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PROFESSIONAL CORPORATION

Date: February 2010

# START THE NEW YEAR RIGHT WITH A WAGE AND HOUR AUDIT

**By Christine A. Page, Esq.**

A wage and hour audit should be on the top of every company's list of New Year's resolutions in 2010. They are inexpensive to perform, particularly relative to the cost of defending a lawsuit for wage and hour violations. Unfortunately, such suits show no sign of diminishing in light of the number of disgruntled terminated employees unable to find work and the financial rewards to plaintiffs' counsel who can capitalize on innocent and often highly technical mistakes. Although the concerns are heightened in California due to certain state law requirements not mandated under federal law, the need for a wage and hour audit is universal. Employment claims now constitute nearly fifty percent of all class actions and most of them are for wage and hour violations.

The initial focus of any audit is to determine whether employees are properly classified as exempt or nonexempt. The misclassification of a nonexempt employee as exempt leads to a host of potential problems, including the failure to pay overtime, failure to provide meal and rest breaks, failure to maintain proper records of hours worked or to report the hours on payroll checks, and failure to pay sufficient wages upon termination. Each of these violations can compound the damages a company faces in terms of lost wages, penalties, interest, and attorneys' fees. The rules governing the classification of employees–particularly those meeting the administrative exemption–are frequently misunderstood and require a position-by-position analysis of the employee's typical workday. Too many employers assume they are safe if an employee receives a good salary and exercises a lot of discretion in performing his/her job. Sadly, such employers have learned the hard way that the employee not only has overtime and related claims but that the additional benefits and bonuses offered that misclassified employee will not be taken into consideration to offset the damage claims.

Once employees have been properly classified, the focus turns to ensuring that the hours of nonexempt employees are accurately tracked and reported, including start and finish times and times in and out for lunch. In addition to calculating overtime hours, California law requires that employers provide an unpaid lunch break and paid rest breaks at specific intervals during the workday and failure to either ensure or properly document breaks has triggered a deluge of litigation in recent years. A case currently pending before the California Supreme Court will hopefully give some clearer guidance and relief to California employers this year on the practice of lunch breaks, but currently the law makes the employer responsible for ensuring that they are taken and that they are timely and of adequate duration.

A wage and hour audit should also include a review of employee handbooks and policies for corrections and updates, review of the company's internal practices for identifying and correcting timekeeping errors, ensuring equal pay, proper deductions from employee wages, and other matters. Invariably, a few hours spent conducting an audit will identify violations–often technical–that if corrected can spare the company the time, expense, and aggravation of having to defend its mistakes before a judge or jury.

Should you need assistance in conducting your wage and hour audit, please contact Christine Page in our Employment Law Department.

**Christine A. Page** is a partner at Gilchrist & Rutter in Santa Monica, Calif. Her practice focuses on business litigation & dispute resolution, emphasizing real estate, employment and securities matters.