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Does the Wage/Hour Administrative Employee Exemption Apply to Your Employee?

Often employers mistakenly apply the administrative exemption to an employee who performs administrative tasks but does not qualify for this exemption, such as administrative assistants. Unlike the executive employee exemption, this exemption does not require the supervision of others. Unlike the professional employee exemption, this exemption does not require a degree or specialized course of study or imaginative, creative work. Examples of jobs that may qualify for the administrative exemption include Purchasing Supervisors, Human Resources Managers, Health/Safety/Environmental managers, Information Technology managers, Marketing and Social Media managers, Quality Control managers, Auditors, and in-house Accountants and Attorneys. The administrative exemption can even apply to individuals not expressly designated as managers, like specialists, generalists, bookkeepers, and paralegals, provided those employees exercise discretion and judgment in matters of importance, which is often reflected in budgetary authority but can also include policy-making, risk assessment, and strategy.

Each of these factors must be present for the administrative exemption to apply:

1. The work must not be manual in nature, regardless of how important, highly-paid, or complex the work is.
2. The primary duty—the most important functions and generally the functions occupying the majority of the employee’s time—must be related to the management or general business operations of the employer or the employer’s customers (such as operational consultants or tax advisors). The administrative exemption normally does not apply to employees involved in the manufacture, retail sale, or provision of the employer’s products or services, with the exception of consultant-type services.
3. The employee must exercise independent and judgement in matters of consequence. For example, an administrative employee who reorders a quantity of product that will cost six figures performs a consequential task but does not use discretion and independent judgment. Compare that to the employee who free of supervision seeks bids and negotiates terms – that’s more likely considered discretion and independent judgement. According to the Wage and Hour Division, “the exercise of discretion and independent judgment must be more than the use of skill in applying well-established techniques, procedures or specific standards described in manuals or other sources.”
4. The employee must be paid a salary of at least \$684/week (\$35,568 annually).

Job titles are not quite meaningless, but it’s close. Let’s look at the example of the job title of Office Manager. For Acme Plastics Co., the Office Manager decides and executes the business’ social media campaigns affecting both sales and recruiting, makes financial reports including projections, and solicits and evaluates bids for IT support services and employee benefit plan

providers. For Acme Lumber Co., the Office Manager's primary job functions are phone answering, attendance tracking of all non-production staff, inventorying and re-ordering supplies, putting bills in line for payment, keeping the coffee fresh and hot, and being the central node of complaint collection and employee morale. Neither office can survive without its Office Manager, but only Acme Plastics' Office Manager can qualify for the administrative exemption.

Exemptions are analogous to tax deductions—they're made at the employer's risk and the employer has the burden of proving that the employee qualifies for exempt status. I recommend an annual or at least every other year exemptions audit—are exempt employees classified properly? Have job duties changed? Reporting structure? Scope of authority? All of these factors may affect whether an employee qualifies for exempt status.

If you have any questions or would like additional information, please contact Richard Lehr at (205) 323-9260 or rlehr@lmvtlaw.com.