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24th Annual Employment Law Update

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What You Need to Know:

State Law Update

Gulliver A. Swenson

What is an independent contractor?

- *Anfinson v. FedEx Ground Package System*
- The Court of Appeals adopts the “economic realities” test instead of the common law test to determine whether relationship is employer-employee or employer/independent contractor. The factors of economic realities are:
 - The permanence (or lack of it) in the relationship
 - The skill required to perform the work
 - The worker’s investment, if any, in equipment
 - The worker’s opportunity for profit or loss
 - The degree of control over the worker
 - Whether the service of the worker is integral to the business
- Affirmed by Washington Supreme Court



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Minimum Wage Act

- *Litchfield v. KPMG*
- Issue – Who qualifies as professional exempt for the Minimum Wage Act (MWA's) overtime requirements

Minimum Wage Act (cont.)

- MWA requires an employer to compensate its employees at least one and one-half times the employees usual hourly wage for all hours worked in excess of 40 hours per week
- Overtime pay does not apply to employees working in bona fide executive, administrative, or professional capacity

Minimum Wage Act (cont.)

- Department of Labor & Industries (“L&I”) defines “bona fide professional capacity” as:
 1. Earns more than \$250 a week
 2. Performs work requiring advanced knowledge acquired through a prolonged course of intellectual study, and
 3. Consistently exercises discretion

Minimum Wage Act (cont.)

- Litchfield was an audit associate
- Argued that had to be a CPA or have the experience necessary to be a CPA under Public Accountancy Act
- Court rejected bright line test because L&I regulations recognize that some accountants that don't hold a CPA license may still qualify as exempt

Minimum Wage Act (cont.)

- *Fiore v. PPG*
- When an employee's duties consist primarily of individual retail sales and manual labor is the employee "promoting sales" so as to be exempt from minimum wage requirements

Minimum Wage Act (cont.)

- Fiore was a Territory Manager for a painting company that sold its paint at Lowes; Fiore was responsible for 11 stores in Washington
- His duties were:
 1. talk to Lowes' customers
 2. set up displays
 3. manage the chip rack
 4. work with Lowes' employees

Minimum Wage Act (cont.)

- Dept. of L&I defines “administratively exempt” as an employee who:
 1. Earns more than \$250 a week
 2. primary duty consists of the performance of office or non-manual work directly related to management policies or general business operations of the employer or the employers customer, and
 3. Consistently exercises discretion

Minimum Wage Act (cont.)

- Significant manual labor defeat exemption
- Must be work of substantial importance directly related to management policies or business operations
- Advising management, planning, negotiating, representing the company, purchasing, promoting sales, and conducting business research

Minimum Wage Act (cont.)

- PPG provided Fiore with knee pads, ear plugs, a mallet, a hammer, a crowbar, a wrench, and screwdrivers
- He was one of 167 “Territory Managers”
- Fiore was NOT an exempt employee
- \$24k in damages; \$500k in attorney’s fees



Thank you!

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