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Convenience Store Manager Was FLSA-Exempt Executive

A U.S. District Court in North Carolina has ruled that the manager of a discount retail store was not entitled to overtime compensation under the Fair Labor Standards Act (FLSA) because she was an exempt executive employee [*Grace v. Family Dollar Stores, Inc.*, No. 3:08 MD 1932, 2009 U.S. Dist. LEXIS 59154 (WD N.C., 7-9-09)].

Background

Family Dollar Stores, Inc. operated discount retail stores throughout the U.S., each run by a store manager. Irene Grace said that as a store manager, she spent 99% of her time handling freight, running a cash register, and doing janitorial work. She worked 52 to 65 hours a week but did not receive overtime pay.

WHAT THE LAW SAYS – The FLSA executive exemption applies to an employee: (1) who is paid a salary of at least \$455 per week, not including board, lodging, or other facilities; (2) whose primary duty is management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision of the enterprise; (3) who customarily and regularly directs the work of two or more other employees; and (4) who has the authority to hire or fire other employees or whose recommendations in this area are given particular weight (see *The Payroll Source*®, p. 2-12). Here, the salary requirement for exemption was not in dispute.

Primary duty of management

The following factors are evaluated in considering whether an employee's primary duty is management: (1) the amount of time spent performing managerial duties; (2) the relative importance of managerial duties as compared with other types of duties; (3) the employee's relative freedom from supervision; (4) the relationship between the employee's salary and the wages paid to other employees for the kind of nonexempt work performed by the employee; and (5) the frequency with which the employee exercises discretionary powers. All of these factors indicated that Grace's primary duty was management, said the court.

Time spent performing managerial duties. An employee who spends less than 50% of his or her time on management duties can still be considered to have a primary duty of management if other factors support that conclusion, which was the case here. Moreover, the concurrent performance of exempt and nonexempt work does not disqualify an employee from exemption. While she stocked shelves, unloaded a truck, or ran a cash register, Grace remained responsible for ensuring the successful operation of her store.

Relative importance of managerial duties. Grace's managerial duties included processing freight, hiring and training employees, handling customers, and managing the store's finances. These managerial duties were more important to Family Dollar than Grace's non-managerial duties.

Relation between manager's salary and nonexempt employee wages. Grace's salary was significantly greater than the wages of the store's nonexempt employees. She received a salary of \$625 per week, which later increased to \$655. The \$625 per week salary was equal to an average hourly wage of between \$9.62 (in a



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65-hour week) and \$12.02 (in a 52-hour week). The \$655 salary per week was equal to an average hourly wage of between \$10.07 (in a 65-hour week) and \$12.60 (in a 52-hour week). In comparison, the average hourly wage of nonexempt employees at the store during that time (i.e., before the minimum wage increased to \$5.85 in 2007) was \$5.81 an hour.

Relative freedom from supervision. Grace was relatively free from supervision. Her district manager supervised 17 stores over 11 counties in Georgia, and visited her store only every second or third week. Most communication between Grace and her manager occurred by phone and e-mail. Grace said she did not feel that her district manager infringed on her ability to run her store as she saw fit.

Exercise of discretion. Grace frequently exercised discretion as a store manager. She interviewed employees, made hiring recommendations, disciplined employees, and assigned work. She had discretion over theft control and the prosecution of shoplifters. The fact that Family Dollar standardized some policies and procedures, such as store setup, did not negate Grace's ability to exercise discretion.

Directing the work of two or more employees

Grace customarily and regularly directed the work of two or more employees. She managed between three and five employees, and always supervised at least two cashiers. The court said an exempt executive employee must direct a total of 80 employee hours each week to satisfy the requirement of customarily and regularly directing the work of two or more employees. Grace directed at least 80 employee hours of work more than 89% of the time she was a store manager.

Hiring and firing employees

Grace satisfied this requirement as well. She could not hire employees, but she was actively involved in interviewing and screening new hires, and her district manager almost always followed her recommendations. Grace terminated the employment of at least one employee without the prior approval of her district manager, and she could reduce an employee's hours in order to induce the employee to quit.

Note: In 2008, the Eleventh Circuit Court of Appeals upheld a jury verdict finding that more than 1,400 current and former Family Dollar managers were not FLSA-exempt executive employees and awarding them more than \$35 million (see [PAYROLL CURRENTLY, Issue No. 4, Vol. 17](#)). The case here does not fall in the Eleventh Circuit, but in the Fourth.