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HEADS UP!

BEWARE THE RISKS OF MISCLASSIFYING EMPLOYEES AS TRAINEES

The last issue of HEADS UP! discussed the legal exposure associated with misclassifying employees as independent contractors, and stated that the same exposure applies to the misclassification of employees as interns and volunteers. What follows will attempt to clarify the very limited circumstances when a worker is properly classified as a "trainee" or "intern."

Many employers proceed under the misguided notion that, as long as a worker is willing to work for free, the hiring entity is magically free of all legal requirements associated with engaging employees, starting with paying legally-required wages. This notion is badly misplaced.

Moreover, the engagement of a worker on this basis is tantamount to proceeding with a false sense of security. This can often prove to be the worst of all worlds, because it assumes that the employer is legally protected. This becomes disastrous when decisions are made with the expectation of legal protection, that later proves to be illusory.

Trainees and Interns

At the outset, it is important to note that, as with "independent contractors," California law provides a legal presumption that any work or services provided are performed within the context of an employment relationship. Once evidence is produced to show that services were performed, the presumption attaches, and the "employer" must then satisfy the burden of proving that the relationship was other than one of employment. If the evidence supporting both parties is of equal force, the presumption will prevail, and the relationship will be deemed to be an employment relationship.

In other words, proving independent contractor, trainee or volunteer status is an uphill battle from the moment a worker claims to be an employee.

To prove a legally enforceable training program or "internship," each of the following elements must be proven:

1. The training must resemble that provided in a vocational school;
2. The training must be for the benefit of the trainee or student, not the entity engaging him/her;
3. The trainee must not displace regular employees;
4. The business providing the training must not derive any immediate benefit from the trainee's activities, but instead must, at least on occasion, experience an impediment to its operations as a result;
5. Trainees must not have a reasonable expectation of future employment;
6. Trainees must understand that they are not entitled to wages for the time spent in training.

By virtue of element three in particular, only relatively few of the trainee/intern arrangements claimed are legally defensible.

In the event that the evidence fails to establish any of these elements, the worker will be determined to be an employee under the law. The result can be catastrophic for the employer.

This is because the "employee" will be entitled to recover the monetary value of all benefits that other similarly-situated employees were being provided at the time the worker was acting under the misclassification. These would likely include all wages, including overtime compensation, and unpaid taxes and penalties associated with tax withholdings that should have been withheld from wages by the employer. They also include the value of paid rest and meal breaks, and the value of any daily premiums associated with breaks that were unlawfully withheld, paid vacation benefits, paid sick leave benefits, unemployment benefits, workers' compensation benefits and health insurance benefits.

As with a famous case involving Microsoft, workers who are misclassified as trainees/interns, are entitled to other benefits of employment as well. In the Microsoft case, these included stock options that had been granted to properly-classified Microsoft employees during the time period involved in that litigation. When the court ruled that employees who had been misclassified as independent contractors by Microsoft were entitled to the monetary value of stock options, Microsoft settled the case for \$199 million.

The same legal principle applies to workers who are misclassified as trainees or interns.

For businesses who utilize trainees, it is imperative that the test applicable to trainees/interns, summarized above, be carefully scrutinized to verify that workers so classified qualify for that status under applicable law.

Second, for workers who do legally qualify, it is highly recommended that such workers be required to sign a contract or job description which specifies in detail the particular circumstances of the relationship that demonstrate compliance with each of the elements set forth in the legal standard summarized above.

Simply stating, in writing, that the relationship is that of a trainee or intern is not sufficient, and the courts will accord it little weight.