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Construction Practice Pointer
Reyes v. Hollywood
Decided February 28, 2005

A federal district court in Florida recently held that a building contractor was not obligated to pay overtime to an employee working as an estimator. Although the estimator in Reyes worked an average of forty-five hours per week, the court found that the estimator was exempt under the "administrative" exemption in the wage-hour law. Therefore, the employer had no obligation to pay the estimator overtime compensation.

In reaching its conclusion, the court considered the fact that the estimator used his judgment in selecting the fabrication method for computing the labor cost part of his bid, a critical selection accounting for differences of up to 20% in the final bid. Thus, the estimator did not pick numbers from a book and plug them into a computer program. The fact that the estimator's work was reviewed by a chief estimator did not destroy the exemption, where the supervisor only checked the work to detect "obvious flaws." Hence, the estimator's work involved independent judgment and discretion, relating to matters of significance to his employer, and he was appropriately classified as an exempt employee. Although not addressed by the court, the estimator's salary, approximately \$55,000 per year, would be more typical for an exempt employee than a non-exempt employee.

While the court's decision regarding estimators is important precedent within the construction industry, it must be emphasized that wage/hour exemptions present many nuances. The ultimate result hinges on the court's case-by-case analysis.

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