

## Tamara Devitt in HR Magazine: Don't Forget to Review Duties Tests for Overtime Exemptions

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Haynes Boone Partner [Tamara Devitt](#) talked with *HR Magazine* about the Department of Labor's (DOL's) expected proposal for an increased salary threshold for the white-collar exemptions from overtime pay.

Here are excerpts from the article:

Meeting the salary cutoff is just one requirement for classifying workers as exempt. Employers should also take the time to review workers' job duties to ensure they satisfy the applicable exemption's criteria.

"The duties tests are dependent on a variety of factors," said Tamara Devitt, an attorney with Haynes Boone in Costa Mesa, Calif. Each of the three white-collar exemptions has slightly different criteria:

- Executive exemption. The employee's primary duty must be managing the enterprise or a department or subdivision of the enterprise. The employee must customarily and regularly direct the work of at least two employees and have the authority to hire or fire workers (or the employee's suggestions and recommendations as to hiring, firing or changing the status of other employees must be given particular weight).
- Administrative exemption. The employee's primary duty must be performing office or nonmanual work that is directly related to the management or general business operations of the employer or the employer's customers. The employee's primary duty also must include the exercise of discretion and independent judgment with respect to matters of significance.
- Professional exemption. The employee's primary duty must be to perform work requiring advanced knowledge in a field of science or learning that is customarily acquired by prolonged, specialized, intellectual instruction and study.

Of the three white-collar exemptions, the administrative exemption is the least straightforward and creates the most challenges for employers, Devitt said. "Employers can sometimes fail to recognize the complexities of the exemption analysis and do not undertake the careful review that should be done before classifying an employee as exempt."

### Compliance Tips

The employer has the burden of demonstrating that the exemption applies, Devitt said. "So employers should be thoughtful and careful about classifying employees as exempt."

The content or duties of the job—not the job title—are the key to determining the proper classification under the FLSA ....

"Given the complexity of the analysis and the risk of getting it wrong, it is a good idea for employers to include a wage and hour lawyer in the analysis process," Devitt said.

To read the full article, click [here](#).