

Seventh Circuit Rules That Software Account Manager Is An Exempt Employee Not Entitled To Overtime

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In a case that attempts to clarify the application of the Fair Labor Standards Act's (FLSA) exemptions for administrative employees, on May 27, 2011, the Seventh Circuit held that an account manager for a software company is exempt and therefore not entitled to overtime. In *Verkuilen v MediaBank*, an account manager for a company that provides computer software to advertising agencies, filed a lawsuit seeking overtime pay under the FLSA. The employer, MediaBank, argued that the account manager was not entitled to overtime because she was an exempt administrative employee.

Affirming the dismissal of the complaint, the Seventh Circuit ruled that the account manager was a "picture perfect" example of an exempt administrative employee. (The court did not address whether the account manager was exempt as a computer employee). For the administrative exemption to apply, the Department of Labor's regulations require that the employee's primary duty must be "both the exercise of discretion and independent judgment with respect to matters of significance" and "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." Additionally, exempt administrative employees must be paid more than \$455 per week.

In *Verkuilen*, the court distinguished the account manager from a non-exempt store salesperson or a technician who fields random calls from customers. According to the court, the account manager was exempt because "she's on the customer's speed dial," acting as the intermediary between customers struggling to master complex software and MediaBank's software developers. The account manager also spent much of her time on the customers' premises, identifying the customers' needs, translating those needs into specifications used by the developers, training the customers' employees on using the software and answering questions. Thus, the court held that her primary duty was directly related to the general business operations of MediaBank and (as a consultant) to MediaBank's customers.

What Does This Case Mean For Employers?

Employers continue to struggle applying the FLSA's executive, administrative and professional exemptions. The *Verkuilen* decision helps clarify the application of the administrative exemption to employees connected with the evolving computer software and advertising industries. However, because judicial interpretations of the exemptions are fact-specific, employers should consult counsel to address the unique circumstances of their workforce.