

## **Professional Exemption**

The overtime provisions of the Fair Labor Standards Act were originally enacted for two purposes. They were a protection for workers whose bosses insisted on long shifts to maximize productivity. They were also a way to fight unemployment, which was still high in 1938 as a result of the Great Depression. If a factory owner needed 6,000 hours of work a week, he might be tempted to hire and train 100 workers at 60 hours a week each. Under the forty-hour work week established by the FLSA, he would need 150 workers. Fifty new potential jobs were just created.

Bona-fide professional employees were exempted from the FLSA at its inception. People with well developed job skills did not need protection from unscrupulous employers. Since they are not as easily replaceable as manual laborers, they could demand, and were assumed to receive, higher wages. They could refuse to work excessive hours, because the company needed them as much as they needed the job.

The nature of professional work also precluded the FLSA as a path to job creation. For example, if an employer needs more accountants, it can't just find someone and confer upon the person certification as a Public Accountant. Professional employees are people who have acquired a considerable amount of knowledge in their field. This takes time, planning, and the ability to pay for

education. The FLSA was intended to give unemployed people jobs right away, not after a few years and a few thousand dollars.

The nature of professional work precludes job creation through limiting hours. On a production line, one person can get off a shift and another go right on and business keeps moving. But professional work implies a closer relationship between the worker and the work. One sculptor can't just pick up where another left off. Whatever the field, a professional employee develops an intimate knowledge of a particular project or field. That is part of why he or she is so valuable. The projects of professionals are not so easily cubbyholed into a forty-hour week. There are ebbs and flows that result in fluctuating demands on a professional's time..

The Fair Labor Standards Act has changed the American workplace for all employees. But it was drafted because of specific concerns for one segment of the American economy. Professionals are in a different segment of employment. The Fair Labor Standards act has benefited professionals, but they still do not need all of the protections it offers.