



One Minute Memo®

Decision Denying Class Certification has Significant Implications for Accounting Industry

The United States District Court for the Central District of California has denied class certification under Rule 23 of the Federal Rules of Civil Procedure to a group of current and former, non-CPA Tax Associates and Tax Seniors of Deloitte & Touche LLP and Deloitte Tax LLP (“Deloitte”) who had been seeking overtime compensation, challenging Deloitte’s classification of their positions as exempt. Judge Dale S. Fischer rejected Plaintiffs’ argument that, under California IWC Wage Order 4-2001, Tax Associates and Tax Seniors could not be exempt as a matter of law because they do not hold a CPA license. Plaintiffs argued that they satisfied the predominance test of Rule 23(b)(3)—requiring questions common to the class to predominate over those of the individuals—because the learned professional exemption does not apply to employees working in a field covered by the licensed professional exemption under California law. In short, Plaintiffs relied almost entirely on an earlier Eastern District of California decision finding the learned and licensed professional exemptions to be mutually exclusive and awarding overtime to Audit Associates and Audit Seniors of PricewaterhouseCoopers, simply because they did not hold a CPA license. That decision is currently on appeal to the Court of Appeals for the Ninth Circuit.

Plaintiffs also argued that they could not, as a matter of law, be exempt under the administrative exemption because of California’s licensing requirements for public accountancy, which they interpreted as prohibiting the exercise of independent discretion and judgment absent a CPA license. Again, Judge Fischer ruled in the accounting firm’s favor, holding that Plaintiffs cannot circumscribe California’s overtime exemptions by using the Business and Professions Code’s (BPC) licensing requirements. The fact that a manager and/or partner with a CPA reviewed Plaintiffs’ work, as required by the BPC, did not foreclose the exemption or, more specifically, Plaintiffs’ exercising independent discretion and judgment in the performance of their duties as Tax Associates and Tax Seniors.

A team of Seyfarth Shaw lawyers from the New York and Los Angeles offices represented Deloitte in securing this significant decision. If you have any questions about the decision, or its impact on the accounting industry, please contact Peter Walker or Christopher Lowe at (212) 218-5500.

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