



PAYROLL CURRENTLY

The Biweekly Payroll Compliance Publication of the American Payroll Association

Volume 17

Issue # 11

May 29, 2009

Finance Employee Was FLSA-Exempt Executive

An employee described as a “jack of all trades” who performed duties involving preparing paperwork and data entry for construction loans, accounts payable, and payroll was not entitled to overtime wages under the Fair Labor Standards Act (FLSA) because she was an exempt executive employee, a U.S. District Court in New Mexico has ruled [*Slusser v. Vantage Builders, Inc.*, 576 F. Supp.2d 1207 (D N.M., 2-6-08)].

Diane Slusser sued Vantage Builders, Inc. (VBI) for unpaid overtime, saying that despite titles she held, such as “Operations Manager” and “Assistant Comptroller,” her duties were primarily clerical in nature.

WHAT THE LAW SAYS – The FLSA executive exemption applies to an employee: (1) who is paid a salary of at least \$455 per week, not including board, lodging, or other facilities; (2) whose primary duty is management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision of the enterprise; (3) who customarily and regularly directs the work of two or more other employees; and (4) who has the authority to hire or fire other employees or whose recommendations as to the hiring, firing, advancement, promotion, or other change of employment status of other employees are given particular weight (see *The Payroll Source*®, p. 2-12). The salary requirement was not in dispute here.

Primary duty of management

An employee’s primary duty is usually what the employee does that is of principal value to the employer, not the collateral tasks performed by the employee, even if those tasks take up more than half the employee’s time (29 C.F.R. §541.700(a)). Here, the court cited the following evidence in support of its conclusion that Slusser’s primary duty was management:

Relative importance of managerial duties. Although Slusser spent a lot of time on data entry and preparing paperwork, this was clearly less important to VBI than her managerial responsibilities. She assigned work to the employees she supervised, directed their work, answered employee questions (a form of employee training), and was responsible for the day-to-day operations of the payroll department. She was in charge of the accounts payable department and was responsible for developing an operations plan for the department. It did not matter that Slusser herself was subject to supervision.

Amount of time spent performing exempt work. Slusser performed nonexempt work on her own against VBI’s wishes. She had been instructed by her supervisor to “stop being a doer” and delegate her clerical work to the people she supervised.

Relative compensation. Slusser’s duties were primarily managerial. She was the second highest paid office employee at VBI and one of the few employees to earn a bonus. The people she supervised earned about half as much as she did.



PAYROLL CURRENTLY

The Biweekly Payroll Compliance Publication of the American Payroll Association

Volume 17

Issue # 11

May 29, 2009

Directing the work of two or more employees

Slusser customarily and regularly directed the work at two or more full-time employees. She also directed the work of temporary employees. Although Slusser spent most of her time doing the same work as the employees she supervised, she remained responsible for performing her managerial duties. The fact that Slusser's supervisor sometimes contradicted Slusser's instructions did not negate her supervisory responsibilities.

Authority to hire and fire employees

VBI gave particular weight to Slusser's recommendations for hiring, firing, promoting, and demoting the employees she supervised. Slusser and her supervisor were in charge of hiring accounts payable clerks, and she was involved in hiring payroll clerks. She evaluated the employees working under her and had fired employees.