

Overtime Exemptions Protect Apple Packing Business

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In *Elliott v. Custom Apple Packers*, 153 Wn. App. 296 (2009), the Washington Court of Appeals held that a salaried shipping supervisor at an apple packing facility in Eastern Washington was exempt from overtime under the Washington Minimum Wage Act. Generally, employers must pay any employee who works over forty hours in a defined work week time and a half (1½) his or her regular rate as an overtime premium. Certain exempt employees such as executives, administrators and professionals are not entitled to overtime if they are paid a salary of \$455 per week and perform primarily exempt duties. In *Elliott*, the ex-employee had initially been hired as an apple packer but had been promoted to a shipping supervisor. He was paid a \$4,000 month salary. He was later terminated for poor performance, failure to lead and manage his shipping department. Then, two years after his termination, he filed an overtime lawsuit against the company, claiming that he was not an exempt executive and was entitled to overtime because, although he was paid a salary, he did not hire, fire or discipline employees, and instead was in charge of loading, order verification and quality control. He claimed that he spent the majority of his time on the forklift, moving and loading apple crates. These job duties that are not normally considered “executive” for purposes of being exempt from overtime. The company admitted that the ex-employee did perform manual labor in loading trucks (as he was a “working supervisor”), but defended that he was primarily responsible for supervising the shipping workers and tracking order paperwork. Essentially, the ex-employee was responsible for fulfilling apple shipping orders.

At trial, the company asserted that the ex-employee was exempt from overtime as a salaried executive and under a little used agricultural exemption. Washington law exempts bona fide agricultural workers from overtime, recognizing that hours rise greatly at harvest and payment of overtime during that period could financially impact farmers. The ex-employee disagreed, claiming that the agricultural exemption was confined to labor performed on a farm and not labor performed in a fruit packing warehouse. The *Elliott* court noted that the plain language of the agricultural exemption included “packing, packaging, grading, storing or delivering to storage, or to market, or to carrier for transportation to market, any agricultural or horticultural commodity.” Thus, the court held that the plain language of the statute covered fruit packing.

The take away from the *Elliott* case is that even if an employee may not qualify as an exempt executive because he or she is involved in manual labor or other non-managerial tasks such as loading the truck or driving a forklift, the employee still may be exempt under other exemptions of the wage and hour statutes. The *Elliott* court allowed the employer to argue both the executive and agricultural exemptions, and the jury found that the agricultural exemption applied, thereby protecting the former employer from the overtime claims. The other take away from *Elliot* is that paying an employee a salary does not, by itself, protect employers from claims of overtime and minimum wage. The employee must perform exempt duties, and if he or she is primarily engaged in manual labor, most exemptions will not apply even if the company is paying a salary. A “working supervisor” or “foreman” may not qualify as an exempt executive even if he or she is paid a salary and directs the work of others. An exempt executive’s primary duty must be management.

Washington courts narrowly construe exemptions from overtime and the burden of proving such exemption lies with the company, not the employee. In Elliot, the company was fortunate that another exemption existed or it would have been liable for overtime wages even though it paid the shipping supervisor a salary.