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Client Update

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First Circuit Court of Appeals Gives Managers a Trial on Their FLSA Overtime Lawsuit

Many employers assume that paying a manager a significant salary and having that person manage two or more employees is enough to exempt the manager under the executive exemption from the overtime pay requirements of the Fair Labor Standards Act (FLSA). However, to be exempt, the manager must have management as a primary duty and must be able to influence or have authority over personnel decisions. Overtime exemption claims are expensive to defend since they tend to be fact intensive. In addition, depending upon the state, these claims can go back as far as six years with exposure for back pay, liquidated (multiple) damages, interest and attorneys' fees. A recent decision from the United States Court of Appeals in Boston highlights the potential for these cases to occur.

Gassan Marzuq and Lisa Chantre were store managers at related Dunkin' Donuts franchises in Massachusetts. Each had agreements that stated that they were to work "no less than a six day, 48 hour work week," but Marzuq and Chantre worked in excess of 80 and 50 hours per week respectively. Both claim that although they directed the work of two or more employees and earned more than \$455 per week, they were not truly exempt employees. Marzuq and Chantre admitted that while management was a job duty for them, it was not their primary duty (which is the statutory requirement) considering the burden of limited staffing and the general responsibilities of the stores. They did not have input in regard to hiring, firing, or promotion of staff and claimed that they were, for the most part, just basic employees. Obviously, the Dunkin' franchisees see things differently.

Marzuq and Chantre were both supervised by a district manager. The district manager was responsible for seven stores in the area, and it was he who coordinated staffing levels, ordered the baked goods and arranged maintenance among other management duties. He visited the stores weekly and was involved in the hiring and firing of staff. When Marzuq and Chantre needed more help, they had to go through the district manager.

The Dunkin franchisees claimed that both individuals met the criteria of the executive exemption

from overtime. Although both Marzuq and Chantre were “in charge” of their stores, they spent the vast majority of their time engaged in regular staff duties. They both made close to the same amount of money as the line staff and had little decision-making opportunities at work as well. Marzuq stated in his complaint that he did not have time to actually be the manager as he was “on the floor 90%” of the time, serving customers, cleaning inside and out of the building, landscaping, and covering shifts. He stated that he could not delegate clean-up or shift coverage because of a lack of staff.

The Court of Appeals focused on the primary duty test in reaching its decision that a trial would be necessary to resolve this dispute. The primary duty test looks at several factors. First, what is the “relative importance” of the manager’s exempt and other duties. While the job descriptions and other written policies make clear that managing is the expectation, the managers’ testimony established that their manual work, such as serving customers and cleaning, also was “critical to the success of the restaurant” and likely created a question as to whether they were actually performing managerial and non-managerial duties simultaneously. Second, the Court analyzed the amount of time spent on managing and found the evidence inconclusive. Third, the Court reviewed the level of direct supervision of the manager’s authority to manage. Again, Dunkin’ and the two managers had differing views of how independently the stores were actually managed. Finally, the Court looked at the relationship between the managers’ rate of pay and that paid to the hourly employees they managed. With respect to converting the salaries for the sake of comparison, the Court converted those salaries to hourly rates based on the hours being worked by the managers. It appears that a gap of anything less than three dollars an hour was sufficient to trigger at least suspicion on the part of the Court regarding the applicability of the exemption.

In requiring that this matter go to trial, the Court did not set a black letter test about the percentages of time spent on various duties. Even though Marzuq testified he spent 90 percent of his time performing the same tasks as hourly employees, the Court said that it did not necessarily mean that Marzuq was not primarily performing managerial duties, such as coaching and training workers, at the same time. However, the Court found that the percentage could be “significant in evaluating whether a manager is able to perform supervisory and nonexempt tasks concurrently.”

Getting exemption status correct can be tricky. As explained at the outset, it can be extremely costly to misclassify an employee as exempt. According to the Department of Labor, there were over 4,500 FLSA lawsuits filed last year regarding misclassified employees. With millions of dollars potentially at stake, it is critical that employers be extremely cautious and rely on their experts on this subject.

As widely reported, the DOL is expected to issue significant new regulations later this year regarding eligibility for this exemption. The changes will include a dramatic increase in the

minimum salary that an exempt employee must earn, and also may include more stringent requirements as to the job duties requirement even if the increased minimum salary amount is satisfied. Please contact Peter Bennett (pbennett@thebennettlawfirm.com) or Rick Finberg (rfinberg@thebennettlawfirm.com) of The Bennett Law Firm to complete a review of FLSA exempt status compliance or to learn more about this important topic