Wage & Hour Tip

Caution: Administrative Assistants Only Rarely Are Exempt From Overtime Pay

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Employers sometimes classify office workers who perform secretarial, receptionist, and other administrative tasks as exempt from overtime pay because they receive a salary and have job titles such as "executive assistant." But such employees will not necessarily be found exempt from the requirement to pay overtime merely because they receive a salary, perform administrative duties, and hold impressive job titles. Clerical and administrative employees often do not have sufficiently high-level positions or perform primary duties that meet the "administrative employee" exemption, which can lead to claims for non-payment of overtime.

The federal Fair Labor Standards Act (FLSA) and state law require that employees who work more than 40 hours in a workweek be paid 1.5 times their regular rate of pay for any hours worked above 40 unless they qualify for an exemption. To qualify as exempt, employees must be paid on a salary basis of not less than $455 per week and must also perform duties that qualify for an exemption. Generally, for office workers performing administrative tasks, the exemption for "administrative employees" must be met. Determining whether an employee's position qualifies for this exemption involves a two-part analysis.

First, the employee's primary duty must be the performance of work that is directly related to management or general business operations (as distinguished from, for example, working on a production line or selling the company's products to customers). Second, the employee's primary duty must include the exercise of "discretion and independent judgment" on "matters of significance." Administrative assistants often meet the first part of this test, but fail the second part.

The FLSA regulations make clear that executive or administrative assistants will only qualify as exempt if they assist "business owners or senior executives of large organizations." Thus, if the administrative employee is one of several assistants in the office performing general administrative duties and is not primarily assigned to assisting an owner or senior officer of the business, then the exemption will not apply. The employee also must be delegated authority to exercise discretion and independent judgment — which involves considering, comparing, and evaluating different courses of action and then making a decision or recommending a decision — on sufficiently important and consequential matters. Following specific instructions or prescribed procedures is insufficient.

An exempt executive or administrative assistant generally will perform fewer clerical tasks as compared to a secretary and will receive a substantially higher salary. The assistant's primary duty typically will involve managing the owner/ executive's schedule; acting as his or her representative in dealings with third parties; prioritizing and handling correspondence; researching and handling special projects; and arranging board of directors or shareholder meetings. The employee's primary duty and the importance of his or her position to the owner/executive's role should be accurately reflected in job descriptions and performance evaluations, which can serve as evidence to support exempt-status.

For more information on this topic, please contact a member of the Employment Law Group.