

Handshakes and Good Intentions Can Lead to Costly Wage Litigation

December 05, 2016

McGlinchey Alert

A recent Louisiana Second Circuit decision serves as a reminder to employers to memorialize details of employment or ownership (and other matters) in a formal written process that complies with applicable laws when taking on new hires or partners. Well-penned agreements are essential in cementing expectations and can help avoid costly litigation.

In this case (*Knight v. Barney Tucker, et al*, Docket No. 50,993, Court of Appeal, Second Circuit, State of Louisiana. November 16, 2016), a CPA, who previously worked as a sole practitioner, joined an existing CPA firm that promised him firm ownership, a good salary, vacation pay, and expense reimbursements. The parties, however, failed to cement all the details of the relationship on paper.

When cash flow became an issue at the firm, the partners deferred compensation and the plaintiff left the firm in the middle of the night, removing client files and leaving a letter of resignation. The plaintiff then sued the firm, claiming he was owed unpaid wages, overtime, vacation, business expense reimbursement, and, pursuant to the state wage statutes, 90 days of penalty wages, attorney's fees, and costs.

Central to the issues under the Fair Labor Standards Act (FLSA) and state wage statutes, the appellate court disagreed with the trial court and found the plaintiff to be an employee of the firm and due outstanding compensation, despite his partnership status. The plaintiff received the outstanding salary amount as well as accrued and unused vacation pay.

The appellate court declined to reverse the trial court's holding that the firm's belief that plaintiff was a partner rather than an employee of the firm was in good faith, and that the denial of penalties was not in error. The appellate court also found that plaintiff met the criteria for the Professional Exemption to mandatory overtime payment under the FLSA and denied plaintiff's claim for overtime.

While most employers strive to create and maintain hiring processes with the help of the HR team or legal counsel to avoid litigation, often balls get dropped and minds don't meet during an euphoric hiring or a battlefield promotion. Such practices can lead to misunderstandings and litigation when the euphoria fades, reality emerges, and disagreements occur. This case demonstrates the importance of following the rules in the hiring process and making sure documentation is completed for employers of all sizes.

Questions about your business' employment agreements? Contact the authors of this alert or a member of McGlinchey Stafford's [Labor & Employment](#), [Commercial Litigation](#), or [Consumer Financial Services](#) teams.

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