

# Job--not job description--counts for exemption

Exempt employees aren't entitled to overtime pay. But a job description that specifies that an employee's position is exempt and delineates job duties that fit an exemption isn't enough to establish exempt status.

If a worker challenges an exempt classification with evidence of what she actually does, a court may conclude that she should have been classified as nonexempt after all.

Remember, it is the actual work performed that counts, and not just what the job description says.

**Recent case:** Jennifer worked as a staffing coordinator for Concentric Healthcare Solutions. Her job was to assign nursing staff to patients and facilities that needed their services.

She was classified as exempt administrative—a Fair Labor Standards Act exempt classification that requires the “employee’s primary duty to be the performance of office or nonmanual work directly related to the management or general business operations of the employer or the employer’s customers”; and “hose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.”

Concentric alleged its staffing coordinators were authorized to set salaries for individual nurses, discipline staff and make decisions about their assignments.

The lower court said that was enough to make the position exempt, but Jennifer appealed.

She argued that in reality, she could not raise pay and that her supervisors never acted on any recommendation she made to terminate a nurse's services. That was enough for the 9th Circuit Court of Appeals to reverse the lower court and reinstate Jennifer's overtime lawsuit. (*Quintiliani v. Concentric Healthcare Solutions*, No. 14-17312, 9th Cir., 2016)

**Final note:** Be mindful that jobs may change over time. If you don't regularly review job descriptions to ensure they still reflect the actual job being performed, you may be risking an expensive and time-consuming overtime lawsuit.