



Federal Court Agrees with DOL: Mortgage Loan Officers are Not Exempt

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The U.S. Department of Labor's recent guidance on the exempt status of mortgage loan officers has survived a federal court challenge by the Mortgage Bankers Association. The dispute began in March 2010, when the DOL declared that mortgage loan officers are not exempt from the minimum wage and overtime requirements of the Fair Labor Standards Act (FLSA). Reversing and withdrawing two prior opinion letters on the subject, the DOL stated in an administrator's interpretation that employees who perform the typical duties of a mortgage loan officer do not qualify as administrative employees exempt from overtime under the FLSA.

Under the administrative exemption, an employer need not pay overtime to an employee if three conditions are met: (1) the employee is paid on a salary basis of at least \$455 per week; (2) the employee's primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and (3) the employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance. In the March 2010 administrator's interpretation, the DOL said the typical mortgage loan officer does not meet the second condition, because he or she is primarily engaged in making "sales."

In January 2011, the Mortgage Bankers Association filed suit against the DOL in federal court in Washington, D.C., claiming that the March 2010 administrator's interpretation was "arbitrary, capricious, an abuse of discretion, and otherwise contrary to the law." The Association sought to have the federal court declare the March 2010 interpretation unlawful. The federal court rejected the Association's challenge on June 6, 2012 finding that the DOL's March 2010 interpretation was properly adopted and was not "arbitrary and capricious."

Thus, for now, the DOL's conclusion that typical mortgage loan officers are not exempt and therefore must be paid overtime still stands. It remains to be seen whether the Mortgage Bankers Association will appeal this ruling, or whether future administrations will continue to follow this interpretation.

What is certain is that the question of who is – and who is not – exempt from overtime pay under the FLSA's administrative exemption will remain a thorny question for many employers for a long time. If you have questions about the application of the administrative exemption to members of your workforce – or any question regarding work hours or pay – please contact a member of Varnum's Labor and Employment Relations Group.