

March 31, 2006

**LITIGATION ALERT AFFECTING
ALL NON-PROFIT ORGANIZATIONS**

On March 15, 2006 a class action was filed against one of our non-profit clients alleging that their Social Workers were not properly classified as exempt professional employees and should have been paid overtime as non-exempt employees. The class action claims violation of Labor Code Sections 520 (overtime), 203 (waiting time penalties of up to 30 working days), 226 (penalties for failure to have pay stubs itemized and not to exceed \$4,000 per employee), 1194 (interest, reasonable attorneys fees and costs), 558 (additional penalties), and restitution and injunctive relief pursuant to California Business and Professions Code 17200 et seq. The affected employees include all current and former Social Workers for the last four (4) years. As you can image, the potential liability is staggering.

On November 4, 2005, the U.S. Department of Labor issued an opinion letter concerning whether Social Workers and Case Workers are exempt from overtime pursuant to the Fair Labor Standards Act. Are these learned professionals that should be exempt from overtime? The U.S. Department of Labor stated the follow:

“The provisions of the exemption must be considered on an employee by employee basis. However, based on the information you have provided, those Social Workers with masters degrees who work in the field of their degree, will generally meet the above criteria. Social work conducted at this level requires advance knowledge in a “field of science or learning” and has a recognized professional status required by the regulation. ...Social Workers who meet these criteria and who are paid on a salary or fee basis of not less than \$455.00 per week meet the requirement for the learned and professional exemption of 29 CFR section 541.330.”

“Because you have stated that the occupation of case worker does not customarily require specialized academic training, since the only prerequisite for this occupation is a bachelors degree in social sciences, we conclude that Case Workers do not meet the requirements of the learned and professional exemption. Therefore, the Case Workers are not exempt from the minimum wage and overtime requirements of the FLSA.”

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Our firm has consistently recommended to all of our non-profit clients to conduct a self audit to determine if its employees have been properly classified as exempt employees. We believe that the class action that has been filed will become the test case important to all non-profit clients. If our firm can be of any assistance to you, please contact us. We strongly recommend that you do not make any changes without consulting your employment law counsel. Of course, if you have any questions, please feel free to contact us. We will continue to update you concerning the significant litigation.

Very truly yours,

Al

Alfred J. Landegger

AJL:tn

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