

Ninth Circuit Attempts to Clarify Learned Professional Exemption's Educational Requirement

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Last week, the Ninth Circuit issued a decision in **Solis v. State of Washington, Department of Social and Health Services**, wherein it attempted to clarify the **learned professional exemption's "specialized intellectual instruction" requirement**. In *Solis*, the U.S. Department of Labor filed a complaint against the State of Washington, Department of Social and Health Services ("DSHS") wherein it alleged that **DSHS had failed to pay overtime to certain of its social workers in violation of the Fair Labor Standards Act ("FLSA")**. DSHS argued that the social workers were exempt under the learned professional exemption.

The main focus of the case was whether the **social workers met the learned professional exemption's educational requirement**. In order to qualify to work as a social worker for DSHS, one needed a "[b]achelor's degree or higher in social services, human services, behavioral sciences, or an allied field," as well as eighteen months as a Social Worker 1 or two years' experience in an equivalent position." The degrees that DSHS considered to be an "allied field" included "Counseling, Psych[ology], Social Work, Human Services, Sociology, Child Development, Family Studies, Pastoral Counseling, Anthropology, Gerontology, Therapeutic Recreation, Education, Therapeutic Fields, or Criminal Justice."

The United States District Court for the Western District of Washington (the "District Court") **granted DSHS's motion for summary judgment** and dismissed the complaint because the District Court concluded DSHS required that its social workers receive a sufficient amount of specialized intellectual instruction to satisfy the learned professional exemption's educational requirement. The District Court based its decision in part upon a district court decision from Pennsylvania entitled **Chatfield v. Children's Services, Inc.**, 555 F. Supp. 2d 532, 536-37 (E.D. Pa. 2008) where an employer's requirement that its truancy officers had a bachelor's degree in social work, human services, or a related field, plus three years of work experience was held to be sufficient enough to satisfy the learned professional exemption's requirements.

However, the Ninth Circuit reversed the District Court's grant of summary judgment. The Ninth Circuit noted that it had not yet addressed the learned professional exemption's educational requirement and, thus, relied on precedent from other circuits and accorded deference to two **Department of**

Labor ("DOL") opinion letters. The Ninth Circuit first noted that other circuits, including the 11th, 8th and 5th, have concluded "that positions that do not require a particular course of intellectual instruction directly related to the employee's professional duties do not come within the 'learned professional' exemption, even if they also require substantial practical experience." The Ninth Circuit further noted that a number of circuits, including the 5th, 6th and 10th, have held that where applicants are required to complete a particular course of instruction directly related to a position, the learned professional exemption's educational requirement is satisfied even if the applicants do not have a specific degree.

Taken together, the Ninth Circuit concluded that these decisions are consistent with two opinion letters that the DOL had issued regarding social workers and, thus, accorded such opinions deference. In the first DOL opinion letter (the "2001 Opinion Letter"), the DOL concluded that certain social workers met the learned professional exemption's educational requirement because they were required to possess either a master's degree in social work or human services or a bachelor's degree in human behavioral science together with specified work experience. In the second DOL opinion letter (the "2005 Opinion Letter"), the DOL concluded that a different social worker position that merely requires a bachelor's degree in social sciences failed to satisfy the learned professional exemption's educational requirement. The DOL reasoned that a bachelor's degree in social sciences does not constitute the "specialized" academic training necessary to qualify for the learned professional exemption. The Ninth Circuit agreed with the District Court that DSHS's requirement that the social workers have a degree in "social services, human services, behavioral sciences or an allied field," is more specific than the requirement of a degree in "social sciences" that was addressed in the 2005 Opinion Letter. However, the Ninth Circuit also noted that DSHS's requirements are less specific than the educational requirements addressed in the 2001 Opinion Letter.

As the Ninth Circuit explained, "[t]he dispositive question here is not whether DSHS requires more than a degree 'in any field,' but whether it requires a 'prolonged course of specialized intellectual study.'" The Ninth Circuit further explained that in order to satisfy the learned professional exemption's educational requirement, the required prolonged course of specialized intellectual instruction must be sufficiently specialized and relate directly to the position. The court then concluded that "[a]n educational requirement that may be satisfied by degrees in fields as diverse as anthropology, education, criminal justice and gerontology does not call for a 'course of specialized intellectual instruction.'" The court also noted that DSHS's acceptance of applicants with other degrees who merely had course work in the designated acceptable fields further undermined the DSHS's position that the social workers satisfy the learned professional exemption.

Furthermore, the Ninth Circuit distinguished this case from *Chatfield* by noting the closer nexus in *Chatfield* between the educational requirements and the duties of the truancy prevention job. Because of that nexus, it could more fairly be said that the education requirements "were sufficiently more specialized than a general degree in 'social sciences' to amount to 'a specialized degree in a field related to the work [applicants] will perform.'" In sum, the Ninth Circuit held that DSHS's requirement that a social worker have "a degree or sufficient coursework in any of several fields" that are broadly related to the social worker position "suggests that only general academic training is necessary" and not a prolonged course of specialized intellectual study. Accordingly the Ninth Circuit reversed the District Court's grant of summary judgment.

This decision should serve as an important reminder to employers that they must carefully examine their educational requirements when seeking to apply the learned professional exemption to its employees. As the Ninth Circuit noted, FLSA exemptions are to be construed narrowly against employers and that the employer has the burden of showing that a particular exemption applies.

Employers who fail to meet this burden may be subject to overtime claims from current and former employees.

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