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# The Sixth Circuit Rules Underwriters Are Exempt From The Overtime Requirements Of The FLSA Under The Administrative Exemption

By Nitya S. Lohitsa / Mar 04, 2016

On Wednesday, March 2, 2016, the United States Court of Appeals for the Sixth Circuit ruled in *Lutz v. Huntington Bancshares, Inc., et al.* that the Plaintiffs, loan underwriters at Huntington Bank, were properly classified as exempt employees under the administrative exemption of the Fair Labor Standards Act (FLSA). Due to their exempt status, the underwriters were not entitled to overtime pay under the FLSA.

The court ruled that the underwriters were exempt based on their specific duties and the level of discretion demonstrated by plaintiffs as underwriters. Initially, the court rejected the plaintiffs' argument that the underwriters were engaged in the production of the bank's product, making loans. After reviewing their job duties, the court concluded that the underwriters advised the bank on whether or not the bank should accept the credit risk posed by its customers. The court stated that the relevant inquiry was whether the employee helped run or service a business - not whether that employee's duties merely touched on a production activity.

The court also found that the underwriters exercised discretion in determining whether to approve or deny a loan for a customer. The underwriters did not merely make formulaic or mechanical decisions. For example, the underwriters performed an independent investigation into the customer. In addition, while the underwriters followed bank guidelines to assist in their decision-making, they frequently deviated from the Bank's guidelines to determine whether a customer qualified for the desired loan. The bank permitted underwriters to waive or deviate from the guidelines by imposing additional requirements for loan approval upon the customer that were not specified by the guidelines. The bank also permitted underwriters to make a "counteroffer" to customers about a different type of loan if the customer did not qualify for his or her desired loan. The authority to counteroffer was not found anywhere in the guidelines and was based entirely on the underwriters' discretion.

Because the underwriters exercised independent decision-making and discretion and performed non-manual, office duties that affected Huntington's business, the court held that the underwriters were exempt employees and not entitled to any alleged unpaid overtime.

Cases alleging violation of the FLSA's administrative overtime exemption are fact intensive and often turn on the employee's job duties and the level of discretion exercised by the employee. Employers should pay particular attention to how they classify their employees and the time records they maintain for both exempt and non-exempt employees. FLSA claims are on the rise, particularly claims for alleged unpaid overtime where an employer is accused of misclassifying employees as exempt instead of non-exempt. Employers may avoid these claims by ensuring that the administrative exempt employees meet the duty and independent judgement tests of the administrative exemption.

If you have any questions about whether to classify an employee as exempt or non-exempt, please contact Nitya S. Lohitsa at (313) 965-8260 | [nlohitsa@clarkhill.com](mailto:nlohitsa@clarkhill.com), or another member of Clark Hill's Labor and Employment Practice Group.