



# Delaware EMPLOYMENT

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## Law Letter

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### WAGE AND HOUR LAW

## Crew leaders fly the coop, get second chance to prove overtime claims

by Scott A. Holt and Michael P. Stafford

*Last year, we reported about a case involving a number of employees who filed an **overtime** lawsuit against Mountaire Farms claiming they were misclassified as executive exempt employees. The employees worked as crew leaders for chicken-catching crews, and they argued that they didn't have enough authority to qualify for the executive exemption. A federal court in Delaware, however, determined that the claims wouldn't fly and entered judgment in favor of Mountaire Farms. The crew leaders cried "fowl" and appealed the court's decision to the Third U.S. Circuit Court of Appeals (which covers Delaware).*

### ***What it takes to be exempt***

Under the Fair Labor Standards Act (FLSA), employees are presumed to be nonexempt and entitled to **overtime**. The Act exempts certain employees from the **overtime** requirements, however, including so-called executive employees. To be considered an executive employee, a person must perform certain duties that qualify as exempt. Regulations promulgated by the U.S. Department of Labor state that executives are employees who, among other things, have the authority to hire or fire other employees or whose suggestions and recommendations about the hiring, firing, advancement, promotion, or any other change of status of other employees are given particular weight.

With many companies trending toward a more centralized decisionmaking process

on personnel issues, the requirement that an executive employee's suggestions be given "particular weight" may pose a problem. For instance, a supervisor whose recommendations or suggestions are rarely followed by his superiors may not qualify for the exemption. This problem is particularly significant when you consider that the burden to demonstrate the employee qualifies for the exemption is on the employer, not the employee.

### ***Don't count your chickens before they've hatched***

The appeal by the crew leaders focused on two issues they claim were enough to support that they weren't exempt. They first argued that their written job descriptions didn't include recruiting, hiring, or firing crewmembers as duties. They also contended that during their combined 30 years of employment with Mountaire Farms, they had an extremely limited role in the hiring, firing, or disciplining of employees.

For instance, the crew leaders stated that they had no responsibility to recruit chicken catchers to work in the crews. They also testified that they had no responsibility for making recommendations on hiring or firing, even within restricted guidelines. After reviewing the record, the appeals court agreed with the employees.

The court found that the crew leaders' testimony about their job duties and responsibilities revealed that they had "limited powers" over their subordinates and were rarely involved in the hiring or firing process. As a result, the Third Circuit determined that the lower court erred in dismissing the case and sent the case back for a jury trial. *Davis v. Mountaire Farms, Inc.*, 2006 U.S. App. LEXIS 18224 (3d Cir., July 20, 2006).

### ***Taking care of your roost***

Exemption issues under the FLSA are truly case-by-case determinations. This case illustrates the significance attached to an employer's own job description as well as the importance of conducting a full analysis of what employees actually do before determining whether an exemption is applicable.

So what should you do to make sure you are in compliance? The first step is to review all written job descriptions to make certain they include the duties necessary to qualify for the applicable exemption. A job description that lacks the requisite exempt duties will be exhibit number one for an employee's **overtime** claim.

For your employees currently classified as executive exempt, you also need to make sure they play a role in employment decisions affecting their subordinates. If they don't, either reclassify their jobs as nonexempt and begin tracking time and paying **overtime** or beef up their jobs to make sure their recommendations are given sufficient weight. For the latter, that may be as simple as calling supervisors in to consult on personnel decisions involving their subordinates, getting them involved in interviewing job applicants, or requiring them to conduct, or at least comment and sign off on, employment evaluations for their direct subordinates.

*Find out more about the FLSA's **overtime** requirements in the subscribers' area of*

[www.HRhero.com](http://www.HRhero.com), the website for Delaware Employment Law Letter. You have access to an HR Executive Special Report on the subject: "**Overtime** Ins and Outs: How to Comply with the FLSA." Just log in and scroll down to the link for all the Special Report titles. Need help? Call customer service at (800) 274-6774.

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