Second Circuit: Entry-Level Audit Associates are "Learned Professionals" and Do Not Qualify for Overtime Wages Under the Fair Labor Standards Act

On July 22, 2014, the United States Court of Appeals for the Second Circuit decided *Pippins* v. *KPMG, LLP* ("*Pippins*"), which examined whether entry-level accountants qualify for overtime wages under the Fair Labor Standards Act (the "FLSA").[1] The Court held that entry level accountants are "learned professionals" under the FLSA, and exempt from overtime wage requirements.

I. Background and Procedural History

Plaintiffs, former entry-level audit associates at accounting firm KPMG, LLP ("KPMG"), brought a class-action suit against KPMG in the Southern District of New York for unpaid overtime wages under the FLSA.

The FLSA requires employers to provide additional compensation to employees who work more than forty hours per week.[2] However, the FLSA exempts employees working in a "professional capacity" from overtime wages.[3] While the FLSA does not define "professional capacity", federal regulations exempt learned professionals—employees whose primary duty requires "the performance of work requiring advanced knowledge in a field of science or learning customarily acquired through a prolonged course of specialized intellectual instruction"—from the FLSA overtime wage requirements.[4] These regulations require a learned professional to perform predominantly intellectual work that requires specialized academic training and permits the exercise of discretion and judgment.[5]

KPMG moved for summary judgment, arguing that the plaintiffs were learned professionals under the FLSA, and the District Court granted the motion. On appeal, the plaintiffs argued that they did not qualify as learned professionals because their work involved routine tasks performed in accordance with strict procedures, and did not require the exercise of discretion or specialized academic training.

II. The Second Circuit's Decision

The Court affirmed the District Court's decision. To determine if the plaintiffs qualified as learned professionals under the FLSA, the Court focused on two issues: whether the work performed by plaintiffs for KPMG demonstrated advanced knowledge, and whether the plaintiffs required specialized intellectual instruction to complete their assignments.

On the issue of advanced knowledge, the Court looked to whether the plaintiffs performed intellectual work that required the consistent exercise of discretion and judgment.[6] The proper test, the Court reasoned, was whether an employee applied advanced knowledge and exercised discretion and judgment by "interpret[ing] and analyz[ing] information central to the practice" of a particular profession.[7] In the accounting field, the Court

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[1] *Pippins* v. *KPMG, LLP*, 2014 WL 3583899 (2d. Cir. 2014).

[2] *See* 29 U.S.C. § 207(a)(1).

[3] *See* 29 U.S.C. § 213(a)(1).

[4] *See* 29 C.F.R. § 541.301(a)

[5] *See* 29 C.F.R. § 541.301(b); 541.301(c); 541.301(d).

[6] *See* 29 C.F.R. § 541.301(b).

[7] *See, e.g.*, *De Jesus Renta* v. *Baxter Pharmaceutical Service Corporation*, 400 F.3d 72, 74 (1st. Cir. 2005) (pharmacist who

reasoned that a learned professional must demonstrate professional skepticism while collecting and analyzing accounting and audit data, and pay particular attention to evidence of accounting impropriety or financial fraud.

Reviewing the evidence, the Court held that the work performed by plaintiffs for KPMG satisfied the test for advanced knowledge. The Court rejected the plaintiff's contention that their work was routine, and did not involve the exercise of discretion. In doing so, the Court paid particular attention to two key facts. First, the Court noted that the plaintiffs evaluated client internal controls and performed walkthroughs of client property. Second, the Court emphasized that the plaintiffs were responsible for collecting and analyzing client information, and producing work product with the resulting data. In the view of the Court these were among the "quintessential activities that form the basis for an audit opinion, KPMG's main product." Downplaying evidence that plaintiffs follow a step-by-step process during these activities, the Court suggested that following detailed procedures did not prevent plaintiffs from exercising "the professional judgment and trained intellect that is characteristic of good accountants." And while the Court recognized that the plaintiffs served as entry-level employees under heavy supervision, the Court distinguished serving as an entry-level professional with not being a professional at all, and emphasized that supervision of junior associates was a customary practice in accounting firms, law firms and other professional organizations.

On the issue of specialized intellectual instruction, the Court agreed with other Circuits that satisfying the learned professional regulations required only "a few years of relevant specialized training" and "a bachelor's degree in a germane field."[8] The Court noted, however, that generic, non-specialized educational requirements would not suffice.[9] To determine the educational requirements of a particular profession, the Court indicated that the appropriate test was professional custom.[10] Therefore, the Court looked to whether a "vast majority" of audit associates "required a prolonged, specialized education to fulfill their role as accountants." Because most audit associates possessed accounting degrees, and were eligible for the CPA exam, the Court held that the work performed by plaintiffs required specialized educational instruction.

Significantly, the opinion concluded by emphasizing that the plaintiffs were not the type of workers the FLSA was intended to protect. In the view of the Court, the FLSA is "a shield to protect unwary workers", rather than "a sword by which [professionals] … may obtain a benefit from their employer which they did not bargain."[11] Applying this rationale, the Court suggested that the plaintiffs were precisely the type of professionals that should be exempted from the FLSA overtime regulations: "well-compensated professionals at a top national accountancy practice, performing core accountancy tasks."

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filled prescriptions according to standard procedure, but retained discretion to depart from procedures, was a learned professional); *Owsley* v. *San Antonio Independent School District*, 187 F.3d 521, 526-27 (5th Cir. 1999) (athletic trainers who can make immediate decisions about treatment of athletes were learned professionals); *Rutlin* v. *Prime Succession, Incorporated*, 220 F.3d 737, 742-43 (6th Cir. 2000) (funeral home director who made decisions about embalming process and supervision of funerals was a learned professional).

[8] *See, e.g.*, *Reich* v. *Wyoming*, 993 F.2d 739, 741 (10th Cir. 1993) (game wardens required to have a bachelor's degree in wildlife management, wildlife biology or a closely related field were learned professionals).

[9] *See, e.g.*, *Dybach* v. *Florida Department of Corrections*, 942 F.2d 1562, 1565 (11th. Cir. 1991) (bachelor's degree in any field insufficient to satisfy specialized instruction prong for probation officers); *Vela* v. *City of Houston*, 276 F.3d 659, 675 (5th Cir. 2001) (emergency medical technicians were not learned professionals due to lack educational requirements and insufficiently detailed training).

[10] *See Young* v. *Cooper Cameron Corporation*, 586 F.3d 201, 205 (2d. Cir. 2009) (quoting 29 C.F.R. § 541.301(d)).

[11] *Freeman* v. *National Broadcast Company*, 80 F.3d 78, 86 (2d. Cir. 1996).

III. Significance of the Decision

Pippins represents a victory for accounting firms, and suggests that other learned professions will find little sympathy from the Second Circuit in claims for overtime wages under the FLSA.

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If you have any questions about the issues addressed in this memorandum or if you would like a copy of any of the materials mentioned, please do not hesitate to call or email Charles A. Gilman at 212.701.3403 or cgilman@cahill.com; Jon Mark at 212.701.3100 or jmark@cahill.com; or John Schuster at 212.701.3323 or jschuster@cahill.com.