

California Corner: Misclassification—What Do Managers Do? They Manage, Unless They're in California

Article By:

Labor and Employment Practice

Store managers are typically classified as exempt from overtime based on what is known as the "executive" exemption. The California Wage Orders set out a six-part test for this exemption, but in basic form, the test asks whether the employee: manages a department or unit; directs the work of other employees; has authority over personnel decisions; exercises discretion or independence in making decisions; spends a majority (more than 50 percent) of his time engaged in managerial duties; and makes a salary above a certain level. Pretty clear that a senior management person in a retail environment would fit the bill, right? Not necessarily.

In *Smith v. Equinox Holdings, Inc.*, 2015 U.S. Dist. LEXIS 48754 (N.D. Cal. Apr. 10, 2015), the Northern District of California denied Equinox Holdings, Inc. summary judgment in a misclassification, whistleblower and wrongful termination lawsuit brought by a former manager who had been classified as overtime exempt.

The Plaintiff, Joseph Smith, worked for Equinox as a District Shop Manager and later National Shop Training Manager, selling workout clothes in Equinox fitness centers. In November 2013, Equinox started investigating low profit margins at its stores, which led them to review Smith's stores. Equinox fired Smith after concluding he had improperly discounted items for his own personal gain. Smith then sued, claiming Equinox misclassified him as exempt and fired him in retaliation for his complaints about Equinox policies. Equinox moved for summary judgment, maintaining that Smith was an exempt executive and that his termination was legitimate.

The court found that issues of fact existed regarding: (1) whether Smith regularly exercised discretion and independent judgment; and (2) whether he was in fact primarily engaged in managerial duties. On the first issue, Smith argued that, even though he was a District Manager, he actually had only "minimal authority and discretion over his work." He claimed that the corporate office directed his actions, from managing to merchandising to the cleanliness and maintenance of his stores. He also claimed to have no input into budgets or decisions regarding how labor hours were allocated in his stores. The court agreed that questions of fact remained, noting that while "a regulated workplace does not rule out independent judgment," an employee who simply applies his knowledge in following prescribed procedures may not be exercising discretion and independent judgment.

On the second issue, Smith alleged that he was not primarily engaged in managerial duties — he

claimed he spent most of his time doing the same work as nonexempt staff members (stocking shelves, folding merchandise, cashiering) because the stores were minimally staffed. Equinox countered with register data (accountings of time spent logged into the register) showing that Smith had spent only 3 percent of his time working on the register. The court agreed that this register history, if true, "would indeed be a striking fact," but Smith's testimony to the contrary was enough to avoid summary judgment by creating a triable issue.

In response, Equinox argued that if Smith engaged in mostly nonexempt activities, as he claimed, he was not performing the work Equinox hired him to do. The court, however, credited Smith's testimony that the stores were "small and lightly staffed," which he said made it unavoidable for him to perform nonexempt tasks. Ultimately, the court found that it should be left up to a jury to decide whether Equinox had "realistic expectations" and whether Smith's practices diverged from those expectations.

This case serves as a reminder that it is very challenging to get misclassification claims decided via pre-trial motions, due to the factual disputes that impact the exemption analysis. Further, when the employer is a company with multiple business locations and a necessary focus on consistency in consumer experience, the employee is likely to make the same sorts of arguments as did Smith—standardized processes deprive "managers" of the independent discretion necessary to support an exempt classification.

In California and elsewhere, misclassification suits remain popular. Particularly for employers with corporate headquarters elsewhere and multiple business locations with "standardized" corporate processes, businesses should review their job descriptions and daily operations to ensure expectations are reasonable and performance for exempt employees is tracked and reinforced in a way that supports their classification. Calling someone a "manager" does not make them exempt from overtime—acting as a "manager" does.

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