



Could This Be You?
 An Employee Questions His “Exempt” Status and Demands Overtime Pay. What Should You Do?

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Recently, a new client called about an employee who had questioned his status as an employee “exempt” from overtime pay. The employee regularly worked more than 40 hours per week and claimed he was entitled to overtime pay. The employer contacted us to discuss whether its classification of the employee as “exempt” under the Fair Labor Standards Act (FLSA) was proper.

When the FLSA classification of an employee is challenged, the employer bears the burden to prove the classification is correct. The employer must be able to show that the employee’s position falls within one of the FLSA’s exemptions to the requirement of overtime pay. The focus must be on the duties performed by the employee, not the employee’s job title. The tests for the exemptions are multifaceted and are construed narrowly to favor the employee.

Here, our client viewed the employee to fall within either the “administrative” or “executive” exemption to the FLSA. The compensation-related criteria for both

exemptions were met. However, we quickly ruled out the exemption for executive employees. This particular employee did not have the authority to hire and fire employees, nor did he provide any input into such decisions, which is one of the tests for the executive exemption.

We then considered whether the tests for the administrative exemption were met. The administrative exemption is one of the more ambiguous overtime exemptions under the FLSA and is often misapplied by employers. It was questionable whether the employee's primary duties were directly related to management or general business operations, rather than providing the services offered by the company. Also, our new client had few facts to show that the employee's primary duties included the exercise of discretion and independent judgment on matters of significance, which is another requirement of the administrative exemption. We advised our client on its options going forward.

Misclassification of an employee as exempt from overtime pay can be very costly to an employer. Damages under the FLSA include the employee's unpaid overtime pay and an additional equal amount as liquidated damages, together with an award of attorneys' fees and costs. The old adage, "An ounce of prevention is worth a pound of cure" seems fitting here. Employers must be alert when initially classifying employees as FLSA exempt and should periodically re-evaluate such classifications, especially when relying on the amorphous administrative exemption, to maintain compliance with the FLSA.