

## ***Employer in Saskatchewan owes close to \$20,000 in overtime for misclassifying an employee as a manager***

A recent Court of Appeal decision from Saskatchewan reminds all employers of the costs associated with misclassifying an employee as a manager in order to avoid paying overtime pay. In *Balzer v. Federated Co-Operatives*, an employee made a claim for overtime pay (in addition to wrongful dismissal damages).

The trial judge awarded \$19,398.30 in unpaid overtime. This was calculated based on six years of unpaid overtime, as was permitted by the applicable limitations act in Saskatchewan. The Company appealed this decision.

As argued at trial and on appeal, the Company alleged that the employee was in a “management position” and, therefore, exempt from overtime pay in accordance with the predecessor legislation to the current *Saskatchewan Employment Act*. Note that the current legislation exempts “a person whose primary responsibility is to exercise authority and perform functions that are of a managerial character.” The predecessor legislation was stricter and only exempted an employee who performed services that were entirely managerial in character.

The trial judge found that the employee was not a manager as his duties included sales, taking orders, delivering product, and collecting the accounts receivable. He did not have any real decision-making authority, nor did he effectively manage other employees. The Court of Appeal found that the trial judge correctly concluded that the employee was entitled to overtime pay and dismissed this part of the appeal. Once again, while this decision was based on predecessor legislation to the current *Saskatchewan Employment Act*, it is likely this employee would not meet the exemption under the new exemption either based on his job duties.

Employers need to scrutinize who they classify as a manager and exempt from overtime pay. The applicable provincial minimum employment standards legislation is intended to protect as many employees as possible, and as such, exclusions are applied very narrowly. Moreover, employers operating in multiple jurisdictions need to be mindful that the exclusions differ from province to province.

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70 The Esplanade, Suite 401, Toronto, Ontario M5E 1R2

📞 416-867-3093 📠 416-867-1434 📞 1-866-327-7657

