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Georgia Court Evaluates Executive Exemption Under FLSA

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When is a store manager truly a manager, and not just a lead hourly employee, for purposes of the executive exemption of the Fair Labor Standards Act? Employers recently received some positive guidance from the South Carolina district court in *Gooden v. Dolgencorp, Inc.*, 3:10-cv-1059, Dkt. 60, (U.S.D.C. So. Car. Ap. 3, 2012) and *Thomas v. Dolgencorp, Inc.*, 3:10-cv-1061, Dkt. 59, (U.S.D.C. So. Car. Ap. 3, 2012).

The Plaintiffs in these cases each managed a Dollar General store and performed managerial and non-managerial duties, often simultaneously. Dollar General successfully argued that the Plaintiffs were exempt from overtime compensation under the executive exemption. The Court began its analysis by asking "what is the employee's primary job duty?" While there are many factors in answering this question, the amount of time the employee spends on management verses non-management tasks is a "useful guide" and a "good rule of thumb." Multitasking or performing both management and hourly duties at the same time, as these retail managers did, "is explicitly recognized as a managerial duty by the Department of Labor's regulations." Dollar General also met the other exemption elements, including the relative importance of their management duties, the frequency in which these management duties were performed, their relative freedom from supervision, the differences in their pay and that of their subordinates, and their discretion over subordinates. Ultimately, the opinion rested heavily on the Plaintiffs' testimony that the stores could not function without someone performing their management duties. The fact that Dollar General had certain operating procedures to follow and that each manager ultimately reported to a district manager was insufficient, without more, to negate the discretion these managers had over their stores. The Court granted summary judgment to Dollar General in both cases.

The application of a FLSA exemption is fact-intensive and job titles do not control. Simply holding the title of the highest level employee at a retail store does not automatically mean that the employee is exempt, either. Other retailers have not been as successful in establishing that their store management employees are exempt from overtime where the "managerial" employees functioned largely as lead employees who followed set policies, had little discretion to affect operations, and often had little authority over subordinate staff. Other large retail operations have had trouble establishing the appropriateness of FLSA exemptions for their store management. Clearly, the use of these exemptions should be done with caution, after a sound job audit and determination that every element of the exemption is met, and after checking to make sure the exemptions are also in compliance with state laws. For large employers, these steps will help protect against and, if needs be, provide a sound defense, not only single wage claims but the much more expensive and time-consuming collective action under the FLSA or related state statutes.

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