



Accurate Job Descriptions—Your Ready Defense Against Employee Misclassification Lawsuits

The rise of the "gig economy" has led to an increase in the number of FLSA class action lawsuits claiming either of two expensive problems:

- that people labeled as independent contractors were actually treated as employees
- Or that employees were incorrectly categorized: non-exempt instead of exempt, and vice versa.

In either situation, verdict values can be huge — often running into the millions of dollars between back wages and attorney's fees and mandated government fines and penalties. Some of the largest settlements in recent history include:

- \$2.85 Million against Lowe's for misclassifying employed installers as independent contractors
- \$6 Million against PNC Bank for misclassifying assistant branch managers as exempt to avoid paying overtime
- \$7.85 Million against Fairfax County, Virginia for misclassifying fire captains as exempt to avoid paying overtime
- \$8.75 Million against Postmates for misclassifying employed driver couriers as independent contractors

All the way up to ...

- \$227 Million against FedEx for misclassifying employed ground drivers as independent contractors

Here's what you have to watch out for and what you need to do:

Independent Contractor (IC) Or Employee?

Independent contractors are an important part of the business world, and the Department of Labor (DOL) recognizes the business need. However, because it costs an employer less to hire ICs versus employees — primarily by not paying overtime or benefits — the DOL has set a priority to identify and hold accountable those employers who wrongly classify employees as ICs.



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Central to determining worker status is the degree of supervision and control an employer exercises on matters such as scheduling, location, tools and appearance. There is no single yardstick that determines worker status, but the deciding factor in court is always which job aspects the worker controls and which aspects the business controls.

A description of the role and classification, which the contractor signs, removes any gray areas. When everything is spelled out in writing before the relationship begins, you can limit your exposure to lawsuits.

Exempt Or Non-Exempt?

Similarly, whether an employee is non-exempt and paid hourly and overtime, or exempt and paid set wages, can come into question. This most often occurs when a non-exempt hourly employee is asked to take on tasks that are normally performed by exempt employees, such as supervision — or when an exempt employee is required, without added compensation, to work significant overtime hours next to non-exempts who are being paid overtime.

The 2016 Department of Labor regulations that expand overtime eligibility are behind today's increased legal scrutiny; millions of salaried workers are now entitled to overtime based on their annual compensation. So it's no wonder that wage-and-hour litigation tops the annual employment law caseload. And as with any new government rules, misunderstandings can easily develop — making it vital that you are clear on the employees' roles, responsibilities and compensation as well as manage employee expectations.

This is why Functional Job Descriptions (FJDs) that detail not only roles, responsibilities, compensation and the position classification are today's must-haves. When employees read and sign such FJDs upon hire, you have a valuable defense tool in the event of future lawsuits.

If it's time to update your FJDs to remove gray areas and potential land mines, [contact WorkWell today.](#)



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