

Resist qualification inflation: Super skills don't make position exempt

The U.S. Department of Labor considers the minimum job requirements for a position—not the people who hold those jobs—when determining whether the employees are nonexempt, hourly workers or exempt under the Fair Labor Standards Act (FLSA).

If you hire overqualified applicants, their training and experience doesn't transform the job from hourly to exempt.

Recent case: A group of utilization review employees for Centene Co. brought an FLSA collective action lawsuit to recover unpaid overtime wages. Their jobs consisted of reviewing medical authorization requests submitted by health care providers to verify medical necessity and the appropriate level of care for insurance coverage and payment purposes.

The employees are nurses and the minimum standard for being hired is training as a licensed vocational nurse, which requires completion of a year-long program. Centene also employed registered nurses, including some with bachelor's degrees in nursing.

The company argued the nurses fit into the FLSA's learned professional exemption because they have "advanced knowledge customarily acquired by a prolonged course of specialized intellectual instruction," a requirement for that exemption.

The court disagreed, at least as far as the licensed practical nurses were concerned. And because that was the minimum job requirement, the fact that the company also employed registered nurses was irrelevant. It isn't the education the employee has that counts, but the job they perform. (*Clark, et al., v. Centene*, No. 12-CA-174, WD TX, 2014)