

Overtime Traps to Avoid: Misclassifying Employees as Managers

written by Rory Lodge | November 25, 2016



As an HR director, you understand that employees must receive at least the minimum overtime and other benefits provided by your province's employment standards laws. You also understand that these minimum protections don't apply to managerial personnel. You might also think you understand the difference between an employee and a manager.

Unfortunately, the reality of employment standards doesn't always correspond to the everyday reality of the workplace—particularly when it comes to determining who is and isn't a manager. This is especially true if the person you're classifying has supervisory responsibilities. Misclassifying employees who look like supervisors as managers is a common mistake that opens your organization to inadvertent underpayments. And carried out over a continuous period of time and/or applied to a large number of workers, these mistakes can lead to overtime and other employment standards class action lawsuits in the millions or even tens of millions.

How well do you understand the distinction between employees and managers? Here are 2 real life cases in which a court had to make that call—and the key factors they considered in each situation.

CASE 1: EMPLOYEE OR MANAGER?

SITUATION

A regional airline fires its station manager at an international airport in Québec. She sues for wrongful dismissal. The *Canada Labour Code* gives "employees," but not managers, the right to sue for wrongful dismissal. The arbitrator rules that the station manager is a "manager" under the law and dismisses the complaint. The station manager claims she's an "employee" and appeals the ruling.

QUESTION

Is the station manager an employee or a manager?

ANSWER

The federal appeals court says she's a "manager" and dismisses the complaint.

EXPLANATION

It's the nature of the work—rather than her title or place in the management chain—that determines whether she's actually a manager under the law, the court explains. The determining factor is whether the employee's primary responsibility is to manage. In this case, the station manager did have managing responsibilities:

- She was the airline's senior representative in the airport;
- She had responsibility for local operations and customer service;
- She was in charge of 7 employees;
- Her responsibilities included personnel management, work scheduling, preparation of budgets, interaction with local airport authorities, maintenance of ground equipment and preparing monthly reports.

Even though her authority wasn't absolute—she reported to a regional manager—she had sufficient autonomy and discretion to be considered a manager, the court says [*Leontsini v. Business Express Inc.*].

CASE 2: EMPLOYEE OR MANAGER?

SITUATION

A BC metal worker files a complaint with the Employment Standards Tribunal against the construction contractor he works for certain benefits, including overtime and statutory holiday pay under the BC *Employment Standards Act* (ESA). The Tribunal agrees that he's an "employee" under the ESA and awards him the benefits. The contractor appeals, claiming that the metal worker is actually a manager.

QUESTION

Is the metal worker an employee or a manager?

ANSWER

The B.C. Supreme Court rules that he's an employee and thus entitled to benefits under the ESA.

EXPLANATION

The definition of "manager," according to the court, is a person whose principal responsibility is supervising and/or directing human or other resources. While the metal worker had some very minor supervisory duties, he didn't have the responsibility that would make him a manager under the ESA, according to the court. Factors:

- He worked at various construction sites, checking on whether work was done and providing what was needed to keep the work going;
- The only policies he enforced related to wearing hardhats and attending the weekly safety meeting;
- Although he monitored the work of 3 to 5 employees, he had no authority to hire, fire or discipline them
- He had no authority to set or change work schedules, call employees into work or authorize overtime, vacation or leaves of absence.

The court concluded that these factors demonstrated that the employee was simply an employee and not a manager under the ESA [*J.P. Metal Masters 2000 v. Director of Employment Standards*].