

A REVIEW OF GRACE ET AL. V. FAMILY DOLLAR

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Over the last few years, employers have struggled to weather the economic downturn while facing a significant increase in wage and hour litigation, including class and collective actions. Recently, the increase in wage and hour litigation has outpaced all other workplace-related litigation. New initiatives announced by the U.S. Department of Labor, as well as the hiring of more than 300 new wage and hour investigators over the last two years, have signaled that there is no rest for wage and hour litigation weary employers. However, employers scored a victory in a recent 4th Circuit opinion wherein the Court of Appeals found that a store manager who spent extensive time performing nonmanagerial tasks was nonetheless properly classified as exempt and affirmed the district court's order granting summary judgment. *Grace et al v. Family Dollar*, 637 F.3d 508 (4th Cir. 2011).

The Fair Labor Standards Act (FLSA) requires employers to compensate employees at one and one-half times their regular rate of pay for all hours worked in excess of 40 hours per week. Section 13 of the Fair Labor Standards Act provides that the overtime provisions of the Act do not apply to "any employee employed in a bona fide executive, administrative, or professional capacity. In the *Grace* case, the plaintiff was employed as a Family Dollar store manager. The testimony proffered in the case established that as the store manager, the plaintiff earned more than \$600/week, supervised two or more assistant managers and clerks on a regular basis and was responsible for training, supervising, disciplining and evaluating employees.

The parties' briefs and the Court's decision, however, centered on whether the plaintiff's primary duty was management. The plaintiff testified that she spent up to 99 percent of her time performing nonmanagerial tasks including running registers, stocking shelves and unloading freight. The 4th Circuit based its decision on the fact that time alone is not determinative of an employee's primary duty. Rather, an

employee's primary duty may be management even if a majority of his or her time is spent performing nonmanagerial tasks.

As the Grace case demonstrates, there is no simple, one-size-fits-all answer, and neither attorneys nor clients can rely on estimates about the percentage of time employees spend performing tasks to pass judgment on the classification of an employee under the FLSA. Rather, employers must conduct a thorough, job-specific analysis to determine whether its employees are properly classified.

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