

One Minute Memo®



The Second Circuit Finds Entry-Level Accountants To Be Exempt Learned Professionals Under the FLSA

By Gena B. Usenheimer

Tuesday, in *Pippins v. KPMG*, the Second Circuit held that entry-level accountants are professionals exempt from overtime under the FLSA. While the Court's finding is of great significance to employers within the accounting industry, the decision offers broad guidance as the meaning of the professional exemption generally, guidance which is applicable to employers in all industries.

Briefly, the FLSA's professional exemption require that an employee's main or most important duty be the performance of "work requiring an advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction." Implementing regulations impose a three prong test to determine whether an employee's primary duty qualifies for the exemption: 1) the work must be predominantly intellectual in character, requiring the consistent exercise of discretion and judgment; 2) the work must be in a field of science or learning (such as accounting), and 3) be of a type where specialized academic training is a standard prerequisite for entrance into the profession. Because in *Pippins* there was no dispute that plaintiffs were accountants working a field of science or learning, the Court's analysis focused on the other two elements of the test.

The bulk of the Court's analysis focused on the meaning of the "advanced knowledge" prong, specifically, what it means to consistently exercise "discretion and judgment." Notably, the Court found that "what matters is whether [employees] exercise intellectual judgment within the domain of their particular expertise" finding the "critical question" to be whether "workers act in a manner that reflects knowledge and requires judgments characteristic of a worker practicing that particular profession." The Court also observed that employees may "exercise professional judgment when their discretion in performing core duties is constrained by formal guidelines or when ultimate judgment is deferred to higher authorities." With respect to supervision by "higher authorities," the Second Circuit opined that supervision of junior professionals by their more experienced and senior colleagues is standard operating procedure in many offices and "does not relegate the junior professionals to the role [] of non-professional staff," especially where the junior employees use professional judgment in determining when to elevate an issue to a supervisor and/or when ask for help.

In addition to the "advanced knowledge" prong, to qualify for the professional exemption employees must also employ advanced knowledge "customarily acquired by a prolonged course of specialized intellectual instruction." In exploring the parameters of this so-called "education" requirement, the Second Circuit determined the education requirement is likely met by a few years of relevant training so long as that training is specialized to the job or profession at issue. (In contrast, generic education requirements, such as a bachelor's degree in any field, e.g., generally do not meet the requirement.) The

Court then summarily rejected plaintiffs' argument that they did not meet the education requirement because they learned all necessary skills while on-the-job, finding that KPMG's "training" materials would not be understandable to "the average classics or biochemistry major" nor could non-accountants "develop the requisite understanding of the audit function, on the basis of the brief training period."

While the precise implications of the Second Circuit's guidance won't be known for some time, many state wage and hour laws closely track the FLSA so we can expect the decision to have far reaching consequences.

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