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Overtime Due Despite Conflicting Evidence

By Laurie A. Petersen and Samantha J. Wood 8/21/2015

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Conflicting evidence as to whether employees were exempt under the Fair Labor Standards Act (FLSA) was not enough to overturn a jury verdict that they were nonexempt, according to the D.C. Circuit Court of Appeals.

The FLSA ordinarily requires employers to pay employees time-and-one-half for hours worked beyond 40 in a workweek. However, employers are not required to pay overtime to certain classes of employees, including administrators and learned professionals who are paid on a salary basis of at least \$455 per week. (Pursuant to the Department of Labor's recently proposed changes, this minimum salary threshold will likely increase in the near future.)

To qualify as an exempt administrator, the employee's primary duties must include: 1) the performance of office or nonmanual work directly related to the management or general business operations of the employer, and 2) the exercise of discretion and independent judgment with respect to matters of significance. The learned professional exemption requires that the employee's primary duty be the performance of work requiring advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction. The employer bears the burden of establishing that its employees fall within a recognized overtime exemption.

Two medical records coders, Kathy Radtke and Carmen Cunningham, sued Lifecare, alleging that the company had misclassified them as exempt employees and failed to pay them overtime compensation. Lifecare asserted that the employees were exempt under the administrative and professional exemptions.

The case went to trial before a jury. While there was no dispute regarding the salary basis requirement, the parties disagreed as to whether the employees' duties constituted administrative or professional duties. Lifecare introduced evidence establishing that Cunningham and Radtke were exempt administrators because Cunningham supervised between nine to 22 coders and because both Cunningham and Radtke provided training to physicians and worked independently to evaluate and revamp coding procedures. Furthermore, Lifecare introduced evidence establishing that they were exempt professionals because both positions required and both employees possessed certifications relevant to medical coding. Despite this evidence, the jury found that the employees were nonexempt.

Lifecare appealed, arguing that, based on the evidence adduced at trial, it was entitled to judgment as a matter of law. The district court denied Lifecare's motions, and Lifecare appealed to the D.C. Circuit Court.

The D.C. Circuit affirmed the district court's decision, asserting that although some evidence established that the employees performed exempt duties, the employees had introduced conflicting evidence at trial showing that most of their time was spent on nonexempt duties and that the jobs did not require advanced knowledge. The court stated that while it is a question of law as to whether an employee falls under an FLSA exemption, the question of how the employees spend their working time is a question of fact for the jury to decide. To overturn the jury's decision on that issue, Lifecare had to establish that the evidence was "so one-sided that reasonable men and women could not have reached a verdict in plaintiff's favor." The court held that, at most, Lifecare only established that there was a conflict in the evidence before the jury, which was not sufficient to overturn the jury's verdict.

Radtke v. Lifecare Mgmt. Partners, D.C. Cir., No. 14-7079 (July 28, 2015).

Professional Pointer: Having accurate and up-to-date job descriptions will go a long way in allowing an employer to establish that a particular job is exempt and that employees performing that job are not entitled to overtime.

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