

Sixth Circuit Holds Residential-loan Underwriters are Exempt Under the FLSA

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The Sixth Circuit Court of Appeals ruled that residential-loan underwriters are exempt administrative employees under the Fair Labor Standards Act (FLSA) and are therefore not entitled to overtime. In *Lutz v. Huntington Bancshares, Inc.*, a group of residential-loan underwriters asserted that they were nonexempt production workers, entitled to overtime because they did not exercise the necessary independent judgment and discretion regarding matters of significance nor did they perform work directly related to Huntington's general business operations.

Concluding that the underwriters were exempt, the appellate court noted that the underwriters were employed to decide whether the customer qualified for the desired loan. It concluded that the underwriters performed administrative work because they assisted in the running and servicing of the bank's business by making decisions about when Huntington should take on certain kinds of credit risk, an activity that was ancillary to the bank's principal production activity of selling loans. In doing so, the Court distinguished a 2010 Wage and Hour Administrator's opinion letter finding that mortgage loan officers were non-exempt, concluding that the duties identified in the opinion letter differed from those being performed by the Huntington underwriters.

The Sixth Circuit also concluded that the underwriters exercised the necessary discretion and independent judgment with regard to matters of significance, as required under the Department of Labor (DOL) regulations. Although the underwriters were required, in general, to adhere to the bank's guidelines, the Court found that the underwriters nevertheless had the authority to waive or deviate from those guidelines in certain instances and determine the financial risk that Huntington would take for any given loan. In that regard, the Court noted that the underwriters could approve loans between \$250,000 and \$1 million and their decision would bind Huntington to that risk, while their denial of an application would prevent a customer from acquiring credit. The Court therefore concluded that the Huntington underwriters met the regulatory definition for an administrative exempt employee under the FLSA and affirmed the dismissal of Plaintiffs' lawsuit.

What does this case mean for employers?

Although the ruling in *Lutz* was fact-specific, it provides guidance for employers who are evaluating whether certain categories of employees are administratively exempt from the FLSA's overtime requirements. Employers should also periodically audit their exempt classifications to ensure that the employees are performing exempt work. If an exempt employee relies on guidelines and manuals, those should be crafted to accurately reflect the exercise of judgment and discretion inherent in the given position. Please feel free to contact your Miller Canfield FLSA expert if you have questions regarding the classification of your workers or if you otherwise need any assistance.

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