarah Pillen is an associate with the Lincoln-based law firm of Rembolt Ludtke LLP and may be reached at (402) 475-5100 or spillen@remboltludtke.com. This article is provided for general information purposes only and should not be construed as legal advice. Those requiring legal advice are encouraged to consult with their attorney.