

Clash over exempt status advances warehouse manager's overtime claim

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The Fair Labor Standards Act (FLSA) requires employers to pay employees 1½ times their regular hourly rate for all hours worked in excess of 40 hours per week. That "overtime" concept you've heard us pesky attorneys drone on about is subject to three "white-collar" exemptions: executive, administrative, and professional. You may classify employees who fit within one of the white-collar exemptions as ineligible from overtime.

Whether employees fall under one of the exemptions is a highly fact-intensive analysis, with the burden of proper classification falling solely on the employer. You should regularly evaluate whether an employee's job duties (not job title) qualify him for a white-collar exemption because even the question of misclassification, not just the ultimate determination, can be costly.

Manager claims overtime

Dean Cameron worked as a warehouse manager for Avalon Mobility for approximately nine months. According to his job description, his responsibilities included care, placement, organization, inventory, cataloging, loading, unloading, and damage claims related to warehoused shipments and maintenance of the warehouse.

Cameron prepared a résumé on his computer at Avalon describing his duties and responsibilities as "select product to be distributed for the day; stock incoming product; maintain production rate in a fast paced work environment; prepare itinerary for [drivers'] delivery and pickups; [answer] calls from carriers and customers; [schedule] new deliveries and pack jobs; train new employees; supervise warehouse employees; oversee daily upkeep in

warehouse; weigh all outbound deliveries; prepare paperwork for payroll; and make inbound deliveries and local moves when short staffed."

After his employment ended, Cameron filed a complaint in the U.S. District Court for the District of Arizona against Avalon. In the complaint, he alleged that he regularly worked a minimum of 55 hours per week but was deprived of overtime compensation because Avalon misclassified him as an exempt employee under the administrative and executive exemptions.

Both parties asked the court to enter judgment in their favor on Cameron's claim for overtime compensation. To determine whether he properly qualified as an exempt employee, the court conducted a fact-intensive analysis of his duties and responsibilities as Avalon's warehouse manager.

Administrative exemption

First, the court looked to Cameron's duties and responsibilities with respect to the requirements for qualifying as a "bona fide administrative employee." The administrative exemption requires that (1) an employee be paid at least \$455 per week, (2) his primary duty consist of the performance of office or nonmanual work directly related to the management or general business operations of the employer, and (3) his primary duty include the exercise of discretion and independent judgment with respect to matters of significance. While Cameron was paid at a rate of \$550 per week, the parties disputed whether Avalon could show that his position satisfied the remaining two elements.

Primary duty. Cameron asserted that his primary duty was operating a forklift. Avalon asserted that his primary duty was managing the warehouse, and

the forklift was one of the tools with which he could accomplish that duty. In acknowledging that managerial duties can be packaged with nonmanagerial tasks in a way that the management function cannot be readily and economically separated from the nonexempt tasks, the court refused to presume that Cameron's operation of a forklift meant that he was not exempt.

Under federal regulations, an exempt employee's work under the administrative exemption also must be "directly related to assisting with the running or servicing of the business." According to Avalon, although Cameron did operate the forklift as part of his job, he was responsible for independently determining where to place and organize shipments within a 35,000-square-foot warehouse and ensuring that Avalon remained in compliance with client storage contracts. The court concluded that the disputed facts about whether Cameron's primary duty was the performance of nonmanual work directly related to the management or general operations of the business should be examined by a jury.

Discretion over matters of significance. Cameron also disputed that his primary duty (driving a forklift) involved the use of discretion and independent judgment over any matters of significance. "Matters of significance" refers to the employee's level of authority over issues that have a significant financial impact on the employer. Avalon argued that Cameron's duty of managing the warehouse depended heavily on his use of discretion and independent judgment based on the sheer size of the warehouse and his responsibility for organizing a large volume of shipments. Avalon also presented evidence that his job had a significant impact on the company's ability to fulfill its contractual obligations.

In acknowledging that Cameron had to process shipment information independently, the court noted that his discretion and independent judgment were not stripped of him by virtue of his being "guided in these decisions based on factors outside his control, such as length of time of storage, contractual terms, and governing regulations." Again, because of the factual dispute, the court left this issue to be resolved by a jury, barring any settlement.

Executive exemption

Avalon also relied on the FLSA executive exemption. The FLSA defines an employee working in an executive capacity as someone:

1. Who is compensated on a salary basis of at least \$455 per week;
2. Whose primary duty is management;
3. Who customarily and regularly directs the work of two or more employees; and
4. Who has the authority to hire or fire other employees or whose suggestions regarding employment actions are given particular weight.

Cameron again argued that Avalon couldn't meet the requirements of any of the elements besides the first one because his primary duty of operating a forklift wasn't related to the management duties contemplated by the FLSA.

Manages the enterprise. According to federal regulations, management in general includes "activities such as interviewing, selecting, and training of employees; setting and adjusting their rates of pay and hours of work; directing the work of employees; [and] maintaining production or sales records for use in supervision or control," among other things. The court noted that the duties Cameron listed in his résumé are akin to those of an exempt management employee (e.g., supervise warehouse employees and train new employees). However, Cameron now disputes the veracity of the duties listed in his résumé, claiming he created it and listed the job duties at Avalon's direction. Avalon asserted that the duty of managing a warehouse satisfies this element.

Directs two or more employees. Cameron asserted that he supervised one full-time and one part-time employee; therefore, he didn't regularly direct the work of two or more full-time employees. Avalon contended that in addition to the two warehouse employees, Cameron customarily supervised drivers and drivers' helpers, which meant he supervised the equivalent of two full-time employees and met the requirement. The FLSA regulations permit employers like Avalon to aggregate time spent supervising multiple part-time employees to satisfy this requirement.

Has authority to make hiring and firing decisions. It was undisputed that in Cameron's relatively short tenure at Avalon, he didn't have the opportunity to participate in employment decisions. But Avalon contended that didn't mean he didn't have such authority. Again, the disputed facts left the determination of whether Cameron satisfied this element for a jury.

Takeaway

The number of challenges to employers' classification of employees as exempt—by employees and the U.S. Department of Labor—has steadily increased for several years. To guard against such challenges, you should conduct periodic self-audits on exempt employees by comparing their job duties (i.e., the duties they actually perform, not just those listed in their job descriptions) with the specific exemption requirements. Even if you initially properly classified an employee or a group of employees as exempt, a shift in job duties may call the initial classification into question. It's important to consult with legal counsel when you have any classification questions because the inquiry is highly factual.

You should also take note of your responsibility to maintain records of all hours worked by nonexempt employees. Often, an employee seeking payment for overtime hours he allegedly worked will overstate his claim. If the employee is found to have been misclassified, his employer may be on the hook for back pay if it cannot prove the number of hours he actually worked. The onus to produce records of hours worked is on the employer. Even if you don't require your employees to clock in or fill out time cards, you should have some way of demonstrating that an employee didn't work the hours he claims to have worked (e.g., computer login records or parking garage records).

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