



DATE: April 19, 2010
TO: Our Valued Client Partners & Friends
FROM: HIB Account Team
RE: EMPLOYER ALERT 2010-03
Be Careful Using the Administrative Exemption

We are pleased to bring you our **Employer Alert 2010-03: Be Careful Using the Administrative Exemption**. This article addresses a very common issues in the workforce of classifying employees as Exempt or Non-Exempt.

We hope you find this useful and please, if you have any questions, contact your HIB Account Team for assistance.

BE CAREFUL USING THE ADMINISTRATIVE EXEMPTION

A California court recently invalidated portions of an employment agreement when it sided with six employees who sued their former employer for violations of the Labor Code. The case highlights the difficulties employers face satisfying the administrative exemption.

The Case

Six individuals sued their former employer, a temporary staffing firm, for an "alleged failure to comply with Labor Code provisions pertaining to overtime compensation, commissions, meal periods, and itemized wage statements." Most of the employees worked for the staffing firm as account executives.

The court explained, "The duties and responsibilities of an account executive involved recruiting, interviewing, and evaluating candidates to be placed as temporary employees; selecting and placing candidates on job orders and assisting clients with their call-in business needs; and new business development." The former employees **had little discretion as to how to perform those duties**. Rather, they were expected to follow the "recipe" established by corporate headquarters.

The employer claimed the plaintiffs were barred from filing a complaint because they signed an employment agreement that included a provision entitled "Limitation on Claims," that shortened the statute of limitations for such claims to six months. The employer also argued each plaintiff was exempt from the wage and hour laws due to the administrative exemption.



EMPLOYER ALERT 2010-03

Be Careful Using the Administrative Exemption

April 19, 2010

Page 2

The Court's Decisions

The trial court determined that the "Limitation on Claims" provision contained in the employment agreements was unenforceable as a violation of both public policy and California Labor Code section 219, which prohibits private agreements that limit statutory remedies.

The trial court further determined the administrative exemption did not apply to plaintiffs, and the appellate court agreed. The employer lost because, according to the court, "account executives **did not directly relate to management policies or general business operations.**"

The Administrative Exemption

The heart of the case involves the Industrial Welfare Commission wage order (No. 4-2001), which applies to professional, technical, clerical, mechanical, and similar occupations. The wage order provides a five-part test to determine whether the administrative employee exemption applies. The employee must:

1. Perform office or non-manual work directly related to management policies or general business operations of the employer or its customers.
2. Customarily and regularly exercise discretion and independent judgment.
3. Perform under only general supervision work along specialized or technical lines requiring special training or execute under only general supervision special assignments and tasks.
4. Be engaged in the activities meeting the test for the exemption at least 50 percent of the time, and
5. Earn twice the state's minimum wage.

In order for employees to be considered exempt under the administrative exception, all five criteria must be satisfied. The court found in the foregoing case that the first criteria was not satisfied because "substantial evidence showed plaintiffs' duties ...were not directly related to management policies because they instead constituted sales work."

What Employers Should Do

- Consult with counsel when drafting employment agreements to ensure you are not violating statutory provisions.
- Be careful when classifying employees as exempt to ensure they meet all the criteria for exempt employees established under the law.
- When in doubt, pay employees as non-exempt.

Source: California Chamber of Commerce



EMPLOYER ALERT 2010-03

Be Careful Using the Administrative Exemption

April 19, 2010

Page 3

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