



'Primary Purpose' is the Appropriate Test to Determine Exemption Status of an Employee

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In *Heyen v. Safeway, Inc.*, an action to recover unpaid overtime pay by a former assistant manager, the Court of Appeal affirmed the trial court's award of overtime pay to Heyen, even though she was classified as an exempt employee while she was employed by Safeway. Heyen claimed that Safeway should have classified her as non-exempt because she regularly spent a majority of her time performing checking and bagging duties. Safeway claimed that Heyen was simultaneously managing the store while also performing checking and bagging duties, and therefore her activities should be considered exempt.

Relying on Federal regulations incorporated into Wage Order 7 and the California Supreme Court case *Ramirez v. Yosemite Water Co.*, the Court held that the jury was properly instructed by the trial court that when a party claims an employee is engaged in concurrent performance of exempt and non-exempt work, the jury must consider the time to either be exempt or non-exempt, depending on the primary purpose for which the employee undertook the task. Essentially, there is no hybrid category. If the tasks or activities were conducted to supervise employees or ensure smooth functioning of the store, then those activities would be exempt work. However, if the tasks were undertaken for other reasons such as in *Heyen*, where the employee devoted the majority of her time to non-exempt work so as not to exceed the number of hours budgeted for the store, then those activities are non-exempt.

Heyen reiterates that the burden of proof of showing an employee's exempt status rests on the employer. To meet its burden, *Heyen* requires employers to show that the primary purpose of tasks performed by their store managers relate to employee supervision and/or management of the store.