When it Comes to Paying Overtime, Managers are Managers Regardless of Title | The HR Space

Labour, Employment and Human Rights Bulletin

The issue of overtime has become a major concern for employers in the wake of class actions on the subject in Canada. The Québec *Act Respecting Labour Standards* (the "**ALS**") provides exemptions from the right to overtime for employees in managerial positions. In *Skiba* v. *Playground, L.P.* (PDF), the Court of Appeal of Québec recently clarified which employees may be exempt as "managers" in Quebec regarding the right to overtime pay.

Facts

Mr. Skiba began working for Playground, L.P. ("**Playground**") as an accountant in 2003. In 2005, he was promoted to "Manager - Business Unit" and in 2006, to "Director Finance & Operations". Later that year, Playground concluded that Mr. Skiba lacked the skills required for the director position and demoted him to Financial Analyst. Mr. Skiba's remuneration and benefits stayed the same and his duties were largely unchanged.

As a Financial Analyst, Mr. Skiba was remunerated on an annual basis (not on an hourly basis). He regularly worked evenings and weekends but did not request overtime pay. In 2008, Playground terminated Mr. Skiba's employment for economic reasons. Mr. Skiba sued Playground claiming, among other things, payment for overtime.

Under the ALS, overtime is owed for hours worked over 40 hours per week.

Superior Court Judgment

The Superior Court of Quebec dismissed the action of Mr. Skiba. The Court relied on section 55 of the ALS which provides that an employee who is paid on an annual instead of an hourly basis is not entitled to payment of overtime for work performed in excess of 40 hours per week, unless a contractual provision or employer policy indicates otherwise. Mr. Skiba appealed.

Court of Appeal of Quebec Ruling

Based on a different ground than the one of the Superior Court, the Court of Appeal of Quebec also ruled that Mr. Skiba was not entitled to overtime. The Court of Appeal decided that Mr. Skiba was exempt under section 54(3) because he held a managerial position.

The Court of Appeal emphasized that the exception applies to both senior and lower level managerial positions. The Court determined that exempt senior managerial personnel includes employees who play a part in developing the business's policies and strategic planning. Exempt lower level managers must exercise an interpretive decisional power, determining specific objectives as well as the work procedures and methods that reflect the decisions made by the senior managerial personnel.

In Mr. Skiba's case, the Court of Appeal stated that even though the employee had lost the title of "director", he retained most of his managerial duties and, as such, was a manager exempt from the right to overtime as provided by section 54(3) of the ALS.

Considering that Mr. Skiba qualified as managerial personnel and was exempt from the right to overtime, the Court of Appeal concluded there was no need to decide whether the Superior Court was correct in law in deciding that an employee who is remunerated on an annual basis is not entitled to overtime.

Lesson for Employers

This Court of Appeal of Québec ruling emphasizes the importance of looking at duties rather than titles when determining whether an employee holds a managerial position. An employee with a title that is not associated with a managerial position may exercise managerial functions within the meaning of the ALS. The reverse is also true. Consequently, employers should review employees' actual duties before determining exempt status under the ALS.

ENJOYED *THE HR SPACE?*
Receive it via email

SEE PREVIOUS ISSUES OF *THE HR SPACE*

SEARCH *THE HR SPACE* BY TOPIC

Authors

Marc Ouellet
Montréal

SUBSCRIBE TO UPDATES from this team

Practice Areas

Labour, Employment & Human Rights

© 2014 Fasken Martineau DuMoulin LLP

75002 Paris
+33 1 44 94 96 98
+33 1 44 94 96 99 (fax)
paris@fasken.com
Visit this office »

This website uses cookies. By continuing to use this website you are agreeing to our use of cookies as described in our cookies policy.

ACCEPT