



# An Ounce Of Prevention Is Worth A Pound Of Litigation

## Insights

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Wading through complex employment laws is often a challenging endeavor for employers. This has been especially true during the last several years, as companies have been reorganizing their workforces, cutting costs and tightening their budgets to stay competitive. If you were one of these employers, it's likely that you were required to reexamine the classification of certain employees who, as a result of the change in their duties, no longer met the exemption requirements.

The distinction between "exempt" and "non-exempt" is relatively simple in theory but difficult in application. To start, there are several different categories of exemptions, each of which pertain to different types of employees. The five major exemption categories in California are the executive, administrative, professional, computer professional, and the salesperson exemptions.

The appropriateness of an employee's classification as exempt must be based on the actual job duties performed by that employee, together with the employer's realistic expectations regarding the position.<sup>[1]</sup> Clearly, a job title alone is insufficient to establish the exempt status of an employee.

### The Latest Guidance

In 2010, a slew of class-actions and single-plaintiff cases which stemmed from allegations of improper classification were filed in the courts. Employees who succeed in proving their allegations are typically entitled to overtime wages, compensation for missed meal or rest periods, waiting time penalties, attorneys' fees and costs, as well as a variety of other penalties found within the statutory scheme.

On December 9, 2010, the California Court of Appeal provided employers with additional guidance pertaining to the proper classification of employees. The case involved a long term employee of United Parcel Service (UPS), David Taylor, who brought an action against UPS seeking recovery of unpaid overtime compensation, penalties for missed meal and rest periods, and other related claims. During his employment, Taylor worked in a variety of managerial positions and was paid a fixed salary, received a yearly bonus, and was eligible for company stock based on UPS' Management Incentive Program. Here is how the court analyzed his claims:

### Executive Exemption

In California, to be exempt as a salaried executive, in addition to satisfying the salary tests, the employee must: 1) manage or be in charge of a customarily recognized department or subdivision of the employer; 2) customarily and regularly supervise two or more other employees; 3) have authority or significant input regarding the hiring, promotion, and firing of employees; 4) customarily and regularly exercise discretion and independent judgment; and 5) satisfy the duties test by spending more than 50% of the employee's time on the exempt tasks.

In holding that Taylor fit within the executive exemption, the court found the following facts significant:

- Taylor's monthly salary was greater than two times the state minimum wage.
- Taylor supervised an identifiable group of employees who performed a regular set of specific tasks for a designated geographic region at UPS.
- Both UPS' "realistic expectations" of Taylor's job duties, as well as the duties he performed daily involved tasks which were different from the work performed by his subordinates. The court found it inconsequential that there were various tasks that are traditionally considered managerial level which Taylor did not perform.
- Taylor could recommend that an employee be discharged or promoted. This was significant, despite the fact that he did not have ultimate authority to hire or fire any employee and that the disciplinary process was governed by progressive discipline guidelines.
- Taylor was responsible for making numerous discretionary decisions on a daily basis, with little or no supervision, and usually under time-sensitive, pressure-filled conditions. The fact that Taylor was required to adhere to UPS' "decision tree" when responding to a situation did not compromise the level of discretion and independent judgment he was required to utilize. The court noted, "[s]upervisors and managers are not rendered mere automatons because they must navigate each workday mindful of regulations and internal policies governing their work environment and the employees they oversee."

### **Administrative Exemption**

In addition to holding that Taylor's duties fit the requirements of the executive exemption, the court further noted that Taylor was exempt as an administrative employee.

In California, to be exempt as a salaried administrative employee, in addition to satisfying the salary tests, the employee must: 1) perform work directly related to management policies or general business operations; 2) customarily and regularly exercise discretion and independent judgment; 3) perform a job that falls within the scope of three different kinds of positions; and 4) satisfy the duties test by spending more than 50% of the employee's time on the exempt tasks. This exemption is one of the most difficult to satisfy because the duties elements are subjective and somewhat vague.

The court noted that the "production-administrative dichotomy," flagged by Taylor, was merely a tool that could possibly, but would not necessarily, clarify the analysis. Taylor admittedly did not work at

the "production level," (i.e., he did not engage in unloading, loading, sorting, and delivery of packages) even though he handled day-to-day issues in the fast paced production environment. Rather, Taylor implemented policy and action plans to promote efficiency and a smooth interface with other parts of UPS' operations, supervised employees, promoted good customer and labor relations, and engaged in training. The court concluded that such activities could only be characterized as related to running UPS' general business operations; thus, were exempt administrative tasks.

### **Summing It Up**

In a state where employment laws often appear arbitrary, imbalanced, and frustrating, the *Taylor v. UPS* decision is a refreshing ounce of clarification. Employers should use this as an opportunity to reevaluate their organizational charts and conduct a thorough personnel audit. Employers can help prevent lawsuits by being proactive and ensuring that all employees are performing at the requisite level. The importance of engaging in this process cannot be stressed enough. The expense and time involved in prevention is minimal compared to the risks associated with litigation.

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[1] An employee generally cannot deviate from an employer's realistic expectations regarding exempt duties then claim "nonexempt" status. This is especially true in situations where employers have confronted employees about the deviation from the exempt duties.