

FEDERAL COURT RULES IT RECRUITERS ARE NOT EXEMPT FROM OT PAY: 4 STEPS FOR STAFFING FIRMS TO ENSURE COMPLIANCE

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Federal Court Rules IT Recruiters Are Not Exempt From OT Pay: 4 Steps for Staffing Firms to Ensure Compliance

A Pennsylvania federal court dealt a blow to staffing firms that classify recruiters as exempt from overtime, ruling that a staffing firm must provide their IT recruiters overtime pay because they perform "routine sales production work" rather than administrative duties. The February 11 decision in *Thomas v. TEKsystems, Inc.* marks the second federal court in recent years to reject the administrative exemption for recruiters at the same company, and raises serious questions about whether staffing firms across the industry have been misclassifying their own workers for years. Here's what staffing companies need to know about this decision and four steps to help your wage and hour compliance efforts.

The Decision: Recruiters Are Producers, Not Administrators

In *Thomas v. TEKsystems*, seven former recruiters sued their employer, alleging the IT staffing firm misclassified them as exempt from the Fair Labor Standards Act's overtime requirements. US District Judge William S. Stickman granted the workers' motion for partial summary judgment, finding that TEKsystems failed to prove recruiters satisfied the administrative exemption.

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The court's analysis turned on a critical distinction in wage and hour law: whether employees perform work "directly related to management policies or general business operations" (administrative) versus work related to "the day-to-day 'production' of sales" in a service business (production). Judge Stickman found recruiters fell squarely in the latter category.

The court minced no words in its assessment: **"Although TEK maintains that it is not in the business of selling talent to clients, and that recruiters' duties are administrative, the evidence proves otherwise."** Despite the company's characterization of itself as providing "talent services," the court found that recruiters' primary duties consisted of identifying candidates, screening resumes, making phone calls, and submitting recommendations to account managers – all activities aimed at producing the very service TEKsystems sells to clients.

Judge Stickman rejected the company's argument that recruiters' responsibilities (including negotiating compensation packages, developing recruiting strategies, and managing contract employees) elevated their work to the administrative level. The testimony revealed that recruiters don't actually negotiate contracts, don't create management policies, don't make final hiring decisions, and spend most of their time on production activities like "reviewing business requirements, sourcing strategy, getting on the phone, and qualifying and disqualifying candidates."

The Legal Framework

Under the FLSA's administrative exemption, employees must meet three criteria to be exempt from OT:

- have a salary basis of at least \$684 per week;
- primary duty of office work directly related to management or general business operations; and
- exercise of discretion and independent judgment on matters of significance.

TEKsystems lost on the second and third prongs. The court found recruiters' work directly produces what the company sells (candidate placements), making them production employees, not administrators. The court compared recruiters to inside salespersons who sold products over the

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phone and logistics coordinators who sold transportation services – both previously deemed production workers.

On discretion and independent judgment, the court found recruiters functioned like “personnel clerks” who screen applicants against minimum qualifications set by managers. While recruiters had some discretion in sourcing methods, the court found that account managers approved their recommendations, clients made final hiring decisions, and supervisors tracked performance metrics and coached or disciplined recruiters who didn’t meet production goals.

What This Means for Staffing Firms

This decision creates significant risks for staffing companies that classify recruiters as exempt:

- **Job descriptions don’t control:** The court rejected TEKsystems’ reliance on job descriptions, emphasizing that courts focus on actual day-to-day duties.
- **“Inside sales” language is damaging:** Internal characterization of recruiters as salespeople, commission-based pay tied to placements, and language about “producing” created evidence that recruiters are production employees.
- **Limited decision-making authority matters:** If recruiters need approval before presenting candidates, and if performance is measured through production metrics (placements, calls made, candidates screened), they’re likely not exercising the independent judgment the exemption requires.
- **It’s not just TEKsystems:** The court’s reasoning applies broadly to recruiters whose primary duties involve sourcing, screening, and submitting candidates, whether in IT staffing or other sectors.

4 Steps Staffing Firms Should Consider Taking Now

While this ruling is from a district court in Pennsylvania and could be appealed, the reasoning behind it should lead staffing leaders across the country to take notice. We recommend you take the following steps to address potential issues that could arise in your organization.

1. Conduct a Privileged Audit

Work with your FP counsel to audit recruiter positions under attorney-client privilege. Document actual day-to-day duties, analyze time spent on different activities, evaluate decision-making authority, and examine performance metrics and supervision. Get an honest assessment before a lawsuit forces you to defend classifications in court.

2. Review Internal Communications

Determine whether any of your training materials, emails, or compensation documents contain language characterizing recruiters as “sales,” “producers,” or employees who “sell” candidates. If you find such language, you may want to change your stance on these positions – either adjust the work they perform, or reconsider the classification.

3. Evaluate Your Compensation Structure

If you pay recruiters commission based on placements, use performance metrics focused on production numbers, or tie compensation to the “spread” between client charges and consultant pay, you could be considered as treating them like salespeople. According to this decision, such treatment would support a finding they should be paid overtime like salespeople.

4. Consider Reclassification or Restructuring

If your audit reveals vulnerabilities, either reclassify recruiters as non-exempt or restructure roles so that senior-level employees who set strategy, manage teams, and make final candidate decisions are exempt, while junior recruiters who primarily source and screen are non-exempt. Make sure duties actually differ: important-sounding job titles without changed responsibilities likely won't survive scrutiny.

Conclusion

We will continue to monitor developments in this case and other litigation affecting the staffing industry, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information directly to your inbox. If you have questions, contact your Fisher Phillips attorney, the authors of this Insight, or any member of our [Staffing Industry Team](#).