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# e2r Alert

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## Managerial Exemptions

Starbucks Coffee Canada ("Starbucks") could be on the hook for 50 million dollars in unpaid overtime if a new class-action lawsuit filed on behalf of its managers is successful. According to the Ontario Employment Standards Act, 2000 ("ESA"), a person whose work is supervisory or managerial in character and who may perform non-supervisory or non-managerial tasks on an irregular or exceptional basis is not entitled to overtime.

While 'supervision' is one indicator of a managerial/supervisory employee, it's not the only factor. In fact, sometimes an employee who supervises (and schedules, hires, disciplines, etc.) may be a 'manager' in title but not exempt from overtime under the managerial/supervisory exemption because they perform the same or similar work to those they manage on a less than extraordinary basis (think a retail store manager). Other times, an employee may have no supervisory functions but is exempt because they exercise management-level functions, like the responsibility for making substantial purchases, financial control and budgeting, and production planning.

In other words, when assessing the exemption, the Ministry of Labour looks beyond just job titles and direct reports and is focused on the actual duties of the employee. We note that similar managerial exemptions exist in most provinces.

The class-action lawsuit claims that Starbucks violated the ESA by misclassifying some of its employees as managers under the ESA and therefore failed to pay them overtime. While the class-action suit is still in its early stages, it serves as an important reminder to employers across Canada of the importance of properly classifying employees. While it can be helpful for employers to take advantage of overtime and other exemptions to minimum employment standards legislation, the costs of misclassification can be costly and time consuming to litigate.

We strongly suggest that you speak with an e2r® Advisor if you have any questions regarding whether or not you have properly classified your employees, especially where an exemption applies.

