

Alaska Supreme Court Unanimously Affirms Trial Court Award of Overtime Pay, Prejudgment Interest, Penalties and Attorneys' Fees to Incorrectly Classified Employee

Breaking Developments In Labor and Employment Law
05/09/08

A recent unanimous Alaska Supreme Court decision, *Geneva Woods Pharmacy Inc. v. Thygesen*, Opinion No. 6255 (April 25, 2008), serves as a reminder to employers of the financial risks of improperly classifying employees as “exempt” from state or federal overtime pay requirements and of failing to maintain accurate records of hours worked for nonexempt employees. Properly classifying employees can be especially tricky where, as in *Geneva Woods Pharmacy*, an employee is properly classified as exempt under federal law, but is nonexempt under state law.

Plaintiff Was a Nonexempt Employee Under Alaska State Law

Plaintiff, a registered nurse, carried the title "Director of Nursing" for Geneva Woods Pharmacy's Home Infusion Department. She performed in-home patient care and administrative tasks. Shortly after resigning, she sued her former employer, alleging that she had been improperly classified as exempt from overtime pay. On cross-motions for summary judgment, the trial court ruled that plaintiff was an exempt employee under the federal Fair Labor Standards Act (“FLSA”), but that she was a nonexempt employee under the Alaska Wage and Hour Act (AS 23.10.060 et seq.). The only issue remaining for trial was the amount of overtime plaintiff worked.

Employer Failed to Keep Accurate Time Records

The employer admitted that plaintiff was directed to submit a time card each week reflecting only eight hours of work per day, regardless of the number of hours she had actually worked. No accurate time records were maintained by the employer. Instead, the employer supported its position on hours worked by estimating from patient records and other documents. Although the employer agreed with plaintiff that she spent the bulk of her time on professional visits for in-home care and that she spent an additional 10 percent of her time on administrative tasks, the employer maintained that plaintiff did not work more than 40 hours a week. In contrast, plaintiff estimated that in the 73 weeks prior to her resignation, she had worked approximately 9.5 hours of overtime each week.

Although both the employer and the plaintiff "recreated" their estimates of hours worked, the trial court generally agreed with plaintiff's estimates and ruled in her favor with regard to her

entire overtime claim, totaling more than \$32,000. The trial court also concluded that the employer was liable for statutory (*i.e.*, liquidated or double) damages in the same amount as the unpaid overtime, plus prejudgment interest, and over \$156,000 in attorneys' fees, for a total judgment of over \$250,000. On appeal, the Alaska Supreme Court affirmed the trial court's rulings.

Employer Did Not Meet Its Burden of Proof on the Number of Hours Plaintiff Worked

The Alaska Supreme Court observed that, where an employer maintains accurate time records of the number of hours an employee works, the employee has the burden of proving that she was not properly compensated. However, where the employer fails to maintain accurate time records, the burden is on the employer to *disprove* the employee's claimed hours. The Court noted that, in such cases, the employee need only present "sufficient evidence to allow the trial court to draw a just and reasonable inference that overtime wages are due."

What This Means for Employers

Employers should draw two important lessons from *Geneva Woods Pharmacy*. First, this case demonstrates the difficulties employers face in states where the exemptions under the FLSA are not identical to the exemptions under applicable state law. Employers should never assume that compliance with federal law equates to compliance with state law, or vice versa. Generally, the standard that is more favorable to the employee must be applied. Thus, even where an employee is exempt from overtime pay under the FLSA, the employer must carefully evaluate whether the employee's actual duties *also* meet the tests for exemption under the applicable state law. Likewise, employers should never assume that an employee is exempt from federal or state overtime requirements simply based on the job title (*e.g.*, "Director" or "Manager") or the fact that the employee is being paid a salary. It is the actual job duties, not an exempt-sounding job title or salary basis of the job position, that determine whether the employee is entitled to be paid overtime.

Second, in these types of overtime cases (where the employer has failed to keep accurate time records), the determination of time actually worked is often based on the testimony of the employee. The employer is then faced with the difficult burden of presenting evidence that negates "the reasonableness of the inference to be drawn from the employee's evidence." As *Geneva Woods Pharmacy* demonstrates, this can be a difficult, if not impossible, burden to overcome. For this reason, for any employee who is entitled to receive overtime pay, the employer should maintain and monitor accurate time records and, in particular, employees who do record their time should not be directed to record inaccurate hours.

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