

A New Year's Resolution: Sign a Manager's Agreement **By Dale Alberstone, Esq.**

For the past seven 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.

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 employment 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 legally complete written employment contract is signed by both the manager and the owner or by the manager and 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 or maintenance man. 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 only 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 \$900). 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.

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 the “Resident Managers as Tenants” publication which may be found at the web site: www.LACITY.ORG/LAHD.

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 employment contract with each resident manager. 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, although in 1993, the California Court of Appeal issued a decision that would limit such a claim.

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".

Conclusion

The key to employing managers is that the owner obtains 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!

Dale Alberstone is a prominent real estate attorney who has practiced real property and business law for the past 29 years. He has been appointed to periodically serve as a judge pro tem of the Los Angeles Superior Court and is a former arbitrator for the American Arbitration Association. He also testifies as an expert witness for and against other attorneys who have been accused of legal malpractice.

Mr. Alberstone has been awarded an AV rating from Mardindale-Hubbell, which is a registered certification of Reed Elsevier Properties, Inc. An AV rating reflects an attorney who has reached the heights of professional excellence and is recognized for the highest levels of skill and integrity.

The foregoing discussion is intended 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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“TEAR OUT” SUMMARY

Apartment Managers: Wage and Hour Laws (January 2006)

1. General Rules:

- A. Minimum wage compensation for a manager is \$6.75 per hour for each hour worked.
- B. Overtime: Overtime of 1½ times hourly rate (\$10.13) must be paid if more than 8 hours per day, 40 hours per week, or 6 consecutive days.
- C. If the Manager is not required to live at the property of an under 16 unit building, but the Manager chooses to live there, then any rent may be charged.
- D. If the Manager is required to live at the property, regardless to the number of units, the rent paid by the Manager may not exceed the monthly sum of \$381.20 for a single manager, or \$563.90 for a couple.
- E. If no rent is charged, the manager’s wages may be offset by no more than \$381.20 (1 manager) or \$563.90 (couple) per month.

2. Qualifications to General Rules:

A. **Under 16 Units:** If less than 16 units and the manager is not required to live at the property, then manager can be charged any rent, even if greater than \$381.20 or \$563.90. But full hourly minimum wage must be paid to manager without offset if full rent is charged. Dollar-for-dollar wage reduction in payment of minimum wage not exceeding \$381.20 or \$563.90 if partial rent reduction (up to 2/3rds the unit’s value).

B. 16 Units Or More:

Exception No. 1: “Offset of Wages”: Manager’s wages may be reduced by the lesser of (1) 2/3rds the unit’s rental value, or (2) \$381.20 per month (1 manager) or \$563.90 per month (couple) if no rent is paid. Dollar-for-dollar wages reduction if only a partial rent reduction. Manager’s wages may not be offset by more than \$381.20 or \$563.90 even though the apartment might be worth a lot more.

Exception No. 2: “Check Exchange”: Manager may pay up to 2/3rds the value of the unit as rent (without regard to \$381.20 and \$563.90 limitations) provided that separate checks are exchanged for the Manager’s payment of rent and Owner’s payment of wages. Thus, the Owner must pay Manager the full minimum wage (\$6.75 for all hours worked) and the Manager must pay Owner an amount not exceeding 2/3rds the rental value by separate checks.

C. **“\$2,339 Manager”:** The exemption from wage laws for highly compensated managers earning \$2,339 per month is generally inapplicable. It is best not to rely on this exemption.

3. Recommendations:

A. **Sign a contract:** No offsets to the minimum wage are allowed unless Manager signs a contract with

Owner providing for such offsets!

B. **Management Certification:** Require Manager to record all hours worked, initial and deliver such report to

Owner.

C. **Posting:** Post Manager’s name and address in conspicuous place at the building.

D. **Record Keeping:** Keep accurate records of all matters concerning hiring, working and firing of Managers.

NOTE: As used herein, “Owner” includes a management company employer.

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