

**Eastern District of California Holds That Unlicensed Accountants
Are Not Exempt from Overtime Laws**

March 25, 2009

In a case that will be of interest to any company that employs unlicensed accountants, including professional accounting firms, the U.S. District Court for Eastern District of California under Judge Lawrence K. Karlton granted summary judgment for the plaintiffs in *Campbell and Sobek v. PricewaterhouseCoopers*, Case No. S-06-2376 LKK/GGH. The court found that the plaintiff class of over 2,000 unlicensed PricewaterhouseCoopers (PwC) associates was not exempt from California's overtime laws because they do not qualify for California's professional exemption, executive exemption, or administrative exemption.

Background

The plaintiffs were employed by PwC in California as Attest Associates and were not licensed as certified public accountants (CPAs). Attest Associates work in PwC's Assurance division performing financial audits for PwC's clients, as distinguished from individuals providing tax services or advice. The plaintiffs filed a class action lawsuit in 2006 alleging that PwC misclassified them as exempt and failed to pay them overtime. They sought various penalties for violation of the California Labor Code and Industrial Welfare Commission Wage Order 4-2001. After the court's 2008 order granting class certification, the parties filed cross-motions for summary judgment. PwC argued that its Attest Associates qualified for California's professional, executive, and administrative exemptions.

The Court's Opinion

The court held that the Attest Associates were not exempt under California's professional exemption, executive exemption, or administrative exemption. California's professional exemption is generally divided into two parts—the "enumerated professions" exemption (i.e., professionals licensed and certified by the State of California in the practice of law, medicine, dentistry, optometry, architecture, engineering, teaching, or accounting) and the "learned or artistic professions" exemption (employees "primarily engaged in the performance of work requiring knowledge of an advanced type in a field . . . customarily acquired by a prolonged course of specialized instruction and study"). In *Campbell*, the court examined the language of the Wage Order to determine whether accounting professionals who are not licensed could fall into the second, catch-all category for learned or artistic professions, or whether they are necessarily excluded from that category.

PwC argued that while unlicensed accountants did not qualify for the “enumerated professions” exemption, they could still qualify for the “learned professions” exemption. The plaintiffs countered that the specific language of the Wage Order suggested that the “enumerated professions” provision is a completely separate provision from the “learned professions” provision, such that professionals in the enumerated professions (here, accountants) who are not licensed cannot qualify as exempt under the “learned professions” exemption. The court ultimately agreed with plaintiffs, holding that unlicensed accountants could not be “learned professionals,” and thus could not qualify for the professional exemption.

The court also found that PwC’s Attest Associates did not qualify for California’s executive exemption because they did not manage a “customarily recognized department or subdivision” of PwC’s business. The court then held that Attest Associates did not qualify for California’s administrative exemption because they were subject to “more than general supervision” by virtue of the professional standards governing the supervision of unlicensed accountants. Wage Order 4-2001 provides in pertinent part that to qualify for the administrative exemption an employee must “perform under only general supervision work along specialized or technical lines” or “execute under only general supervision special assignments and tasks.” The court observed that it was possible that “the supervision mandated” by California Business and Professions Code 5053 (requiring unlicensed persons engaging in “public accountancy” to be supervised by CPAs) “precludes any unlicensed accountant from falling within the administrative exemption” as a matter of law. The court ultimately declined to issue such a blanket ruling, however, finding instead that the plaintiff class’s work was reviewed and supervised by PwC managers at a level that was more than general supervision, thus the members of the class could not qualify for the administrative exemption.

Having determined that PwC’s Attest Associates could not qualify for California’s professional, executive, or administrative exemptions, the court declined to consider whether Attest Associates exercised sufficient “discretion and independent judgment” to qualify for these exemptions.

The court acknowledged that there was “a substantial ground for difference of opinion” over its determination that PwC’s Attest Associates were not exempt, and it certified its opinion for interlocutory appeal to the U.S. Court of Appeal for the Ninth Circuit. The Ninth Circuit has not yet ruled as to whether it will review the decision on appeal.

Practical Considerations

The court’s ruling emphasizes the need for companies that employ unlicensed accountants or bookkeepers to exercise particular care when evaluating whether those employees are exempt under applicable federal and state laws. The court’s decision may well have implications on the exempt status of other unlicensed professionals, such as attorneys, engineers, and teachers.

For more information about the implications of this decision on your company’s classification of its accountants, bookkeepers, and others with similar duties, please contact any of the following Morgan Lewis attorneys:

New York

Christopher A. Parlo

212.309.6062

cparlo@morganlewis.com

Irvine

Carrie A. Gonell

949.399.7160

cgonnell@morganlewis.com

Los Angeles

John Battenfeld

213.612.1018

jbattenfeld@morganlewis.com**Princeton**

Thomas A. Linthorst

609.919.6642

tlinthorst@morganlewis.com**About Morgan Lewis's Labor and Employment Practice**

Morgan Lewis's Labor and Employment Practice includes more than 300 lawyers and legal professionals and is listed in the highest tier for National Labor and Employment Practice in *Chambers USA 2008*. We represent clients nationwide in a full spectrum of workplace issues, including drafting employment policies and providing guidance with respect to employment-related issues, complex employment litigation, ERISA litigation, wage and hour litigation and compliance, whistleblower claims, labor-management relations, immigration, occupational safety and health matters, and workforce change issues.

About Morgan, Lewis & Bockius LLP

Morgan Lewis is an international law firm with more than 1,400 lawyers in 22 offices located in Beijing, Boston, Brussels, Chicago, Dallas, Frankfurt, Harrisburg, Houston, Irvine, London, Los Angeles, Miami, Minneapolis, New York, Palo Alto, Paris, Philadelphia, Pittsburgh, Princeton, San Francisco, Tokyo, and Washington, D.C. For more information about Morgan Lewis or its practices, please visit us online at www.morganlewis.com.

This LawFlash is provided as a general informational service to clients and friends of Morgan, Lewis & Bockius LLP. It should not be construed as, and does not constitute, legal advice on any specific matter, nor does this message create an attorney-client relationship. These materials may be considered Attorney Advertising in some states. Please note that the prior results discussed in the material do not guarantee similar outcomes.

© 2009 Morgan, Lewis & Bockius LLP. All Rights Reserved.