

**CAVEAT EMPLOYER: OVERTIME COMPENSATION AND THE SLIPPERY
“MANAGER” LABEL**

By

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Alaska workers employed more than 8 hours per day and more than 40 hours per week are entitled to overtime. The rate paid for each hour worked is one and a half times the worker’s hourly wage. That is sufficiently well understood. So, too, it is commonly known that there are certain jobs that do not qualify for overtime. For example, babysitters and those delivering the newspaper are exempt from overtime compensation. What isn’t as well understood is the overtime exemption that generally covers the category of “executive, administrative, and professional” employees.

Simply using the job label of “executive” or “manager,” or paying a salary (instead of an hourly wage) is insufficient to meet the exemption requirements. Determining just who qualifies as an “executive, administrator, or professional” is subject to a four-part test:

(1) The “executive, administrative, or professional” employee is paid a salary of not less than \$455 per week, exclusive of board, lodging or other facilities.

(2) The employee’s primary duty is either managing the full enterprise or managing one of its recognized departments or subdivisions.

(3) The employee customarily and regularly directs the work of two or more other employees.

(4) Lastly, the employee has either the authority to either hire or fire other employees or the employee’s “suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight.”

The price for failing to satisfy the 4-part test can be costly. If the test is failed, the employer not only is liable to the employee for unpaid overtime, but also for an equal amount as “liquidated damages.” What is more, the employer bears the burden of proving the exemption “beyond a reasonable doubt” -- the standard commonly used in proving criminal conduct. It therefore becomes critical whether the “manager” truly meets the overtime exemption definition that the employer intends (and budgets) with the “manager” job title.

The Alaska Supreme Court’s recent decision in *Resurrection Bay Auto Parts, Inc. v. Alder*,¹ serves as an example of just how costly it can be to lose the “manager” label gamble. In that case, the Alaska high court upheld a trial judge’s determination that a Seward Napa store had failed to meet its burden of proving that its “manager” met all of qualifications for an overtime exemption. In fact, only the first requirement of a salary beyond \$455 per week was found to have been met. Just as beauty is in the eye of the beholder, whether a “manager’s” function is “primarily management” is subject to interpretation. In the auto parts manager case, there was conflicting evidence whether “manager” Alder’s “primary duty” was management. The trial court found that despite his title, Alder’s “manager” function had been “essentially reduced to [being] a team leader of the customer service employees,” with his duties “limited to ensuring that the store was closed and opened, that inventory was received by the store, that the store was staffed, and that employees complied with rules.” While noting that many of Alder’s duties would be considered “management,” the trial court found that his functions were secondary (i.e not primary) to his serving customers on the retail floor. Also, because

¹ ___ P.3d ___ (Alaska Supreme Court Opinion 6969 *decided* November 28, 2014).

Alder only supervised one other full-time employee (with other underlings being only part-time or temporary), the specific “two or more” part of the definitional test was not met.

Knowing that hindsight is always 20-20, *Resurrection Bay Auto Parts, Inc. v. Alder* teaches us that treating a “manager” as being exempt is a gamble. The gamble is that an employer pays double if the employer cannot, after-the-fact, convincingly prove that the “manager’s” “primary duty” was of a sufficient executive sort to avoid being downgraded to a “secondary” level, such as being viewed as only “ministerial duties . . . serving customers on the retail floor.”

Recognizing that any doubt will be resolved in favor of enabling overtime compensation, employers need to assure that any exempted “manager” truly and convincingly (“beyond a reasonable doubt”) meets the requirements for the “executive, administrator, or professional” overtime exemption.