**AFTER THE MERGER: D-BART INDUSTRIES**

**Scenario D**

**Graduate Team Handout**

Monday morning at D-Bart headquarters in Portland, Ore., HR Director Wendy Wright received a call from Tom Butler, an hourly employee at the D-Bart plant in Centralia, Wash. Tom said that at the request of his supervisor, Kevin Trent, he had been making D-Bart deliveries on his way home from work for several weeks now. When he asked Kevin for overtime and mileage reimbursement for the deliveries, Kevin said overtime wasn’t authorized. "And besides, Tom," Kevin said, "it’s on your way home. It doesn’t take much time, and you’re not driving any more miles than normal, so what’s the big deal?" A few days later, Kevin gave Tom a revised job description indicating that he had been promoted to manager and was now an exempt employee. "Congratulations, Tom," Kevin said, "now you’re one of us."

"Kevin doesn't think it's anything," Tom complained to Wendy, "but every time I make a delivery it adds a half hour to my day. Two or three times a week--and the hours really start to add up. And now Kevin's made me a manager," he said. "It's not what I expected. I'm doing exactly the same work I did before with no increase in pay, and now I don't get overtime. Is that what management is all about?"

Wendy has heard similar complaints from other D-Bart employees, and she suspects this is a companywide concern. She has called in your team of consultants to help her address the problem. Your report is due to her this afternoon, and it must address the following issues:

1. How does one differentiate between exempt and nonexempt employees?

 2. What steps should HR take to ensure that employees are correctly classified?

3. What should be done to ensure that division supervisors administer hours and compensation correctly?

**AFTER THE MERGER: D-BART INDUSTRIES DEBRIEF
Scenario D
Graduate Teams**

**PLEASE NOTE: This page and the pages that follow must not be given to the graduate teams. This information is for judging purposes only.**

Because they assign the work, supervisors play a significant role in determining whether employees are exempt or nonexempt under the FLSA. Unfortunately, many supervisors mistakenly assume that when they make an employee a manager, that employee no longer qualifies for overtime. However, it is the *nature* of the employee's duties and responsibilities that determines exempt status--not the employee's job title.

Employee misclassification can result in a wage and hour audit from the U.S. Department of Labor (DOL), with penalties for misclassification resulting in back overtime pay. In addition to FLSA compliance, Wendy must ensure that D-Bart complies with state wage and hour regulations that differ from the FLSA. Wendy has good reason to be concerned about Tom's phone call; DOL audits are often triggered by employee complaints.

**1. How does one differentiate between exempt and nonexempt employees?**

The FLSA recognizes a number of employee classifications that are exempt from overtime. Employees who do not fall into one of the exempt classifications are considered nonexempt and are eligible for overtime compensation for hours worked in excess of 40 hours per week.

The following descriptions help identify which employees are exempt:

**EXECUTIVE
(Examples: chief executive officer, controller, vice president, director)**

An executive employee regularly receives a predetermined amount of compensation constituting all or part of the employee's salary, which is not subject to reduction because of variations in the quality or quantity of work performed. An executive employee:

1. Is paid at least $23,660 annually ($455 weekly).

2. Primary duty consists of managing the enterprise or a customarily recognized department or subdivision of the enterprise.

3. Customarily and regularly directs the work of two or more full-time employees or their equivalents (for example, one full-time employee and two half-time employees).

4. Has the authority to hire or fire other employees **OR** makes recommendations that carry particular weight as to the hiring, firing, advancement, promotion or any other change in status of other employees.

**ADMINISTRATIVE
(Examples: manager, supervisor, administrator)**

An administrative employee regularly receives a predetermined amount of compensation constituting all or part of the employee's salary, which is not subject to reduction because of variations in the quality or quantity of work performed. An administrative employee:

1. Is paid at least $23,660 annually ($455 weekly).

2. Primary duty consists of performing office or nonmanual work directly related to the management or general business operations of the employer or the employer’s customers.

3. Work includes the exercise of discretion and independent judgment with respect to matters of significance.

**PROFESSIONAL: LEARNED AND CREATIVE
(Examples: accountant, nurse, engineer, composer, singer, graphic designer)**

These employees regularly receive a predetermined amount of compensation constituting all or part of their salaries, which is not subject to reduction because of variations in the quality or quantity of work performed.

Employees in this category are paid at least $23,660 annually ($455 weekly). (Note: For teachers, licensed or certified practitioners of law and medicine, medical interns and residents covered under this exemption, the salary basis and salary requirements do ***NOT*** apply.)

**Learned Professional**
Primary duty consists of the performance of work that requires advanced knowledge (beyond high school) and that is predominantly intellectual in character and consistently includes the exercise of discretion and independent judgment.

1. The advanced knowledge is in a field of science or learning.

2. The advanced knowledge was acquired by a prolonged course of specialized intellectual instruction (position possesses the appropriate academic degree or has substantially the same knowledge level and performs substantially the same work as degreed employees but possesses advanced knowledge through a combination of work experience and intellectual instruction).

**Creative Professional**
Primary duty consists of the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor as opposed to routine mental, manual, mechanical or physical work.

**COMPUTER-RELATED
(Examples: network or database analyst, developer, programmer, software engineer)**

Computer-related employees in this category are paid at least $23,660 annually ($455 weekly) **OR** at least$27.63 per hour. That is, this exemption does ***NOT*** have to meet the salary basis requirement to regularly receive a predetermined amount of compensation constituting all or part of the employee's salary, which is not subject to reduction because of variations in the quality or quantity of work performed, ***IF*** paid at least $27.63 on an hourly basis.

Primary duty consists of:

1. The application of system-analyst techniques and procedures, including consulting with users to determine hardware, software or systems functional specifications, OR;

2. The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, OR;

3. The design, documentation, testing, creation or modification of computer programs related to machine-operating systems, OR;

4. A combination of these duties, which requires the same level of skills.

**OUTSIDE SALES
(Examples: salespersons, contract negotiators)**

Salary basis and salary requirements do ***NOT*** apply for this exemption. That is, this exemption does ***NOT*** have the salary basis requirement to regularly receive a predetermined amount constituting all or part of the employee's salary, which is not subject to reduction because of variations in the quality or quantity of work performed, ***AND*** this exemption does ***NOT*** have to be paid $23,660 annually ($455 weekly).

1. Primary duty consists of making sales or obtaining orders for contracts for services or for the use of facilities for which consideration will be paid by the client or customer.

2. Customarily and regularly is engaged away from the employer’s place or places of business.

**HIGHLY COMPENSATED EMPLOYEES PERFORMING EXECUTIVE, PROFESSIONAL OR ADMINISTRATIVE DUTIES**

In this category, the employee is paid an annual total compensation of $100,000 or more, which includes at least $455 per week paid on a salary basis. The required total annual compensation of $100,000 or more may consist of commissions, nondiscretionary bonuses and other nondiscretionary compensation earned during a 52-week period, but does not include credit for board or lodging, payments for medical or life insurance, or contributions to retirement plans or other fringe benefits.

Primary duty consists of performing office, nonmanual work. Note: No matter how highly paid, manual workers or other blue-collar workers, including nonmanagement construction workers, who perform work involving repetitive operations with their hands, physical skill and energy are not eligible for this exemption.

Employee in this category customarily and regularly performs at least one of the exempt duties or responsibilities under the executive, professional or administrative exemptions.

*Source: FLSA: Exemption Questionnaire (SHRM)*

**2. What steps should HR take to ensure that employees are correctly classified?**

HR at D-Bart should perform an exemption audit for all divisions to ensure that employees are classified correctly. All documents derived from the analysis should be retained by HR in the event of a DOL investigation. The audit should include the following steps:

1. Identify each position's required tasks and duties.
2. Estimate the number of the hours spent per week handling the listed tasks.
3. Determine which duties fall into the exempt categories listed in question 1 (above).
4. Allocate the hours spent per week between exempt and nonexempt duties.
5. Determine exempt or nonexempt status for the position.

**3. What should be done to ensure that division supervisors administer hours and compensation correctly?**

There are a number of things that need to be done at D-Bart to ensure proper implementation of the FLSA.

*1. Train all managers and supervisors.*
Managers often incorrectly think that wage and hour issues are HR’s responsibility. They must understand that it is the work they assign employees that determines exempt or nonexempt status. Simply promoting someone into a management position does not make them exempt. Supervisors must not encourage off-the-clock work, and managers and supervisors must be held accountable if such encouragement exists.

*2. Document policies in the employee handbook.*Clearly state in the employee handbook that management expects all nonexempt employees to strictly adhere to their break and lunch schedules. Indicate that overtime must be approved in advance and that nonexempt employees are not to take work home or work during off hours. Employees should sign a document indicating their understanding and agreement to these conditions.

*3. Create a corporate climate that does not encourage FLSA violations.*
When employees are expected to "go the extra mile" or are encouraged by managers to work through breaks or after hours, the organization is at risk for DOL audits and penalties. Remind managers that all overtime is to be compensated and that D-Bart will not tolerate supervisor behaviors that encourage off-the-clock work.

**References**

SHRM. (n.d.). FLSA: Exemption questionnaire. Retrieved March 18, 2011, from [www.shrm.org/TemplatesTools/Samples/HRForms/Articles/Pages/CMS\_009647.aspx](https://des-edit.shrm.org/TemplatesTools/Samples/HRForms/Articles/Pages/CMS_009647.aspx) .