



U.S. Supreme Court Reinstates Rule that Mortgage Loan Officers Are Not Exempt From Overtime Laws

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On March 9, 2015, the United States Supreme Court decided an important case for financial institutions concerning the treatment of Mortgage Loan Officers ("MLO's") under the Fair Labor Standards Act ("FLSA"). The general rule under the FLSA is that employees are entitled to be paid overtime for all hours worked over 40 in a workweek unless an exemption applies.

The treatment of MLO's under the FLSA has flip-flopped in guidance from the U.S. Department of Labor. Prior to 2006, the DOL's position was that MLO's did not fall under the "administrative" exemption because their primary duties were to "sell" the "product" of the financial institution, as opposed to being involved in the running of the business.

In 2006, the DOL issued new guidance which found that MLO's were indeed exempt from the FLSA as administrative employees. However, in 2010, DOL reversed its position again and issued guidance that MLO's were not exempt, and were eligible for overtime.

The 2010 guidance was challenged by the Mortgage Bankers Association on the ground that the DOL was required to comply with the Administrative Procedures Act (requiring notice to the public and an opportunity for comments) before radically changing its interpretation of the law. In 2013, the United States District Court for the D.C. Circuit agreed with the MBA and struck down the interpretation for failure to comply with the APA.

However, in *Perez v. Mortgage Bankers Association*, a unanimous Supreme Court held that the DOL's change in "interpretation" was not the same act as amending a "regulation", and that compliance with the APA was not required. The decision can be found [here](#).

The effect of this decision is to reinstate the 2010 interpretation holding MLO's to be nonexempt employees (i.e. eligible for overtime compensation). As the Court noted, financial institutions may have a "safe harbor" for compensation that occurred before based on the 2006 interpretation, but going forward, all financial institutions should be aware that MLO's must be considered nonexempt employees and paid overtime if they work more than 40 hours in a work week.

If you have any questions about this issue or any other employment-related issue, feel free to contact Thomas Wassel at 516-357-3868 or twassel@cullenanddykman.com or Gerard Fishberg at 516-357-3703 or

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