

Help Wanted: 4 U.S. criteria to be a 'manager'

November 25, 2013 by CARRIE MASON-DRAFFEN / carrie.mason-draffen@newsday.com



Labor.

And that's just one factor in the criteria federal labor law requires to determine if you are a manager.

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To be considered a bona fide manager, and thus exempt from overtime, you have to meet all four of the following criteria: You must be paid at least \$455 a week; your primary duties must consist of managing; you must regularly direct the work of at least two full-time employees, and you must have the authority to hire or fire or have input into those decisions.

So your company is defining "manager" way too loosely and illegally denying you overtime as a result.

For more information call the U.S. Labor Department at 516-338-1890 or 212-264-8185.

DEAR CARRIE: I am an operating engineer at a nonprofit hospital, and I think my employer is too intrusive regarding employees' ailments. I broke my foot in a fall from a ladder and was out for six months. I had to bring in a doctor's note before my employer permitted me to come back. Even so, the human-resources person, who is also a physician's assistant, examined me. She asked me to push my foot forward to see how much strength I had. I also had to walk around the room so she could observe me. It was as if she didn't believe I had even broken my foot. I thought this was all unnecessary, because my doctor had cleared me to come back to work. Does the hospital have the legal right to be so nosy?

-- **Too Much Information?**

DEAR TOO MUCH: While its request to examine your foot "sounds intrusive and nosy, the hospital is probably within its legal bounds having the human-resources PA person briefly examine you," said Steven Mitchell Sack, an employment attorney with offices in Manhattan and

East Meadow.

But the double duty of the physician's assistant poses a conflict of interest, because information she gathers could factor into decisions she makes about you in her HR role.

"The potential conflict exists and should be avoided by the hospital," Sack said.

So in the future you can make a stink on that note. But short of that, your employer's request for the examination was legal, Sack said.

Employers typically have the right for company-provided doctors to examine workers who file workers' compensation and disability claims when the employees wish to return to work, he said, especially if the company handbook has an "express provision" stating this.

If you refuse the request, you might be written up for insubordination and fired, especially if you aren't covered by a union contract, he said.

"On balance," Sack said, "since the brief exam was probably lawful, you did the right thing by consenting to it, especially if it confirmed your doctor was correct in clearing you to return to work."

For more on how federal labor laws define managers go to <http://1.usa.gov/151TzxU>.

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