



Can Mortgage Loan Officers Still be Exempt from FLSA Overtime Requirements?

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On March 9, 2015, the United States Supreme Court issued an opinion upholding a 2010 Department of Labor (DOL) interpretative rule finding that mortgage loan officers are generally not administratively exempt from Fair Labor Standards Act (FLSA) overtime requirements. This decision, however, does not foreclose other exemptions that may apply, depending on a particular bank or mortgage company's type of sales operation.

For example, mortgage loan officers may qualify for the FLSA's outside sales exemption if: (1) their primary duty is sales and (2) they regularly perform this duty away from a "fixed site." Any fixed site, whether home or office, will be considered "inside" the employer's place of business. DOL guidance suggests that the second element of the outside sales exemption is met when sales or sales related activity occurs outside the office one or two hours a day, on or two times a week. In Hartman v. Prospect Mortg., LLC, 11 F. Supp. 3d 597 (2014), the United States District Court for the Eastern District of Virginia concluded that a mortgage loan officer whose compensation was tied solely to sales volume, who had significant independence in dictating her schedule, and who spent 25-30% of time outside the office qualified for the outside sales exemption. It is clear, however, that loan officers who work for call center based operations will have more difficulty qualifying for the outside sales exemption.

Another possible exemption for loan officers is the highly compensated exemption. To qualify, loan officers must (1) earn total annual compensation of \$100,000 or more, which includes a salary of at least \$455/week; (2) primarily perform office work; and (3) customarily and regularly perform at least one of the exempt duties of an exempt executive (e.g., managing the business or managing a customarily recognized department or subdivision of the business).

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