

# Misclassifying Your Employees Can Be an Expensive Mistake

By James Harwood – CEO, Total HR

Do you know the difference between an exempt and a nonexempt employee? Getting this answer wrong could cost you BIG money! Managers and/or business owners who do not have a full understanding of the wage and hour regulations may be opening themselves, and their company, up for an investigation by the Department of Labor.

If the Department of Labor conducts an audit and finds the misclassification of an employee's status, the company could be significantly penalized. For example, if a position was misclassified and the employee should have been maintained in a nonexempt position, the employer would be required to pay the overtime back pay to the employee. If this misclassification has been in place over a few years, the monetary impact to the company could be quite costly.

## **Penalties to employer for misclassification of nonexempt employee:**

- Unpaid overtime PLUS interest
- 30 day waiting time penalty based on the employee's average daily wages
- Per employee penalty of \$50 or \$100 for each pay period overtime wages were not paid
- Attorney's fees and costs awarded to the prevailing party

The requirement to pay overtime compensation is one of the key provisions of the Fair Labor Standards Act (FLSA). The FLSA requires that nonexempt employees be paid one and one-half times their regular rate for all hours over 40 worked in a workweek. Thus it is essential that employers understand the difference between exempt and nonexempt status in order to properly pay overtime compensation.

## **Some KEY differences between exempt and nonexempt employees:**

Exempt Employees:

- Are paid a salary
- Are not entitled to overtime compensation
- Are exempt from meal period requirements
- Are exempt from rest period requirements

Nonexempt Employees:

- Are paid by the hour
- Are entitled to overtime compensation for work performed in excess of 8 hours in a day or 40 hours in a workweek
- Must be provided a ½ hour meal period
- Must be provided two 10 minute rest periods

So what are the differences, and what type of work can be properly classified as exempt? In general, employees may be exempt from overtime if they fall within one of these general categories: executive, professional, or administrative. The specific rules for each of these categories is extensive and if you have any questions you should contact an HR Professional, however here is a general overview of each category:

**Executive:** Typically manage the enterprise in which they are employed, regularly direct the work of two or more employees, have the authority to hire or fire other employees, and regularly exercise discretion and independent judgment.

**Professional:** Perform work that is based on an advanced degree (i.e. law, medicine, dentistry, optometry, engineering, and accounting), are primarily engaged in an occupation recognized as a learned or artistic profession, customarily exercise discretion and independent judgment, and earn a monthly salary equivalent to no less than two times the state minimum wage.

**Administrative:** Perform work related to management policies or general business operations, exercise discretion and independent judgment, work under general supervision along specialized or technical lines, and require special training, experience or knowledge.

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It is recommended that employers conduct an analysis of their positions to determine they are appropriately classified as exempt or nonexempt. It is always smarter for companies to occasionally conduct their own audit rather than find themselves in a situation where an employee feels they are being mistreated and calls the Department of Labor. The costs involved in doing an occasional analysis far outweighs the cost of a DOL audit which may result in class action suits, lump sum pay back of monies to employees, penalties and legal fees.

## **Smart preventative measures you SHOULD take:**

- Offer a letter of agreement to every new hire that outlines their job title, job duties and conditions of employment
- Develop detailed job descriptions for each position in your company
- Conduct performance reviews that clarify job duties with your employees on an annual basis
- Contact Total HR at (818) 248-0049 if you have questions or feel that you may have a misclassification situation in your company