

TIME TO FIX OVERTIME

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Here we go again. How many times are we going to have to read about this company or that company being sued for violating the FLSA? According to the Atlanta Journal Constitution “AT&T’s overtime suit only latest Company’s exempt rule questioned when set for some 1st-level managers”. According to the article AT&T is faced with . . . are you ready for this . . . “\$1 billion” yes that is billion with a “B” in potential damages for allegedly misclassifying some of its employees as exempt when they should have been paid overtime. You can see the article at <http://www.ajc.com/business/at-ts-overtime-suit-278860.html>

Lets be clear about something here. I have not read the complaint, but if you read the article it looks like what AT&T allegedly did was pay some employees a salary when they should have been getting overtime and that’s it. So this wasn’t a big bad employer making people work off the clock or paying less than minimum wage.

So, why did the employees sue you ask? Now we all know why this happens. Some disgruntled employees who have been paid a salary for a bunch of years, who have called in sick on numerous occasions, and who have taken advantage of being called “salaried” for as long as they worked for the company got fired or quit or got in trouble. Some slick class action factory found out and talked those employees into acting as class representatives for another bunch of employees, many of who would probably, if you asked them, rather be salaried than hourly anyway and don’t really want to sue. Now AT&T is faced with defending itself against a law that is outdated despite the recent amendments to the regulations. And when this is all over, pay damages or not, AT&T will have to make a bunch of people who I’m willing to bet would rather be salaried, hourly instead. And on top of that, the class action lawyers are going to get millions in fees and the people who were allegedly wronged, if this works the way it usually does, will get a couple of hundred (thousand if they are lucky) bucks each.

So I have a suggestion for Congress. They are going to have some time on their hands now that Teddy Kenndy’s Senate seat has been filed by a republican and the chance of getting any health care reform out of the Senate anytime soon has just dropped to somewhere right around “No chance in . . . ” well, you get it. How about we fix this antiquated system to let people elect to be salaried. It really wouldn’t be that hard. Now we are not talking about doing this for all classes of jobs, for example; factory jobs, out, manual labor of any kind, out. We know how to classify these jobs, we do it for minors now. So how do we do this? Well, we start by amending the system so that the employee has to make more money for certain jobs in order to be salaried. For example, the current floor for a salary based employee is \$455 per week. That’s \$23,660 per year, not much. How about we say if you don’t qualify for the executive or professional exemptions, but you work in an office environment and make say \$675 per week (that’s \$35,100 per year according to my calculator), you can be exempt.

Now of course we will have to put some restrictions on this so the the big bad employers can't take advantage of the poor little employees: for example, no deductions, just like for the salary basis now. If you are sick for two days you still get your full salary for the week. Another thing Congress may want to consider is an hour's cap. Say, not more than 50 hours per week. After that the employer pays overtime. Finally, how about employee consent. The employee, before they begin working for an employer, would have to consent to being classified as salaried and they would have to do so without coercion. Now how do we do that? How about making the employer post a notice, and having the employee sign a DOL drafted release before they can be paid a salary. Not that hard after all, is it? I'm sure if the bright people in Washington put their heads together they could come up with something that is better than what we have now. . . . couldn't they?

Now, not everyone will think this is a good idea, after all, what are the class action factories going to do? Think of all the fees they won't get if we make it easier for people to do what they want to do anyway. But then again, you can't please all of the people all of the time.