

U.S. Supreme Court Rejects Challenge to DOL “Administrator’s Interpretation” That Mortgage-Loan Employers Are Non-Exempt Hourly Employees

AUTHOR: SANDBERG PHOENIX

By Tom Berry

In 2004, the Department of Labor (“DOL”) updated its regulations addressing the various white collar overtime exemptions. In part, the DOL identified a number of employees which may be exempt under the “administrative exemption.” One of the specific examples listed in the regulations, 29 CFR § 541.203(b), were employees “in the financial services industry,” provided such employee did not have as his or her primary duty the selling of financial products.

In 2006, the DOL issued an opinion letter concluding that mortgage loan employees were covered by the administrative exemption. However, in 2010, the Obama DOL unilaterally issued its first “Administrator’s Interpretation” letter and concluded that mortgage-loan employees were non-exempt for overtime purposes because their primary duty entails the sale of financial products to customers and clients. Accordingly, the DOL withdrew the contrary 2006 opinion letter that such employees could be classified as exempt from overtime.

The Mortgage Bankers Association filed suit and argued that the 2010 Administrator’s Interpretation was unenforceable. While the trial court rejected the legal challenge, the Court of Appeals reversed and concluded that the DOL was required to follow the Administrative Procedure Act in the event it wished to deviate or change from the conclusion contained in the 2006 opinion letter. While not reaching the merits of the conclusion by the DOL that mortgage loan employees are non-exempt, the Court of Appeals struck down the use by the DOL of an “Administrator’s Interpretation” letter to announce and change the substantive rule of law from the 2006 opinion letter.

On March 9, 2015, the United States Supreme Court rejected the Court of Appeals' reasoning. Again, without addressing whether or not the ultimate conclusion by the DOL that mortgage-loan employees are non-exempt is a correct legal conclusion, the Supreme Court nevertheless recognized that the DOL was empowered to issue interpretive rules without following the formal requirements of the Administrative Procedure Act. Because an interpretive rule, such as the 2010 Administrator's Interpretation, is only intended to "advise the public of the agency's construction" of the statutes in which it is required to administer, the Supreme Court affirmed the right of the DOL to issue a contrary interpretation as it relates to the exempt status for mortgage loan employees.

Overtime exemptions are always fact specific and are not necessarily resolved by virtue of bright line rules such as announced by the DOL in its 2010 Administrator's Interpretation. To be exempt as an administrative employee, the employee, in part, must be invested with independent judgment and discretion of matters of significance related to the operation of the business. The applicability of the administrative exemption to loan officers, including not only mortgage loan originators, but also other first line employees engaged in lending practices, continue to garner significant litigation.

If a financial services employer continues to treat such employees as an exempt employee based on the administrative employee exemption, the employer will need to be mindful that the Department of Labor will likely reject this legal argument as a matter of statutory and regulatory construction. Whether or not a federal judge will afford the DOL any deference in its legal conclusion that a mortgage loan employee is non-exempt is an open question that will certainly be litigated in the future. In the absence of any further congressional revision to the Fair Labor Standards Act, it is certainly unlikely that the DOL will change its view during the remainder of the Obama Administration. Accordingly, employers should be careful in the event they continue to treat such employees as exempt from overtime.