

CLIENT ALERT: Supreme Court Ruling Approves of Department of Labor Interpretation that Mortgage Originators Do Not Qualify for Administrative Exemption

On March 9, 2015, in *Perez v. Mortgage Bankers Association*, the United States Supreme Court found that the Department of Labor had the authority to reclassify mortgage originators as non-exempt employees who are eligible for overtime compensation under the Fair Labor Standards Act ("FLSA"). While the Court mostly addressed the rule-making authority of the Department of Labor, the case establishes that based on the Department of Labor's current interpretation of the law, unless a mortgage originator qualifies under the outside sales exemption to the FLSA, a mortgage originator is likely entitled to overtime pay.

The decision is the latest entry into a long saga over the classification of mortgage originators. By way of history, in 2010, the Department of Labor reversed its position announced in 2006 and concluded that mortgage originators were not exempt from overtime under the administrative exemption to the FLSA. The interpretation was appealed, and in 2013, a court of appeals found that the Department of Labor did not follow required procedures before reversing its opinion. See MBJ's April 16, 2010 Client Alert entitled, *U.S. Department of Labor Concludes Mortgage Loan Officers Are Not Exempt Under the Administrative Exemption to the FLSA* and MBJ's July 3, 2013 Client Alert entitled, *Federal Court of Appeals Strikes Down U.S. Department of Labor Interpretation on Mortgage Originators*.

The Court's reasoning in *Perez* addresses the authority of a governmental agency to issue opinions and guidance when interpreting statutes. That portion of the decision will have an impact on how agencies issue opinions on the meaning of the laws each agency is charged with enforcing. However, as a practical matter, the *Perez* decision confirms that the administrative exemption is not applicable to mortgage originators. Employers should no longer rely on the Department of Labor's 2006 opinion letter that mortgage originators fall under the FLSA's administrative exemption. Employers must also be mindful to track policy changes from the Department of Labor (and other agencies), as the changes may not be vetted through public rulemaking processes.

Employers should consult with their MBJ attorney to discuss any questions concerning wage and hour issues.

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