

## **Bona Fide Professionals Under the Fair Labor Standards Act**

Bona-fide professionals are exempt from the Fair Labor Standards Act (FLSA). However, this statement leaves unanswered the question of who qualifies as a bona-fide professional.

Until 1938, the year the FLSA was passed, it was fairly easy to determine who was a bona-fide professional. These individuals were people with more than just a job: they had careers. The early mobility of American society was based on the fact that upon reaching one's destination, there would be something to do to make a living. Land was inexpensive and even free, at times. If a person worked the land, generally that person would find success. If farming turned out to be unproductive, there was enough work and an insufficient number of people to perform it that people who left the one-room schoolhouse at the tender age of seven or eight were able to become productive members of society. With industrialization came factories, which had an insatiable appetite for untrained labor. A regular worker at a factory or in other employment did not need job training, just a job.

There were those who occupied a different space in that economy. They brought their job with them. They were trained in a specific trade, craft, or profession. They often worked for themselves; if they worked for someone else, they often knew more about their field than their boss did. Craftsmen, artisans, and tradesmen were covered by the FLSA. They were seen as exploitable, especially as many trades became more mechanized and required less knowledge. Professionals were left uncovered by the FLSA.

A professional has to have both a practical and theoretical knowledge of his or her field. An accountant, who has studied accounting theory and history, is a professional. A book-keeper, who has a technical knowledge of keeping accounts but lacks the broader knowledge and perspective of an accountant, is not a professional. To qualify for the professional exemption, the normal way of entering the field must involve a certain level of academic achievement. For some fields, an undergraduate degree with a major in the field might suffice; most fields require some graduate study to qualify as a professional.

Another example of people with similar jobs being classified as either professional or not is in the field of art. Artists are considered professionals under the FLSA, if their work is original or creative and dependent on the artist's imagination or talent. However, a sign painter, for example, who takes someone else's design and paints it onto a new surface is not performing exempt work.

The rapid evolution of the computer field has changed the definition of who qualifies as a professional. Many tasks that were once the realm of dedicated computer scientists are now accomplished by high school students. As Arbitrator David Vaughn has pointed out, today the mere invocation of the “C-word” is insufficient to call a computer person a professional. Professional status requires a high level of theoretical knowledge of computer science. It is not enough to get the computer to accomplish a task. The work must involve changing the abilities of the computer, whether determining what should be changed or how to change it, or changing the deepest internal workings of the computer.

There are not many gray areas in the definition of a professional. But unscrupulous employers will often try to redefine job descriptions to fit the professional exemption. Employment law is full of cases litigated over just this issue . Perhaps this is why Congress chose to exempt only “bona-fide” professionals , to further reduce the opportunity for confusion and litigation.