The First Circuit Takes a Deeper Look into Employee Exemption Decisions

BY TRACY THOMAS BOLAND AND DANIELLE JUREMA LEDERMAN • JANUARY 23, 2023

On January 11, 2023, the First Circuit (the federal Court of Appeals covering MA, RI, NH, ME and Puerto Rico) issued its decision in *Walsh v. Unitil Service Corp.*, which scrutinized an employer's evaluation of whether its employees qualified as exempt from overtime under the Fair Labor Standards Act's ("FLSA") administrative exemption.

The United States Department of Labor ("DOL") initiated this case in the United States District Court for the District of New Hampshire alleging that employer Unitil Service Corporation ("USC") failed to pay overtime to its dispatchers and controllers. While the lower court granted USC's motion for summary judgment dismissing the case on legal grounds, the First Circuit vacated that decision, disagreeing with the lower court on its interpretation that the dispatchers and controllers fell within the administrative exemption to the FLSA.

Under the FLSA, for an employee to fall within the administrative exemption requires an employer to meet a three-part test. The second prong of the test requires the employer to demonstrate that the employee's "primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers[.]" 29 C.F.R. § 541.200

On appeal to the First Circuit, the DOL argued that determining whether the administrative exemption applied required a "relational analysis" comparing the employee's job duties with the employer's (or the employer's customers') business purpose. The First Circuit agreed and further clarified that the second prong of the administrative exemption test contains a two-part determination: (1) whether the employee's role relates to running or servicing the business, and if so, (2) defining the scope or generality of the employee's role.

In applying this standard, the First Circuit held that dispatchers and controllers did provide the services USC was in the business of providing, and therefore, their roles related to running or servicing the business. However, in turning to the second part – the scope or generality of the employee's role – the Court determined that the dispatchers and controllers were not engaged in the management or general business operations of USC. In making this determination,

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the Court noted that an employee's execution of routine, day-to-day operations is insufficient to show engagement in the management or general business operations of an employer, but rather requires that an employee is responsible for general, i.e., higher-level aspects of a business' operation. Accordingly, because dispatchers and controllers lacked the higher-level responsibilities relating to the management of USC, the First Circuit determined that the administrative exemption did not apply.

While the application of FLSA exemptions always requires a fact-specific analysis, this decision is going to make it even more difficult for employers to demonstrate, especially at the summary judgment stage, that an employee was properly classified as exempt from overtime. As employers continue to evaluate the applicability of FLSA exemptions, they should take care to ensure they can present a strong argument as to why each factor of the applicable exemption test is met (and keep this decision in mind when relying on the administrative exemption).

Please contact your Bowditch attorney with any questions on how this recent decision may change or otherwise impact your assessment.

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