



RETAIL AND SERVICE UPDATE: MARCH 8, 2006

This bulletin provides an update on employment issues for Retail and Service subscribers. Please contact us if you have any questions about this decision or about its effects on your business.

Misclassification of Management Employees Results in Verdict of at Least \$19.1 Million

In a case tried before U.S. Judge U.W. Clemon in Tuscaloosa, Alabama last week, a federal jury on Friday, March 3, 2006 returned a verdict against Family Dollar Stores, Inc. ("Family Dollar"), the nation's second-largest dollar store, for at least \$19.1 Million in damages. Judge Clemon is expected to hold a hearing this week that could potentially double the judgment to \$38 Million.

The dispute involved wages paid to Family Dollar's store managers. The lawsuit was filed in 2001 and was governed by the old Fair Labor Standards Act ("FLSA") regulations; the new regulations became effective in August 2004. However, it still serves as quite a cautionary tale to employers – even under the new regulations – underscoring the fundamental importance of classifying employees properly.

Under the FLSA, salaried employees are exempt from overtime pay if they meet certain criteria. Under the old regulations, employees could be exempt from minimum wage and overtime requirements if they were paid a minimum weekly pay of \$250, served as the primary responsibility for managing a business unit, and supervised at least two full-time individuals. Family Dollar contended that its store managers were properly classified as salaried managers and, in fact, had apparently successfully convinced two other federal courts that its store managers were properly classified as exempt employees. Indeed, this was the second trial of this very case; the previous trial ended last year in a mistrial.

This time around, however, the jury determined that the store managers were misclassified. The plaintiffs claimed they were misled by Family Dollar during the hiring process; they claim they were led to believe they were hired as managers for a salary and bonus covering 48 hours a week. Plaintiffs claim that, instead, they were required

to work up to 90 hours a week performing manual labor, including unloading trucks, stocking shelves, and mopping floors. Family Dollar has stated that it plans to appeal the verdict.

We have seen a growing number of lawsuits filed under the FLSA – that may be due, in part, to the complicated nature of the applicable regulations and the murkiness involved in determining which employees are rightfully exempt. Because the FLSA allows successful Plaintiffs’ attorneys to recover their attorneys fees, these can be attractive lawsuits to pursue. Couple those factors with the ability to quickly compound damages by bringing in large collective actions comprised of numerous Plaintiffs and the fact that alleged violations are ongoing in nature – each paycheck is essentially another potential violation – and it makes for a troubling situation for employers.

This might be an excellent opportunity to re-examine your classification of employees. Our staff at LMPV includes Lyndel Erwin, formerly a District Director for the United States Department of Labor, Wage and Hour Division, where he worked for 36 years. Lyndel and our attorneys can assist employers with wage and hour compliance and problem prevention strategies, including exemption issues.

This Retail and Service update was prepared by Richard I. Lehr, an attorney with the law firm of Lehr, Middlebrooks, Price & Vreeland. Richard can be reached for questions/further information at rlehr@lmpv.com or at (205) 323-9260.

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