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Mortgage Bankers Not Entitled to Overtime Under FLSA

11/16/2012

By Darryl G. McCallum

Mortgage bankers for Quicken Loans were not entitled to overtime as nonexempt employees because the evidence at trial demonstrated that they had a prominent role in the lending process and had exercised discretion and independent judgment in fulfilling that role, the 6th U.S. Circuit Court of Appeals ruled.

A group of mortgage bankers with Quicken Loans sued for overtime compensation under the Fair Labor Standards Act (FLSA), claiming that they had been misclassified as exempt administrative employees. To fall within the administrative exemption to the FLSA, an employee must 1) be compensated at a rate of not less than \$455 per week; 2) have as his or her primary duty the performance of office or nonmanual work directly related to the management or general business operations of the employer or the employer's customers; and 3) exercise discretion and independent judgment with respect to matters of significance in performing his or her primary duty (29 C.F.R. §541.200(a)).

The mortgage bankers disputed that they met the third requirement, arguing that their primary duty involved sales of financial products and that, rather than exercising discretion and independent judgment, they were expected to adhere to a two-page document outlining the steps they were to take in order to develop business.

Quicken Loans, however, contended that the mortgage bankers exercised independent judgment and discretion in the performance of their duties and were thus exempt from overtime compensation. [After a five-week trial, a jury found in favor of Quicken Loans. The mortgage bankers appealed. The 6th Circuit affirmed the jury's verdict.](#)

The 6th Circuit noted that the U.S. Department of Labor's regulations specify that in the financial services industry, employees whose primary duty involves selling financial products do not qualify for the administrative exemption. Those same regulations also provide, however, that an employee's primary duty is his or her most important duty, not necessarily the most time-consuming duty.

In this case, the jury was presented with countervailing interpretations of the plaintiffs' duties. The mortgage bankers put forth evidence, including letters and internal memoranda, identifying themselves as a "sales force." They also presented a two-page document establishing a 10-step process for developing business, contending that they did not exercise independent judgment or discretion in the performance of their duties. Rather, they made decisions within circumscribed guidelines.

By contrast, Quicken Loans called as witnesses several mortgage bankers who adamantly opposed the notion that their primary duty involved selling financial products. In addition, the plaintiffs were presented at trial with their own resumes, many of which described duties far beyond sales, including, for instance, helping clients achieve their financial goals and managing their mortgages more effectively.

The court held that this evidence was sufficient to permit the jury to find that the mortgage bankers' duties brought them within the administrative exemption. The fact that Quicken Loans used various means to channel the mortgage bankers' discretion, including the two-page business development strategy document relied on by the plaintiffs, did not eliminate the existence of discretion. The evidence showed that the mortgage bankers still were able to compare and evaluate possible courses of conduct and make a recommendation to a client that would fit the client's needs. Thus, the court held that there was no basis for disturbing the jury's verdict in favor of Quicken Loans.

Henry. v. Quicken Loans Inc., 6th Cir., No. 11-2125 (Oct. 25, 2012).

Professional Pointer: By upholding the jury's verdict, the court set forth a roadmap for other employers in the financial services industry as to how to demonstrate that their mortgage bankers are in fact exempt employees. Though sales may be one part of their duties, where such employees perform a variety of roles in connection with closing loans, including, for example, analyzing information regarding clients' financial status, educating clients on the financing process, and recommending appropriate financial products, they should qualify as "exempt" employees under the FLSA.

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