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Unlicensed Accountants Are Not Categorically Excluded From Potential Exempt Status

On June 15, 2011, the Ninth Circuit issued its long-awaited decision in *Campbell v. PricewaterhouseCoopers, LLP*, No. 09-16370 (June 15, 2011). In its ruling, the Ninth Circuit reversed the district court's holding that unlicensed junior accountants could never meet the professional or administrative exemptions under California law, concluding that there is a triable issue of fact as to both exemptions.

In *Campbell*, over two thousand unlicensed junior accountants brought suit against their employer, arguing that they were misclassified as exempt and owed additional compensation for their overtime hours worked. The district court agreed, and held that unlicensed accountants could categorically never qualify for the Industrial Welfare Commission's ("IWC") professional or administrative exemptions. Analyzing the professional exemption first, the district court held that these PwC employees were ineligible for the exemption as a matter of law, because they were not licensed Certified Public Accountants. As to the administrative exemption, the district court held that, because the unlicensed accountants were required by law to work under the supervision of a licensed accountant, they could never meet the requirement that they work under only "general supervision" to be classified as an exempt administrative employee.

The Ninth Circuit disagreed. Warning of the potentially extreme implications of categorically excluding entire classes of employees from the exemption analyses, the Court instead held that each employee's duties and responsibilities must be measured against the exemptions' requirements to determine whether each exemption applies.

Starting with the professional exemption, the Ninth Circuit undercut the district court's reasoning as to why no unlicensed accountant could ever be found exempt. While the district court read subsection (a) of the professional exemption – which requires that the individual have obtained a license or certification from the State of California – to render subsection (b) superfluous, the Ninth Circuit instead read these two subsections as an either/or option, allowing for an employee without a license under subsection (a) to still meet the exemption if he or she meets the various requirements for a "learned or artistic" professional under subsection (b). Because unlicensed accountants still are able to perform duties that could be considered those of a "learned or artistic" professional, these PwC employees could not be categorically excluded from the

analysis altogether.

On the administrative exemption question, the Ninth Circuit again disagreed with the district court's analysis. The Court explained that it did not agree with the crux of the lower court's analysis that unlicensed accountants could never meet the administrative exemption because, as a matter of law, they always had to work under the supervision of a licensed accountant. In reversing, the Ninth Circuit explained that, "[w]hile we recognize Plaintiffs are on the low end of PwC's hierarchy, we see no authority that would bar their audit work from meeting this test as a matter of law." Instead, the Ninth Circuit held that the requisite analysis would need a factual inquiry into the employees' daily work, and the decision could not be reached on a job position-wide basis.

The Ninth Circuit cautioned courts to not issue such sweeping exclusion rulings, in which they categorically bar certain job titles from even undergoing the complete exemption analysis. It explained that such a ruling could have a greater reach and could impact many other industries, with potentially unintended results as well. For example, if the district court decision were permitted to stand as issued, it could affect the exempt status of recent medical school graduates working as residents in hospitals and also first-year associates working at a law firm before receiving their bar results, as well as seasoned attorneys licensed in another state but working in California on a corporate deal or an ongoing lawsuit. Under the district court's ruling here, because each of these types of employees are unlicensed in California, they could run the risk of being barred from the professional and administrative exemptions, thereby having the opportunity to sue their employers for their unpaid overtime, as well as potentially missed meal and rest breaks.

Campbell confirms that a court must not limit its review to just the employee's job title alone when it is determining an employee's exempt or non-exempt status. Accordingly, it appears clear that these exemption analyses require fact-intensive inquiries, and sweeping generalizations as to job duties and responsibilities cannot alone support an employee's entitlement to (or ineligibility from) overtime pay.

Authored by Sheppard Mullin's [Labor & Employment Practice Group](#).