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One Minute Memo®

Court Of Appeal Reminds Employers That Exempt Status Is Determined By Compensation Scheme As Well As Job Duties

Under California law, multiple tests together generally determine whether an employee is exempt from overtime-pay requirements. One is a duties test. Another, independent test is the salary-basis test: the employee must receive a salary of no less than twice the minimum wage for a 40-hour week. The Court of Appeal in *Negri v. Koning & Associates* has now addressed the definition of "salary." Because an employee's compensation did not qualify as a salary, the employee was non-exempt (and thus entitled to overtime pay) regardless of what the employee's duties were.

Case Background

Mark Negri, an insurance claims adjuster, sued his former employer, Koning & Associates, for unpaid overtime. Negri earned a wage of $29 per hour irrespective of the number of hours worked per week; *i.e.*, he was guaranteed neither a minimum number of hours nor compensation. Negri estimated that he worked an average of 20 hours of overtime per week, but he never received overtime pay. Koning disputed that Negri was entitled to overtime on the ground that he qualified as an exempt employee under the administrative exemption.

The case was tried to the court based on stipulated facts. Many went to Negri's job duties, but the stipulation also addressed his pay, stating that he was not paid "a guaranteed salary" but rather he was paid $29.00 per hour.

The trial court entered judgment for Koning, concluding that Negri was an exempt employee under Department of Labor regulations recognizing that insurance claims adjusters "generally meet the duties requirement for the administrative exemption," as well as federal case law holding that they are exempt employees. Negri appealed.

The Court of Appeal's Holding

The Court of Appeal reversed, holding that Negri was not an exempt employee because Koning did not pay him a "salary" within the meaning of the administrative exemption.

For the administrative exemption to apply, the employee must be primarily engaged in exempt duties *and* earn "a monthly salary equivalent to no less than two (2) times the state minimum wage for full time employment." The Court of Appeal focused its analysis on whether the manner in which Negri was paid qualified as a "salary."

Given the dearth of analysis of the term "salary" under state law, the Court of Appeal consulted the federal "salary-basis test" concerning federal overtime pay requirements. Under that test, an employee must be paid a predetermined amount that is not subject to reduction based upon the number of hours worked to qualify for exemption from overtime pay requirements. The Court of Appeal held that California requirements on overtime pay must be at least as protective of the employee as this corresponding federal standard.

The Court of Appeal held that Negri was not paid a "salary" under the salary-basis test, because his pay varied with the number of hours he worked. Accordingly, the administrative exemption did not apply. It mattered not that Negri was, in practice, paid for at least 40 hours of work per week such that he received an unchanging minimum amount of pay.

What *Negri* Means For Employers

Negri emphasizes that the manner in which employees earn pay can determine whether they are exempt from entitlement to overtime compensation. Accordingly, employers seeking to establish the usual exemptions (e.g., executive, professional, administrative) must ensure that their presumptively exempt employees are paid a fixed minimum amount that does not vary based on the number of hours worked, even if that fixed amount is tied to the typical number of hours worked in a pay period. Only a few special exemptions (such as for certain workers in the computer software field) permit payment on an hourly basis instead of a salary basis.

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