

Paralegals and legal assistants do not qualify for the FLSA learned professional exemption

The Department of Labor's (DOL) Wage and Hour Division recently released an opinion letter to clarify the non-exempt status of paralegals and legal assistants in regards to the overtime provisions of the Fair Labor Standards Act (FLSA). In the opinion letter, the DOL reaffirmed its longstanding opinion that paralegals ordinarily do not qualify for the learned professional exemption.

What is the primary duty test under the learned professional exemption?

The DOL noted that the primary duty test under the learned professional exemption includes the following three elements:

- The employee must perform work requiring advanced knowledge.
- The advanced knowledge must be in a field of science or learning.
- The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

Why are paralegals considered non-exempt employees?

Paralegals do not qualify for the learned professional exemption under the FLSA because they do not normally require education beyond the equivalent of a two-year degree. The job counts, not the person, in determining exemptions. Even though many paralegals possess four-

year degrees, most paralegal programs are two-year associate degree programs.

Does this mean that all paralegals do not qualify for the learned professional exemption?

The DOL noted an exception in the opinion letter. If the paralegal in question possesses an advanced specialized degree in another professional field, that degree is a standard prerequisite for entry into the field, and advanced knowledge is applied in the performance of the person's paralegal duties, then the person may be exempt. The example in the opinion letter was that if a law firm hired an engineer as a paralegal and the engineer provided expert advice on product liability cases or assisted on patent matters, that engineer would qualify for the exemption. In that case, however, the use of the professional degree would likely be the primary justification for the exemption, not the paralegal job duties.

In general, paralegals and legal assistants do not qualify for the learned professional exemption and are, therefore, covered by the overtime and minimum wage provisions of the FLSA. The determination is the responsibility of the employer so the DOL will continue to issue specific opinion letters based on the job duties of positions in question.

For more information, visit the DOL's FairPay website at www.wagehour.dol.gov or contact CTSI at 303-861-0507.