



Small  
Business  
Monthly

SHARP & ON POINT JULY 2016

## HR Litigation - An Employer's Nightmare

BY LAURIE GRIFFITH

**A**s a business owner, you care about your employees. But with employees comes human resources, and with human resources come rules and regulations. Business owners do not want to run afoul of the employment laws and want to protect their companies against unnecessary investigations and litigation.

For example, the Fair Labor Standards Act (FLSA), which regulates overtime pay and minimum wage, amongst other things, deeply affects the way you run your business. In May, the white-collar overtime exemptions to the FLSA were amended by the Department of Labor (DOL). The changes include an increase in the threshold salary for exemption, an increase in the total annual compensation requirement for highly compensated employees, and the use of nondiscretionary bonuses and incentive payments as part of the standard salary.

Come Dec. 1, salaried employees earning less than \$47,476 will be overtime-eligible. This rule will be especially important for small-business owners who have employees earning more than the current annual threshold of \$23,660 but less than the new threshold of \$47,476. As an employer, you may need to consider changing your pay strategy to maintain current exempt status for employees and comply with the new regulations.

Another important issue affecting small businesses is the improper classification of workers as independent contractors. Although there are many cost-saving benefits when using an independent contractor, it is important to make sure these workers are truly independent. There is no one test to determine whether a worker is an independent contractor, but these are a few questions provided by the IRS that you should ask when considering independent contractor status:

- Do you as an employer control how the worker does his or her job?
- Are the financial aspects of the worker's job controlled by

the employer?

- Are there written contracts or employee-type benefits?

Along with IRS common-law rules, the DOL defines the classification of workers. In 2015, the DOL released an interpretive memorandum on the misclassification of independent workers in an effort to broaden the protection of hourly workers. Both the IRS and the DOL have made the classification of workers a priority in recent years and expect it to continue to be a focus.

You can make easy mistakes as an employer when dealing with HR-related issues, and the above are just two examples of how the FLSA can affect small businesses. Along with the FLSA, there are other important federal laws for employers to note, such as the Family and Medical Leave Act and the Americans with Disabilities Act.

Please join us at the next Sharp & On Point Speaker Series on Tuesday, July 19, from 7:30 to 9 a.m. at Lodge Des Peres, where Robert Kaiser will discuss these issues and other mistakes that employers make and how to reduce your exposure to HR-related litigation.

Kaiser, partner at Armstrong Teasdale, is an expert when it comes to assessing risks and reducing litigation in the area of HR. As a member of the employment and labor practice group who has 25-plus years of practicing labor law, he has worked on everything from labor union relations to executive employment agreements.

To reserve your seat or for more information, visit [www.sharpandonpoint.com](http://www.sharpandonpoint.com) or [www.lopataflegel.com](http://www.lopataflegel.com).



*Laurie Griffith is a principal at Lopata, Flegel & Co. Accountants and Management Consultants. The Sharp & On Point Business Advisory Speaker Series is a free event at the Lodge Des Peres sponsored by Lopata. Learn business strategies you can immediately put in place to point your business in the right direction. For more*

*information, visit [www.SharpAndOnPoint.com](http://www.SharpAndOnPoint.com).*