

Exempt Status & Timekeeping

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A recent decision by a federal appeals court (*Young v. Cooper Cameron Corp.*) emphasizes the need to correctly classify your employees within the letter of the regulations set by the Fair Labor Standards Act (FLSA), and in particular those you've designated as exempt under the Professional category.

The Definition of Professional Exemption

In order for you to classify an employee as exempt under the learned professional exemption, the employee must meet the following criteria:

1. Must be paid on a salary or fee basis (as defined by the regulations) not less than \$455 per week
2. The employee's primary duty must be the performance of work requiring advance knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment;
3. The advanced knowledge must be in a field of science or learning; and
4. The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

What This Case Means to You

The case focused on the fourth requirement of a professional exemption. The lesson from this case for employers is that just because a position seems like a professional position does not mean it is exempt from overtime. The fact the position may require a high level of technical expertise and significant experience will not be enough to qualify it for the professional exemption. Rather, it must *both* require the use of knowledge of an advanced type in a field of science or learning, *and* require an advanced degree in that specialized field. Employers who impose an advanced degree requirement when hiring for a position, but still populate the job category mostly with workers who lack a degree, and qualify based on a certain number of years of experience, are at fairly high risk of not satisfying the requirements for the professional exemption.

In addition to reassessing your positions classified as exempt under the professional exemption, you should confirm that all employees you consider to be exempt are recording their work time, and that

such records are safeguarded. Challenges to exempt status can be filed years after an employee terminates employment.

There are several legitimate business reasons why you might want to keep track of an exempt employee's work time:

1. Timekeeping records allow an employer to monitor labor costs in order to measure efficiency, and allocate costs to certain areas of its business or projects;
2. In addition, these records allow an employer to manage the performance of exempt employees. Characterization as an exempt employee does not bring with it the ability to disregard attendance rules. While the exempt employee's salary can't be reduced for arriving 15 minutes late, the employer can use this record to address chronic tardiness or attendance problems;
3. The time records establish the amount of time worked per week and, therefore, the amount of time available for intermittent FMLA leave for exempt employees; and,
4. Finally, keeping time records for exempt employees may provide a limit on damages, should their exemption be overturned as the result of litigation.

If you need assistance in reviewing your positions for the correct FLSA status, or have questions regarding this article, please contact WorkLife HR.

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