Fix classification errors promptly or 'window of correction' will close

A group of managers and registered nurses who worked for Santa Clara County, Calif., were classified as exempt under the Fair Labor Standards Act (FLSA), making them ineligible for overtime pay.

The county used the "salary test" to classify them as exempt. Under that test, employees are exempt if they're paid a predetermined amount that isn't subject to the quality or quantity of work. However, over six years, 53 of these supposedly exempt employees were suspended without pay for less than a week. The unpaid suspensions were for infractions of the county's disciplinary policy.

The result: A court ruled that the employees were improperly classified and the county owed them overtime.

The county paid the lost wages and crawled back to court, hoping to use the FLSA's "window of correction" rule to correct its mistakes and preserve the employees' exempt status. But the court refused, saying the window is only for inadvertent or isolated violations of the law. The county's policy of allowing improper deductions showed that it had no intention of paying employees on a salary basis and, therefore, the employees never were exempt in the first place. (Klem v. County of Santa Clara, No. 98-16844, 9th Cir., 2000)

Advice: Make sure your compensation and discipline policies are consistent with the Labor Department's salary basis test. If you notice you're making pay deductions that could jeopardize a worker's exempt status, stop now and change your policy.

If it's discovered that you have a "pattern" of withholding part of your employees' salaries, for tardiness, for example, you won't be able to use the window of correction. You also could be liable for overtime wages far in excess of the amount you docked your employees, plus attorney fees, double damages and interest. Get advice on the salary test and other FLSA details at Labor's Web site, www.elaws.dol.gov/flsa.