

KD Alert: Are Your Salaried Employees Properly Classified?

*By Kimberly Westmoreland, Esq.
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Too many employers mistakenly believe that simply because an employee is salaried the employee is not entitled to meal breaks or overtime wages for hours worked in excess of 8 hours per day, or 40 hours per week. Employers often enter into written agreements with their employees acknowledging exempt status, whether it be for an executive, an administrative assistant, an outside salesperson, or a licensed professional on the payroll. Often, this arrangement is not in compliance with California's requirements for exemption from the Labor Code. For example, PetSmart, Inc. is currently under fire for allegedly improperly misclassifying its employees and thereby denying them overtime pay to which they may have been entitled. The company is now defending a class action wage and hour lawsuit in federal court. Numerous Fortune 500 companies and small businesses alike have been confronted with the same issue.

It is a common, and costly, misconception that paying an employee a salary automatically exempts them from overtime and meal period requirements. However, California labor laws and regulations provide very specific, and industry-specific, requirements that must be satisfied before an employee can properly be deemed exempt. The fact that an employee receives a salary can be but a small part of that equation. In an increased effort to enforce such requirements, the California Labor Commissioner is closely examining the work actually performed by employees to determine if the employee is properly classified, and is issuing on-the-spot citations for the improper classification of employees.

An employee's designation as "exempt" must be made on a case by case basis in consultation with an experienced employment attorney. To this end, an internal audit of a company's pay practices can go a long way towards preventing and defending wage and hour claims. With the startling increase in these types of claims, prevention is key.

Kimberly Westmoreland, Esq. and Amber Healy, Esq. of Kaufman Dolowich & Voluck, LLP's Los Angeles office and Employment Law Department can help companies determine whether their wage and hour policies comply with California law.