

A New Year's Resolution: Sign a Manager's Agreement

by Dale Alberstone, Esq.

For the past six years, I have proposed a New Year's Resolution in each January issue of AOA Magazine. Although I endeavor to be creative, it seems that every year my suggested resolution is the same: ***Prepare and sign a written employment agreement with each of your resident managers.*** Because I can think of no resolution more important than that one, I propose it again this year.

*The failure of an owner to comply
will expose him or her to substantial
civil penalties, not to mention criminal sanctions.*

Readers of this column know from years of my past articles that the California Industrial Welfare Commission's ("IWC") regulations may impose severe sanctions on owners who do not have a signed agreement with their managers. Based on hundreds of telephone calls and letters I receive from AOA members each year, it marvels me as to how many owners still neglect having their managers sign a written agreement.

The General Rule

All resident managers are governed by the so-called minimum wage and hour laws which require that they receive at least \$6.75 per hour for each hour worked. Managers who work more than 40 hours per week, 8 hours per day, or more than 6 consecutive days, are entitled to receive \$10.13 for each excess hour.

Minimum Wage Offsets

There are limited exceptions to the general rule that a manager must actually receive a cash payment for the hours he works. The exceptions primarily involve a reduction in the compensation owed in exchange for the owner providing living quarters for the manager. Much of the remainder of this article will explain those exceptions, but bear in mind that none of the exceptions applies unless a properly prepared written agreement is signed by both the manager and the owner (or the owner's management company).

16 Units or More

If an apartment building consists of 16 rental units or more, the owner is required to have a "responsible person" residing on the premises. Usually that person is a manager, but he or she could also be a resident janitor. Unless an exception applies, the owner must compensate the individual in accordance with the minimum wage rule set forth above.

Exception No. 1: An owner may reduce the wages owed by the lesser of (1) two thirds the rental value of the unit or (2) \$381.20 per month if it is one manager or \$563.90 per month if a couple is employed, such as a husband and wife management team. An owner may not offset more than \$381.20 per month or \$563.90 per month, respectively, from the manager's minimum wages even though the apartment unit might be worth a lot more.

Similarly, even if the owner pays the manager the full minimum wage, the owner may not charge the manager(s) more than \$381.20 or \$563.90 per month, respectively, for the manager's unit.

The reason for these restrictions is that the IWC has decided that if a manager is required to live at the premises, he has given up some of his personal freedom. In exchange for this "confinement," the owner is limited as to the amount that he can charge the manager for the unit.

Typically, an owner will offer the manager a reduction in his or her monthly rent in exchange for managerial services. While a reduction is proper under certain circumstances, the maximum rent which may be charged for the manager's unit or set off from the minimum wage is the lesser of \$381.20 a month or two-thirds the ordinary rental value of the unit being lived in. For example, if the ordinary rental value for the unit is \$1,200 per month, and the manager is employed to work 80 hours each month, he is entitled to receive \$158.80 a month from the owner. This is computed as follows: 80 hours at \$6.75 per hour = \$540, which is the minimum wage due. A rent reduction of \$381.20 is proper as the lesser of \$381.20 and two-thirds the ordinary rental value of the unit (which would be \$800). Deducting \$381.20 from \$540 leaves a balance due of

\$158.80 per month.

The law is similar where a couple is employed to manage the premises. In that case, the maximum rent which may be charged for the unit or set off from the wage is the lesser of \$563.90 per month or two-thirds the ordinary rental value of the unit. Thus, if the reasonable rental value of the unit is \$1,200 per month and the husband and wife managers each work 40 hours a month, the owner need not pay the couple any wages. This is determined as follows: 80 hours at \$6.75 per hour = \$540, which is the minimum wage due. A wage reduction of \$563.90 is proper as the lesser of \$563.90 and two-thirds the value of the unit.

Exception No. 2: There is a second exception to the general rule. I call it the “check exchange” exception. Under the Labor Code an owner may charge up to two-thirds of the ordinary rental value of the unit without regard to the \$381.20 and \$563.90 limitations, provided that separate checks for the minimum wage payment and the rent are exchanged with the manager. In order to take advantage of this exception, the owner must pay the manager the full minimum wage (\$6.75 per hour for all hours worked) by one check and the manager must pay the owner an amount not exceeding two-thirds the rental value by a separate check. Under this exception, the owner is not permitted to offset the minimum wage by the rent due from the manager. The theory is that payments for labor will absolutely be required regardless of whether the manager pays the agreed rent.

Under 16 Units

If the apartment building has under 16 units, and the manager's employment agreement is properly prepared so that the manager is not required to live on the premises as a condition of his employment, then the \$381.20 and \$563.90 wage and rent limitations discussed previously are not applicable. In such an event, the owner may charge the manager any amount for the unit, provided that the owner separately pays to the manager the full minimum wages which the manager earns based on the number of hours worked.

For example, if the value of the unit is \$1,200 and the manager works 80 hours a month, the owner may charge \$1,200 as rent provided that he also pays the manager \$560 for services rendered during the month.

However, if the manager is required to live in the apartment building as a condition of employment, then the \$381.20 and \$563.90 wage and rent limitations discussed in the previous section do apply.

The \$2,339 Manager

Managers who earn at least \$2,339 per month (including salary plus free or reduced rent) are not regulated by the Wage and Hour laws if (and only if) the manager is required to exercise discretion and independent judgment in performing his duties. Such highly compensated managers (who usually reside in very large apartment complexes) are excluded from the protection of the basic wage laws. In general, the \$2,339 manager exception rarely applies and owners should not rely on it without advice from competent counsel.

Raising a Manager's Rent

An exhaustive discussion of the rules and limitations concerning rental increases of apartment managers is beyond the scope of this article. However, one important rule applicable to Los Angeles City rent controlled units is relevant to point out. If a manager was the tenant in the unit before being appointed manager, and the owner ultimately terminates the manager's status while allowing him to remain in continued possession as a tenant, the Los Angeles City Rent Stabilization Ordinance allows the owner to substantially increase the manager's rent. Specifically, the Ordinance allows the owner to elevate the rent which was in effect immediately prior to the time the tenant was appointed as the manager by the compounded percentage annual increases which would have been allowed had the person remained a tenant. Owners or attorneys wishing a further discussion of this may review Rule 924.10 of the regulations promulgated by the Rent Adjustment Commission.

Recommendations

California's labor laws are very strict and exacting. The failure of an owner to comply will expose him or her to substantial civil penalties, not to mention criminal sanctions. In order to stay within the bounds of the various laws, I recommend the following:

- 1) **Sign an Employment Agreement:** It is absolutely essential that every owner has a written signed agreement with each

resident manager. It is best that the agreement be an employment agreement. The specific provisions to include in the contract are highly technical, but the general requirements concerning the wage and hour laws are contained in this article.

2) **Post Manager's Name and Address:** Post the name and the address of the manager in charge of the apartment building. Also post the hours and days that the manager will be available for assistance if the manager has a fixed work schedule.

3) **Keep Records:** Keep accurate records of all matters pertaining to the hiring, working and firing of all managers.

4) **Management Certification:** Require the manager (in the written contract) to record all hours that he works during any given month. Also require the manager to submit a written certification to the owner at the beginning of each following month setting forth the total number of hours that the manager worked. This is the key to dissuading a disgruntled manager from later claiming that he was "on call" 24 hours a day, 7 days a week, and, therefore, should be compensated for all that time. Such a claim would expose the owner to a demand of nearly \$60,000 per year at \$6.75 per hour. The figure would be even higher if overtime pay were taken into account. In the absence of

monthly certifications, the manager might sue for all of this extra money for each year that he worked.

5) **Obtain A Copy of Minimum Wage Order 5-2001.** The current wage and hour regulations for apartment managers can be obtained by calling the Department of Industrial Relations at 415-703-5070. Ask for Public Housekeeping Industry Order No. 5-2001. The regulations may also be found on the Internet Website of "WWW.DIR.CA.GOV/IWC". Then click on "Wage Orders" and scroll down to Order No. 5-2001.

Conclusion

The key to employing managers is that the owner obtain a signed written employment agreement and monthly certifications setting forth the number of hours that the manager worked. By doing so, an owner can avoid thousands of dollars of potential liability to the manager under the new minimum wage laws. Better still, the contract will deter litigation. The manager's attorney is not likely to sue if he does not expect to win the case in any substantial way.

A handy "tear out" summary of the relevant wage and hour laws pertaining to resident managers appears on the next page of this magazine. Have a healthy and prosperous New Year!

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The foregoing discussion is intended solely as a general overview of the law and may not apply to the reader's particular case. Readers are cautioned to consult an advisor of their own selection with respect to any particular situation.

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