



LAW OFFICES OF SPECTOR, MIDDLETON, YOUNG & MINNEY, LLP

LEGAL UPDATE

DIVISION OF LABOR STANDARDS ENFORCEMENT POLICIES DO NOT HAVE FORCE OF LAW

A California court has recently ruled that internal policies promulgated by the Division of Labor Standards Enforcement (“DLSE”) are not legally binding authority for interpreting employer duties and obligations under wage orders promulgated by the Industrial Welfare Commission (“IWC”).

A wage order is a regulation promulgated by the Industrial Welfare Commission (“IWC”) pertaining to maximum hours, minimum wages, and working conditions of particular industries. The DLSE enforces the provisions of the California Labor Code and IWC wage orders. As part of its enforcement duties, the DLSE has promulgated a Policies and Procedures Manual in which it has made interpretations of IWC wage orders. As public schools, charter schools must adhere to wage orders applicable to educational institutions.

In *California School of Culinary Arts v. Lujan* (2003) App 2nd Dist. No.B160288 an accredited private culinary school challenged a DLSE interpretation of an IWC Wage Order pertaining to overtime wages for instructors at colleges and universities. The school had classified its instructors as professional employees, thereby exempting the instructors from California’s overtime wage provisions. The DLSE challenged the classification, arguing that the private school did not meet the requirements of a college or university as interpreted by the DLSE. The DLSE had years before added a requirement to the IWC wage order that a college or university entitled to exemption under the Wage Order is one that issues bachelor’s or higher degrees in order to qualify for exemption. The added requirement made the culinary school ineligible as a college or university under the IWC wage order.

The Court of Appeals disagreed with the DLSE, and in so doing stated that DLSE is charged with the enforcement of wage orders and not their interpretation. The Legislature had not empowered the DLSE with rulemaking authority, the Court said, and thus, interpretations promulgated by the DLSE do not have the same legal effect as regulations of governmental agencies specifically empowered by the Legislature to promulgate regulations. Consequently, the additional requirement that colleges or universities must issue bachelor’s or higher degrees is a “self-determined definition... not entitled to any deference” by a court of law.

As a result of *California School of Culinary Arts v. Lujan*, California Charter Schools should deem the DLSE Policies and Procedures Manual and DLSE-issued opinion letters as only advisory non-binding interpretations of the Labor Code and IWC wage orders. California charter schools should keep in mind that classification of employees for purposes of wage, hours, and working conditions is also governed by federal law in addition to state law. Charter Schools should consult both the federal and state requirements for employee exemption from overtime compensation before exempting employees from overtime requirements.

Charter Schools should also obtain and post copies of the IWC wage orders applicable to educational institutions. Copies of IWC wage orders can be obtained on-line at www.dir.ca.gov/Iwc/WageOrderIndustries.htm or by calling (916) 322-0167.

If you should have any questions regarding this update, please contact Jim Young at (jyoung@smymlaw.com) or Phillip Murray at (pmurray@smymlaw.com) at the Law Offices of Spector, Middleton, Young & Minney, LLP at (916) 646-1400.

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