



White Collar Exemptions and Why Job Descriptions are Essential

Publication

2.08.15

The Fair Labor Standards Act

As a general rule, the Fair Labor Standards Act (“FLSA”) mandates that employees be paid at least the federal minimum wage for all hours worked. It also requires that employees receive overtime pay at time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek. To be an exception to the general rule, or “exempt,” the employer must demonstrate that the employee falls into one of the exemptions as defined under the FLSA.

What Are “White Collar” Exemptions?

There are many different types of exemptions. One group is aptly named the “white collar” exemptions. These include the executive, administrative, professional, and outside sales employee exemptions. True to its name, the white collar exemptions do not apply to manual laborers, police officers, paramedics, and other similar public safety personnel. Thus, these exemptions are generally reserved for characters from the hit TV show “Suits,” and not from “2 Broke Girls.”

This article won’t detail the specific requirements for each exemption, but generally speaking, an employer must demonstrate that the employee meets (1) a salary basis test and (2) a duties test. To take advantage of the common, and often misunderstood, administrative exemption under the FLSA, an employee must satisfy the threshold requirement of being paid a minimum of \$23,660/yr., or at least \$455/week. No exemption is available unless this threshold is met. Employee can be paid hourly or on salary to meet the salary basis test, but the key is that the employee’s compensation must be a guaranteed minimum that the employee can count on every week. With some limited exceptions, employers must take care not to reduce or “dock” an exempt employee’s pre-established salary for partial day absences or when there is no work available. Improper reductions of an exempt employee’s pre-established salary amount could lead to a loss of the exemption.

The next prong of the administrative exemption is the all-important duties test. Be aware that the employer has the burden to demonstrate that the employee satisfies this prong. Again, job titles are not determinative. Under Federal law, the duties test looks at the employee’s “primary” job duties, not necessarily what the employee actually does. As such, a job description is very powerful. On the contrary, under California law, an exempt employee must actually perform exempt duties more than 50% of the time. Regardless, under either test, an employee’s job duties will be evaluated very

closely to establish how those duties interact with the employer's business and whether they fall within one of the "white collar" exemptions.

With that in mind, what does an employer do when an employee claims that they are being misclassified? How does an employer prove that the employee's primary duty is to engage in exempt work?

The Underrated Job Description

At bottom, a job description is a functional description of the contents/contexts of an employee's position and is one of the most underrated weapons in a company's arsenal against misclassification lawsuits. It can literally save a company hundreds of thousands of dollars. From an employment attorney's perspective, it helps to prove whether an employee truly satisfies the duties test as required for the "white collar" exemptions. If an employee claims that they are misclassified, a job description may be the only written document establishing what the employee's primary job duty really was and what the employee was expected to do.

But what goes in a job description? As a general matter, a job description should include (1) the role/function of the position, (2) how it fits into the overall organization, (3) the qualifications, experience, and skills required for the position, and most importantly, and (4) the job duties and specific responsibilities for the position. The job duties section should be an exhaustive list of both general categories of duties and specific tasks. In addition, if an employee is expected to supervise subordinate employees, that should be outlined. If helpful, a general estimate of how much time the employee is anticipated to spend performing each category of responsibilities may be included as well.

A Job Description Can Do Wonders

A job description acts as a powerful shield against misclassification claims. Once an employee has notice of his specific exempt job duties, it will force an employee to claim that he was not performing the primary job duties in his job description if he is claiming that he was misclassified. This is a much more difficult to claim to make because he would be admitting that he intentionally failed to carry out his job functions. Unless the job description bears no reasonable relationship to the employee's actual position, it will be viewed as strong evidence of what the employee's primary duty is for purposes of meeting the duties test of the "white collar" exemptions.

A well written job description also provides other added benefits. When needed, it can be used as a sword in the employment relationship. The employer can use the job description to track job performance and affirmatively ensure that the employee is doing what they are supposed to do. A job description is also a handy tool for annual performance reviews and standardizing the review process. It also helps focus an employee on what is expected of him or her, leading to improved morale and ultimately production. On the other hand, if an employee is not performing well at any given point, the employer is much better suited to discipline the employee by referencing a job description that outlines what the employee should be doing. Lastly, for purposes of accommodating

an employee's job restrictions, a job description is an invaluable tool for identifying "essential job functions" and engaging in the interactive process. Without one, an employer will be hard-pressed to deny a reasonable accommodation request without being able to show what duties are "essential."

Well-intentioned employers can easily overlook a job description as an afterthought in the hiring and employment process. All too often employees are presumed to be "white collar" apply based on assumptions, conversations, or other side agreements with employees. Unfortunately, failing to have a well-written job description can lead to considerable liability for claims of unpaid overtime, "off the clock" work, and improper deductions, to name a few.

Employers should periodically conduct internal audits of their employee's exempt status to ensure that they are being classified properly. If necessary, job descriptions should be updated on an annual basis to ensure that they accurately reflect each employee's job duties.

This article originally appeared on *Hotel Executive* on February 8, 2015.

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