

## **CLASSIFYING EMPLOYEES CORRECTLY?**

**By Karen Sutherland**

Preston Gates & Ellis, a major Seattle law firm, agreed to settle a lawsuit alleging violations of the wage and hour laws. The suit was filed on behalf of over 300 lawyers who are or were employed by the firm to review electronic documents that are the subject of discovery requests in lawsuits. The gist of the case was that the law firm treated the lawyers as professionals who were exempt from the overtime laws as a result of their professional status, but the lawyers claimed that their work did not require them to use their professional skills, thereby making them nonexempt hourly workers. The settlement reportedly involves a payout of \$700,000. The firm denied violating the law and told the Seattle *Post-Intelligencer* that it would be easier and more cost-effective to settle the case than to fight it.

The reason this lawsuit is important is that it illustrates that even sophisticated employers can find themselves in a costly dispute over whether employees have been properly classified under the federal (“FLSA”) and state (“MWA”) wage and hour laws. The suit also illustrates that it is the actual work performed by employees that matters, not the amount of education or training that the employees have or the label that is placed on the work. The issues in the Preston Gates & Ellis case could arise in any workplace with exempt employees, even if they are not professionals. Misclassifying executive or administrative employees could have the same result.

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*This brief article is a broad summary only. It lacks specificity about the law and about the effects of different fact patterns, and thus shall not be applied without consulting an attorney. It also focuses on Washington State law and federal law, and the laws of other jurisdictions may vary materially. The information set forth in this article is a broad and general overview of complex topics, and is not legal advice. It also does not take into account any changes to the law or in interpretations of the law that may have occurred since it was written. For more information, contact Karen Sutherland at [ksutherland@omwlaw.com](mailto:ksutherland@omwlaw.com)*