

Case Study: Ounce of Prevention Works “Overtime”

Ounce of Prevention Fund

For the first time in decades the Department of Labor has made significant changes to the Fair Labor Standards Act regulations. First passed during the Great Depression in 1938, the Act was originally intended to encourage hiring of more people by requiring premium payment of time and a half of an employee’s hourly wage when the workweek exceeded 48 hours (the original number of hours covered by the Act). The Act also proposed first minimum wage level, at that time the princely sum of \$.25 per hour.

Originally proposed to cover all jobs, the Act eventually contained four tests (executive, administrative, outside sales, and professional) under which a job could be exempt from the minimum wage and overtime requirements. Originally there were short and long tests for each type of exemption; a job could be considered for exemption under the short test if the wage rate paid exceeded a certain amount per week (assuming a 40 hour work week.) Over the years changes have been made to the minimum wage rate, but until a test specifically for computer jobs was added there were no changes at all to the exemption tests. By the mid 90’s any job could qualify for consideration under the short tests, since the short test wage rates were never adjusted, and minimum wage eventually caught up with them. (The weekly executive and administrative wage standard before the 2004 changes was \$250 per week, barely above the minimum wage equivalent of \$206 per week.)

The human resource management community closely followed the recent changes in the exemption tests,

since this was a watershed opportunity for the DOL to modernize the Act to reflect the massive shift in the US economic base from manufacturing to a service economy. (Even a casual reading of the original tests shows a decided predisposition to a manufacturing environment.) And while the changes were for the most part an improvement, there was little clarification in the administrative test, traditionally the most difficult test to apply.

In addition to eliminating the old “short” and “long” tests, the new standards call for a big jump in the cut-off wage level. To be considered for exemption, incumbents of jobs must be paid no less than \$455 per week. But once that threshold is reached, a job can be tested for possible exemption to the minimum wage and overtime requirements under just one test in either of the five exemption categories. Most knowledgeable human resource professionals understand the new wage rate merely raises the bar to applying a test, and they are taking steps to validate their jobs against the new standards.

Jo Ann Paszczyk, Director of Human Resources for the Ounce of Prevention Fund, asked Blue Prairie Group to evaluate the Ounce’s job descriptions in light of the revised regulations and make recommendations on whether the exemption status of any job should change. The Ounce is much like other not for profit organizations in that it has a large number of job descriptions, about one for every 1.2 employees. Job descriptions are prepared by managers and submitted to Human Resources for evaluation and classification, and managers consider each job to be unique. Since the Ounce organizes job descriptions by department,

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the evaluation was somewhat more complicated, since we had to consolidate similar jobs across different departments.

Even adjusting for these variables, the evaluation process went very smoothly. This was in large part due to the Ounce’s standard description format, which thoroughly captures all the relevant information needed to correctly assess each job. We also had complete information on employee wage rates so we could determine which jobs would not be eligible for exemption. Since the Ounce has no sales function, we applied the executive, administrative, professional, and computer tests.

What many HR professionals, and too few managers, realize, is that it is not the title that makes job exempt: it’s the job content. In our experience, managers will frequently come up with a new title (Administrative Manager versus Administrative Assistant) and not change the job content in any way, under the mistaken notion that this alone will let them pay their right hand person on an exempt basis. Under the Act, job content rules! Unless a FLSA assessment takes into account the actual job content and incumbent requirements, the evaluation is superficial at best and can lead to liability for back pay and penalties if the job is really non-exempt. For example, a job for a Senior Software Engineer might be eligible for exemption under the professional or the computer test; similarly, a Program Administrator might be eligible under the administrative, professional, or executive exemption. The only way to know for sure is to conduct a thorough content audit.

Even after doing a complete description audit, employers must be alert to the possibility that the job is not adequately described. It’s also possible that the auditor may read significance into the order in which specific job responsibilities are listed, or the writer may not have enough skill to properly convey the meaning and significance of job duties. The BPG auditors looked carefully at all these possibilities, and pointed out where parts of some job descriptions looked out of place, or didn’t seem to adequately describe what the incumbent is really doing.

It’s well known that the jobs at the high and low end of the pay spectrum don’t create problems under the FLSA. It’s unlikely that an employee would seriously challenge the exemption status of an officer or department head, or a professional who has had years of academic training (such as a physician, engineer, or teacher.) Jobs in the middle, particularly those that are primarily administrative, are the hardest to evaluate, since more than one test may apply, given job content and requirements. This is where the Ounce’s high standards for job descriptions were particularly helpful, since it was easy to validate content against job requirements, working conditions, and skills. The analysis revealed minimal cases where the requirements seemed overstated for the job duties (or vice versa).

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Like so many other regulations, the FLSA seems fairly simple on its face, but when a company needs to make sure it is in compliance with the Act there are many complicating factors to take into account. For instance:

1. How well documented are your job descriptions? Do you have a standard job description format, or do managers write what they want?
2. Do you have people in the same job who are paid both above and below the new \$455 wage standard? What would you do in this case?
3. How carefully have you looked at jobs across departments? Are you confident you have the same or similar jobs classified the same way?
4. Have you correctly described jobs in “ladders” or career paths? If an employee can move from non-exempt to exempt status as he or she moves up the career ladder, is the change defensible?
5. How strongly does your culture influence your decisions on exemption status? For many organizations, not being eligible for overtime is seen as a badge of honor.

FLSA opens up a whole range of classification and pay issues that extend far beyond just the minimum wage and overtime rules. As the Ounce knows, a sound evaluation of all job descriptions, made at one time, can help validate decisions and point out how the compensation program can protect employees, clarify career paths, give management new tools to help manage employee pay and relationships, and keep the compliance wolf from the corporate suite door.