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Is the Issue of Whether Pilots Are 'Professionals' for Purposes of Wage and Hour Laws Still up in the Air? You May Be Surprised at How This Alaska Ruling Could Affect All Employers.

In a recent decision, the Alaska Supreme Court held that a pilot was not an exempt professional under the Alaska Wage and Hour Act, which is patterned after the federal Fair Labor Standards Act. Although decided under Alaska law on the narrow issue of whether or not the pilot at issue was an exempt professional, the decision has potential implications beyond Alaska and for other employees classified by their employers as exempt professionals under Alaska or federal law.

The case of *Moody v. Royal Wolf Lodge*, decided on November 14, involved a claim for overtime pay by a pilot employed by a wilderness lodge in Alaska. Under both federal and Alaska state law, non-exempt employees who work more than 40 hours in a workweek are entitled to overtime at one-and-a-half times their regular rate of pay. (Under Alaska Law, overtime pay is also required for non-exempt employees who work more than eight hours in a day.) Both Alaska state and federal law provide exemptions from these overtime requirements for certain categories of employees. Probably the most commonly relied upon exemptions are for individuals employed in a bona fide executive, administrative or professional capacity.

In *Moody*, the employer had classified the pilot at issue as an exempt professional under the Alaska Wage and Hour Act and the federal Fair Labor Standards Act. This determination was consistent with the Alaska Supreme Court's 1993 decision in *Dayhoff v. Temsco Helicopters, Inc.* Based on that Alaska Supreme Court decision, the trial court found the pilot to be an exempt professional.

In reversing the trial court, the Alaska Supreme Court relied on a 2005 change in Alaska law adopting the federal definition of the professional exemption. That definition restricts the exemption to employees in "professions where specialized academic training is a standard prerequisite." In support of the professional exemption, the employer identified that Moody: had been taught by flight instructors; had passed the Federal Aviation Administration oral and written tests; held a commercial pilots license and airline transport license; had a certified flight instructor rating, an instrument rating, a multi-engine rating, a single-engine land rating, a single-engine sea rating, a second class medical certificate; and had over 14,000 hours of flight time. Nonetheless, the Alaska Supreme Court held he was not an exempt professional, because being a pilot does not customarily require a prolonged course of specialized intellectual training.

While recognizing that "advanced training" was required to be a commercial pilot, the Court held such training was not "academic or intellectual instruction." Noting the additional credentials and experience possessed by Moody, the court opined "the relevant determination is not whether Moody personally acquired specialized intellectual instruction, but whether that instruction is a *standard* prerequisite for entrance into the aviation profession. The record in this case shows that piloting — even commercial piloting — does not generally require academic training. Therefore, we cannot say that the 'primary duty' of a pilot such as Moody requires 'knowledge of an advanced type customarily acquired by a prolonged course of specialized intellectual instruction.'"

What This Means for Employers.

The specific holding in the *Moody* case is limited to pilots in the state of Alaska. And, any employer in Alaska who has classified any of its pilot employees as exempt should reevaluate that exemption in light of *Moody*. More broadly, the Court cites to and interprets federal authority suggesting that pilots in other jurisdictions, such as Washington and Oregon, may not be exempt professionals under the federal Fair Labor Standards Act. Even more broadly, the reasoning of the *Moody* decision, which appears to create a distinction between academic or intellectual training on the one hand and "experience" or on the job training on the other hand, may be applied to other employees classified by their employers as exempt professionals under the federal Fair Labor Standards Act.

Employers in all jurisdictions may therefore want to reevaluate any employees classified as exempt professionals in light of *Moody*. The financial consequences for misclassifying an employee as exempt from overtime can be substantial, including time and a half for all overtime worked by any misclassified employees for a number of years, the potential for those overtime amounts to be doubled under applicable statutory law, plus the potential payment of the misclassified employees' attorney fees.

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