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AZ, AR, DC, FL, GA, KY, LA, MN, MS, MI, NY,
OH, OK, PA, SC, TN, TX, WV

Re: Fair Labor Standards Act

Dear :

Our firm is currently handling cases arising under the FLSA which is one of the fastest growing areas of litigation in recent years. Typically, we file these cases as collective actions on behalf of hundreds or thousands of employees seeking recovery for unpaid wages. You can incorporate a few questions in your questionnaire to determine if your client has a potential FLSA case. I have attached a general FLSA intake form for your convenience. The statute of limitations under the FLSA is 2 years unless the violation was intentional, then the statute of limitations is extended to 3 years. You should be aware of the various types of FLSA cases discussed below. For more information see our website at www.fairlabor-legal.com or call me at 1-800-898-2034.

Executive Exemption

The FLSA does not apply to everyone. A great deal of the litigation has been against companies who have claimed that certain employees are managers or executives. The executive exemption under the FLSA allows companies to pay managers a set salary and avoid paying them overtime in the event a manager works more than forty hours. However, the exemption also mandates that managers must actually do management duties as their primary duty. More often than not, we have found that many of the individuals classified as managers, assistant managers and/or service managers spend about the same amount of time performing non-managerial functions as all the hourly employees. The types of companies we have seen that use this form of misclassification are retail stores, automotive repair stores, convenience stores and service industry jobs.

Independent Contractors

The FLSA does not apply to independent contractors because they are not considered employees under the FLSA. Still, an employer cannot simply exempt workers from the FLSA by calling them independent contractors. We have seen numerous instances where individuals were improperly classified as independent contractors by companies and as a result did not receive the federal minimum wage or overtime pay.

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The misclassification of employees as independent contractors is common in many service related industries such as: customer services, telemarketing, delivery/courier services, stocking vendors, maintenance crews and nurses.

Donning and Doffing/Off-the-Clock Cases

Another area of the FLSA law which has been the subject of litigation is known as Donning and Doffing cases. These cases involve industries where employees are required to put on and take off protective clothing as a prerequisite for doing their job. Many companies do not pay employees for the time spent donning the protective gear and/or doffing the protective gear at the beginning and ending of a shift, or during break periods throughout the workday. Likewise, any employer who requires its employees to walk to their respective stations then clock in should compensate those employees for the walking time as well. Many of the industries where we see this type of litigation is in chicken processing facilities, beef packing facilities, waste disposal, scientific research and other large factories.

Interrupted Meal Periods

The majority of employers require that their employees clock-out for lunch. Typically, an unpaid meal period must last 30 minutes or more to be considered a bona fide meal period, but can be shorter than 30 minutes under special conditions. Common examples of this violation include factory workers required to eat while working at their machines or employees being required to wear radios during their meal periods and frequently being called to perform duties during their meal period. Another example would be a nurse paged to perform work in the middle of his or her meal period.

For more information regarding FLSA cases see our website at www.fairlabor-legal.com or call me at 1-800-898-2034.

Very truly yours,

BEASLEY, ALLEN, CROW, METHVIN,
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CLG:hmb
Enclosure