

The Executive Exemption

The Fair Labor Standards Act of 1938 provides exemptions for employees working in a “bona-fide executive capacity.” A law passed to prevent “labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers” gave direction to those executives who had been responsible for deplorable working conditions.

Executive employees are generally supervisors of other people. They are expected to ensure that other people perform their jobs. They determine what jobs should be done and in what order and by whom. They determine who works for them and who does not, who should work when, and who gets paid what. The major protections of the Fair Labor Standards Act involve scheduling and rate of pay. The two biggest protections it offers in terms of compensation are premium pay for overtime work and a minimum wage. These areas are under the supervision of those people in executive positions. It was hardly necessary to protect these same executives from abuse at their own hands.

Executives direct workload for their employees. They approve promotions and demotions, and they schedule employee shifts. An employee who does not do any of these things can not be considered an executive employee for the purposes of the FLSA.

These activities inherently involve independent judgment and discretion. All jokes about executive incompetence aside, executives are entrusted with making decisions. If an employee is involved in executive-type activities, but does not exercise judgment or independent discretion, he or she does not qualify as exempt. For example, an employee is given the responsibility to make sure that standard raises are given. This employee determines the new pay rate for each employee, and puts it into effect. However this work was done merely by applying a standardized formula to the old pay rate. It's not true to say that our employee gave anyone a raise, because he did not authorize the giving of the raise, just computed the amount that each employee would receive. A computer could also have handled this task. This is a lack of independent judgment and discretion.

True executives are justifiably exempt from the Fair Labor Standards Act, and receive no protection of premium pay for overtime work. Abuse of the executive exemption is not nearly as rampant as abuse of the administrative or professional exemptions. But it does exist, and it can be successfully challenged.