

# Employee Misclassification

Employees are often deprived of benefits and wages to which they are legally entitled when their employers misclassify them as “independent contractors.” Misclassifying employees as independent contractors allows employers to avoid paying payroll taxes, withhold earned overtime wages and expense reimbursements, and deny workers meal and rest breaks. If an employer controls the manner and means by which an individual performs his or her work, that individual may be considered an “employee” under California law. *See S. G. Borello & Sons, Inc. v Dept. of Industrial Relations* (1989) 48 Cal.3d 341.

Additionally, employers may misclassify certain salaried employees as “exempt,” denying them overtime pay and other benefits. Under California law, employers must pay employees overtime unless they fall under an exemption, such as certain administrative, executive, or professional jobs. In California, an “exempt” employee must generally be: (1) paid a monthly salary equivalent on an hourly basis to not less than two times the California minimum wage for full-time employment; and (2) engaged in work which is primarily intellectual, managerial, or creative, and which requires exercise of discretion and independent judgment.

CPM has brought groundbreaking litigation challenging employer practices that unfairly misclassify employees. If you believe you have been misclassified, please follow up with Adam Zapala or Tamarah Prevost.

- Email Adam
- Email Tamarah
- Call Adam or Tamarah at (650) 697-6000.

## Misclassification Cases of Note

### ***Shephard v. Lowe’s HIW, Inc.***

USDC Northern District of California

CPM, along with Block & Leviton, filed a lawsuit against Lowe’s HIW, Inc. (“Lowe’s”) on June 15, 2012, alleging that Lowe’s had misclassified its

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## EMPLOYEE MISCLASSIFICATION

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California installers as independent contractors in violation of California law. Judge Jeffrey S. White granted the plaintiffs' motion for class certification in August 2013, certifying the class of California installers and appointing CPM and Block & Leviton as class counsel. On behalf of the class of California installers, the firms secured a \$6.5 million settlement, which received preliminary approval from the court on June 25, 2014, and is currently awaiting final approval.

### ***Cozzitorto et al. v. AAA***

Contra Costa County Superior Court

CPM represents a class of Northern Californian tow truck companies in a lawsuit filed against AAA for misclassifying road-side service providers as independent contractors and breaching its contracts with the class members. CPM's lawsuit alleges that AAA exerts total control over every manner of the towing business, and even requires tow companies to incur high costs to obtain AAA compliant vehicles, uniforms and equipment. The class action complaint was filed on December 19, 2013 in the Superior Court of Contra Costa County.

## **News**

CPM Achieves \$6.5 Million Settlement in Lowe's Employee Misclassification Case

Settlement Details Regarding Lowe's Class Action Lawsuit  
07.29.2014

In CPM Class Action, Court Certifies Class Consisting of All Lowe's Installers in California Who Were Misclassified as Independent Contractors as Opposed to Employees  
08.19.2013