

Employment Alert

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Unlicensed Accountants Are Not Categorically Ineligible For Overtime Pay In California

The Ninth Circuit recently issued its highly-anticipated decision in *Campbell v. Price Waterhouse Coopers, LLP*, 09-16370 (June 15, 2011), reversing the district court's holding in a class action misclassification suit that unlicensed junior accountants were categorically ineligible for exempt status under California law. The unlicensed accountants argued they fit neither the professional nor the administrative exemption of California Wage Order No. 4-2001 for purposes of overtime wages and penalties.

Primarily at issue on appeal was the interpretation of the text and structure of the wage order for professionals. The relevant language creates an exemption to any employee: "(a) who is licensed or certified by the State of California and is primarily engaged in the practice of one of the following recognized professions: law, medicine, dentistry, optometry, architecture, engineering, teaching, or accounting," or "(b) who is primarily engaged in an occupation commonly recognized as a learned or artistic profession."

The accountants argued they did not fall under subsection (a) simply because they were unlicensed, and they did not fall under subsection (b) because all of the professions specifically identified in subsection (a) were excluded from subsection (b).

Recognizing the widespread implications of such a finding, not only for accountants but for all other categories identified in subsection (a), the Ninth Circuit rejected the accountants' argument. It held that the wage order unambiguously allowed accountants and the other cited professionals to fall under auspices of subsection (b), subject to meeting the specific requirements of that section. Because myriad questions of fact precluded summary judgment for the accountants regarding whether the professional or administrative exemption applied to the unlicensed accountants in this case, the issues were remanded to the lower court to make a factual determination.

With this holding, employers in California dodged a bullet. A contrary ruling could have completely changed the face of public accounting and other professional occupations in California. While employers must continue to be cautious in determining which "professional" employees should be designated as exempt, this decision prevents a reading of California wage orders requiring mandatory overtime wages to multitudes of unlicensed professionals that heretofore were not receiving overtime.

For more information, please contact Howard Garfield, Helen McFarland, or any other MBT labor and employment attorney.

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