



legal briefs

by Jason W. Mauck

Ericksen Arbuthnot, Attorneys At Law

Defamation and Internet Reviews

With the recent filing of a complaint by a group of “Raiderettes” against their employer, the NFL’s Oakland Raiders, I thought it would be a good opportunity to discuss the state of California’s wage and hour law and some issues which might pose traps for employers that have become relevant in the wake of the Raiderette suit.

• **Control.** Oakland Raider management specifically directed the Raiderettes on where and when to practice and specific uniforms and outfits to wear (all provided by management). Under California law, an “independent contractor” is any person who renders service for a specified compensation for a specified result, under the control of his principal only as to the result of the work, not the means by which the result is accomplished. (Lab. Code, § 3353.) Keep in mind that the test distinguishing between an employee and an independent contractor is not a bright line rule. The fact that there may have been contract between the cheerleaders and the team is not a determinative factor. Rather, the law looks at a number of factors in determining whether a person is properly classified as an independent contractor or an employee. Control by management over the details of how the person’s work is accomplished is an important factor that is considered.

• **Paycheck.** The Raiders’ management allegedly paid the Raiderettes one time for the entire season. Once. A single payment for services can be acceptable for contractors performing work, such as the contractor who recently built a fence in my backyard. However, ongoing work under the control of another may be considered an employer-employee relationship,

rather than a hirer-independent contractor relationship. California law requires hourly employees to be paid every two weeks (this varies for salaried employees of course).

• **Wage and Hour.** If they are considered to be employees, the Raiderettes would be entitled to an hourly wage not below the state minimum—or \$8.00 an hour. The complaint filed against the Raiders alleges that the squad members were paid less than \$5 an hour for their services. Under California law, an employer can be liable for back wages and penalties for failing to pay minimum wage. In this case, it would be not just the time spent at the games, but practice and the special appearances mandated by the team.

• **Fines and Costs.** Another allegation in the Raiderette complaint is that Raiders’ management fined squad members for various minor infractions, such as forgetting pom-poms or not bringing a yoga mat to practice. Fining an employee for simple negligence is not allowed under the California Labor Code and can result in a wage and hour action to reclaim the money taken by an employer. (Lab. C §221.) There are permissible deductions, such as health insurance, but that does not seem to be the case with this lawsuit.

What can you take away from this for your business? Be sure to learn the differences between contractors and employees to avoid misclassifying someone who works for you. The consequences can be a lawsuit for monetary damages, civil penalties, or both. If you have questions about this area of law, the law firm Ericksen Arbuthnot can help.

Feel free to contact our Oakland office a call at 510-832-7770, if you would like to discuss an issue with one of our attorneys.

SEE OUR AD ON BACK COVER