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LEGAL ALERT



Legal Alert: California Court of Appeal Expands the Administrative Exemption Under the New Wage Orders

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In a victory for California employers, a California Court of Appeal recently rejected the traditional administrative/production dichotomy test for an administrative exempt employee for certain business models. In *Combs v. Skyriver Communications, Inc.* (2/7/08), the Court of Appeal affirmed the trial court's decision dismissing the employee's claims for overtime, unpaid meal period penalties and unpaid rest period penalties because the employee was properly classified as an administrative exempt employee. Importantly, the Court of Appeal relied heavily upon the recent changes to the Industrial Welfare Commission's Wage Order No. 4-2001 in determining that the employee was an administrative exempt employee and, therefore, not entitled to overtime, meal periods or rest periods.

Combs, a former "manager of capacity planning" and "director of network operations," filed a lawsuit against his former employer, Skyriver Communications, for various violations of the Labor Code and unfair business practices. Combs claimed Skyriver improperly classified him as an exempt employee and that he was entitled to overtime and a number of penalties for alleged Labor Code violations. The trial court dismissed the lawsuit, finding that Combs was properly classified as an administrative exempt employee.

The Court of Appeal affirmed this decision, rejecting Combs' argument that he was essentially a "production worker" (i.e., a cog in the wheel) and thus entitled to overtime. In so holding, the Court of Appeal examined the traditional administrative/production dichotomy detailed in *Bell v. Farmers Insurance Exchange* (2001) 87 Cal.App.4th 805, and determined that the dichotomy did not apply factually or legally to Skyriver's operations.

Importantly, the Court of Appeal noted that since the administrative/production dichotomy was examined in *Bell*, the Industrial Welfare Commission (the administrative agency charged with regulating working conditions in California) has significantly altered the Wage Order applicable to Combs' employment. Under the new Wage Order, an administrative exempt employee is one that: (1) performs "office or non-manual work" directly related to management policies or the general business operations of the employer or its customers; (2) works under general supervision and along specialized or technical lines requiring special training, experience or knowledge; (3) customarily and regularly exercises discretion and independent judgment; (4) is primarily engaged in duties that meet the test of the exemption; and (5) earns a monthly salary equal to at least two times the California minimum wage for full-time employment.

In determining that Combs was properly classified as an administrative exempt employee, the Court recognized that his duties as the “manager of capacity planning” and “director of network operations” involved office work, and that he performed the duties under general supervision. In addition, the Court of Appeal held that the work primarily performed by Combs (e.g., the behind the scenes operations of administering and developing the company’s computer network and systems, as opposed to creating a widget on an assembly line) was directly related to Skyriver’s general business operations. The Court of Appeal also determined that Combs exercised the requisite level of discretion and independent judgment in his duties because he maintained the authority to “determine the course of action to correct [a] problem” for matters of significance.

Employers’ Bottom Line:

Frequently, employers classify employees as exempt or non-exempt at the time of hire, and then do not make any changes to the classification unless the employees move to another position. Given the ever-changing landscape of whether employees actually meet the test for an exemption, as well as the employer’s affirmative obligation to establish that it properly designated the employees as exempt, we recommend that employers review their exempt positions on an on-going basis to ensure that employees are properly classified as exempt or non-exempt.

If you have any questions regarding this case or the appropriate classification of employees as exempt or non-exempt, please contact the Ford & Harrison attorney with whom you typically work or the author of this Alert, Jesse Caryl, at jcaryl@fordharrison.com or (213) 237-2450.