Watch Your Language!



There’s a nasty little piece of boilerplate that you want to ensure doesn’t appear in your employment contracts: “inclusive of all hours worked,” as in the salary or wage the employees is to receive includes all hours she works. This phrase isn’t just bad syntax but bad law that can get you into trouble.

SITUATION

A fashion design firm hires a retail merchandise supervisor to oversee stores in Manitoba. The supervisor signs an employment contract that lists the duties she’s expected to perform. The contract says that the supervisor will be paid $42,000 per year “inclusive of all hours required to be worked” to fulfill those duties. The firm fires her just over a year later. The supervisor claims the firm owes her unpaid overtime and files a wage complaint. The Labour Board sides with the supervisor and orders the firm to pay her $10,240 for overtime wages owed.

THE PROBLEM

The Manitoba *Employment Standards Code* states that employees who work more than 40 hours per week are entitled to overtime. An employee’s right to receive overtime for work beyond 40 hours is mandatory. In other words, it’s against the law for an employer and an employee to make a contract that says an employer doesn’t have to pay overtime to the employee. This is also the rule in all the other provinces and territories.

The contract in this case purported to pay the supervisor a set wage for performing certain duties, “inclusive of all hours” she had to work to fulfill her duties. The Labour Board interpreted this as “an attempt to `contract out’” of the minimum wage law. So it ruled that the contract was illegal.

The firm is appealing the ruling and may ultimately get it overturned. But even if it does, the firm could have saved itself a lot of grief by writing the contract differently in the first place [*Nygard International Partnership Associates (Re),* [2005] M.J. No. 309].

THE LESSON

DON’T: Stipulate a salary and say that it covers all hours worked (unless you’re contracting with a management employee not subject to minimum wage protections). Phrases to avoid:

Ø “Any and all hours worked”;

Ø “Inclusive of all hours worked”; and

Ø “Regardless of the number of hours worked.”

DO: Specify the number of hours you expect employees to work and the rate of pay for that work. If the employee is expected to work more than 40 hours per week, make sure that the rate of pay includes overtime for those hours.