

Session 11

Fair Labor Standards Act: Balancing Exempt vs. Non-Exempt Status

Fair Labor Standards Act: Balancing Exempt vs. Non-Exempt Status

Session 11

2016 Employment Law Conference ~ *Strength in Balance*

Prepared by:
Nate J. Kowalski, Esq.
Amber S. Healy, Esq.

aa/rr
Atkinson, Andelson
Loya, Ruud & Romo
A Professional Law Corporation

Camden • Chicago • Dallas • Denver • Detroit • Houston • Kansas City • Los Angeles • Miami • Minneapolis • New York • Philadelphia • Phoenix • Portland • Raleigh • San Antonio • San Diego • Seattle • Tampa • Washington, DC • Wichita


Agenda

- FLSA Coverage
- FLSA Minimum Wage Requirements
- FLSA Overtime Requirement
- FLSA Limitations in Youth Employment
- FLSA Recordkeeping Requirements
- Interplay Between FLSA and State Law

aa/rr

1

Exempt vs. Non-Exempt Classification




- Three Tests for Exemption
 1. Duties – “primarily” exempt work
 2. Salary Level – minimum salary regulations
 3. Salary Basis – paid on salary basis

aa/rr

2

White Collar Exemptions



- Administrative
- Executive
- Professional (learned, creative)
- Outside Sales
- Certain computer employees

aa/rr 3

White Collar Exemptions

Administrative Exemption

- Primary duties
- –Office/non-manual
- –Discretion and independent judgment
- –Policy making responsibility
- Most litigated exemption!

- Public Sector:
 - Public Information Officers vs. Convention Center Employees
- Construction:
 - Dispatcher
 - Project Superintendents

aa/rr 4

White Collar Exemptions

Professional Exemption

- Primary duties
- –Advanced knowledge work
- –Job performance requires invention, imagination, etc.
- –Advanced degree acquired by intellectual instruction

- Private Sector:
 - Accountant vs. Bookkeeper
- Public Sector:
 - Social worker with M.S.W. vs. Social worker with Bachelor's Degree

aa/rr 5

White Collar Exemptions

- Primary duties
 - Management
 - Customarily/regularly directs two or more employees
 - Authority to hire/fire
- Managers and Assistant Managers
 - Starbucks — \$1.6 million settlement for 553 employees in Florida and \$18 million in California for 1,000 employees
- Law Enforcement
 - Lieutenant vs. Sargent

Executive Exemption

aa/rr 6

Evaluating Employee Exempt Status

Job titles alone do not determine.

Exemption requirements are narrowly construed and limited.
Nordquist v. McGraw-Hill Broadcasting Co. (1995) 32 Cal.App.4th 555


Employer bears the burden of proof.
Corning Glass Works v. Brennan (1974) 417 U.S. 188

DOL- FLSA Overtime Security Advisor
 (Web-based evaluation tool)

aa/rr 7

Salary Deduction Issues

- Impermissible Deductions
 - Deductions for absences when employee is ready, willing & able to work
- Impact of Improper Deductions from Salary of Exempt Employee



aa/rr 8

Federal vs. State Guidelines

- *California guidelines more restrictive than federal*
- *Two key differences:*
 - CA employee must exercise in independent judgment more than 50 percent of the time. (fact intensive determination)
 - Receive a monthly salary equivalent to two times the state or local minimum wage
 - Under California law effective January 1, 2016 - \$3,466.67 per month; \$41,600 annually
 - Effective December 1, 2016 the FLSA minimum increases to \$47,476 per year; \$913 per week under DOL final rule announced in May 2016 with automatic updates every three years

aa/r

9

Impact of the FLSA on the Public Sector

- 1 Public employees exempt under Executive or Administrative exemption
- 2 Section 7(k) exception for police officers, firefighters, and related employees
 - *Cleveland v. City of Los Angeles* (9th Cir. 2005) 420 F.3d 981)
 - *Haro v. City of Los Angeles* (9th Cir. 2014) 745 F.3d 1249
 - *Adair v. City of Kirkland* (9th Cir. 1999) 185 F.3d 1055
 - *California Assn. of Highway Patrolmen v. California Dept. of Personnel Admin.* (1986) 185 Cal.App. 3d 352)
- 3 Special exemptions for seasonal personnel

aa/r

10

Recent Cases

Navarro v. Encino Motorcars, LLC (9th Cir. 2015) 780 F.3d 1267

- Are automotive services advisors exempt from overtime requirements?
- Supreme Court review expected June 2016

Zannikos v. Oil Inspections (5th Cir. 2015)

If holding followed by other federal circuits, employees who earn over \$100,000 and demonstrate some independent judgment will not require overtime pay

aa/r

11

