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Shinn - Recent California Decision on Overtime Pay Claim for Management-Level Employees

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Taylor v. United Parcel Service, Inc. **2d District Court of Appeal (12/9/10)**

One of the most difficult areas of law for Korean businesses operating in the United States is employment law. This is particularly true for Korean companies with employees in the State of California, where state laws and regulations governing wages, breaks and overtime pay for employees are often the basis for lawsuits by workers against their employers. Generally, California law entitles workers who work more than 40 hours in a week, or eight hours in a day, to receive overtime pay unless the workers fall into certain "exempt" categories.

In *Taylor v. United Parcel Service, Inc.*, the California Court of Appeal recently held that the plaintiff/appellant, a manager at United Parcel Service, was an "exempt executive and administrative employee" who was therefore not entitled to overtime pay and related benefits afforded to "nonexempt" employees. There are both federal and state laws governing workers' wages, hours and working conditions. The federal Fair Labor Standards Act does not pre-empt state law but "explicitly permits greater protection under state law." California state law is codified in Labor Code Section 1171 et seq. and in the regulations, called "wage orders," promulgated by California's Industrial Welfare Commission (IWC).

At issue in *Taylor* was the IWC's Wage Order No. 9, which applies to workers in the transportation industry. The appellant had worked for UPS as an "air hub supervisor" then an "on road supervisor" and finally as a "center manager" responsible for UPS' Ontario, CA facility, then its San Bernardino, CA facility. Work Order 9 recognized that "exempt executive" and "exempt administrative" employees, among others, were not entitled to overtime pay.

Wage Order 9 defined an "exempt executive" as one who: (1) managed the enterprise or a "customarily recognized department or subdivision;" (2) customarily and regularly directed the work of two or more employees; (3) had the authority to hire or terminate employees or whose suggestion to hire, fire or promote employees was given "particular weight;" (4) customarily and regularly exercised discretion and independent judgment; (5) was primarily engaged in the duties that meet the test for exempt employees; **and** (6) earned a monthly salary equivalent to no less than twice the state's minimum wage for full-time employees.

An "exempt administrative" employee was defined by Wage Order 9 as one who: (1) had duties and responsibilities that were office or non-manual work directly related to management policies or general business operations; (2) customarily and regularly exercised discretion and independent judgment; (3) performed work requiring special training, experience or knowledge under general supervision only; (4) primarily engaged in duties meeting the test of exemption; **and** (5) earned a monthly salary equivalent to no less than twice the minimum wage for full-time employment.

The trial court granted summary judgment against the appellant, finding there was no genuine issue of material fact as to any of the factors that UPS had to demonstrate in order to establish the appellant was an exempt employee, and as a matter of law he was not entitled to claim overtime pay and related benefits.

The Court of Appeal affirmed the trial court's decision.

In its opinion, the Court of Appeal rejected the appellant's arguments that he was not exempt because he was a relatively low "production level" employee who was not in charge of a "customarily recognized department or subdivision." The court also rejected the appellant's arguments that he was nonexempt because he did not have the authority to hire or fire employees and that he did not exercise discretion or independent judgment because he was constrained by

company policies and collective bargaining agreements with the labor union. Even if the the appellant could not unilaterally hire or fire employees, the fact that he could recommend such actions, and that his recommendations carried particular weight, was sufficient. In addition, the court held that UPS' various policies and protocols may have "channeled" the appellant's discretion and independent judgment, but that his duties nevertheless entailed the exercise of such discretion and judgment.