



ROBINSON & COLE LLP

## Labor, Employment & Benefits



### **IT Support Specialist Does Not Qualify as Exempt from Overtime under the FLSA's Computer Professional Exemption**

Anthony Martin worked as an IT Support Specialist for the Indiana Michigan Power Company, maintaining software and troubleshooting and repairing problems. If Martin could not fix a problem, he reported the problem and his efforts to fix it to his supervisor, who then decided how to respond to the situation. Additionally, Martin installed hardware and cable for the company's computer network, assisted with the wiring of the network and assisted with relocating workstations. Martin, a high school graduate, did not possess any computer certifications, did not have his own business phone line and worked in a common work area. After Indiana Michigan Power Company classified Martin as exempt from the Fair Labor Standards Act's overtime requirements, Martin filed suit claiming that he was improperly denied overtime.

In [Martin v. Indiana Michigan Power Company](#) (8/23/04), the U.S. Court of Appeals for the Sixth Circuit concluded that Martin did not meet the criteria for the FLSA's computer professional exemption because he was not engaged in computer programming, software engineering or systems analysis. As part of a maintenance organization that takes care of computer systems, Martin simply engaged in tasks performed to predetermined specifications in a system design created by others. Since maintaining the computer system within the predetermined parameters does not require "theoretical and practical application of highly-specialized knowledge in computer systems analysis, programming and software engineering," as required by the FLSA, Martin was not exempt as a computer professional.

The court also concluded that Martin's work did not relate to the administrative operations of the company and that, because he did not have any input into the nature of the computer resources available to the company, his work was not of sufficient importance to the management or operation of the business to qualify for the FLSA's administrative exemption. Finally, the court noted that the mere complexity of Martin's work was not a sufficient basis to justify classifying him as an administrative employee.

### **Chef Entitled to Pursue Malicious Prosecution Claim against Restaurant that Accused Him of Stealing**

Chelsea Bar & Billiards fired its executive chef, Arra Lawson, claiming that he had taken food from the kitchen in violation of restaurant policy. The day after he was notified of his termination, Lawson retrieved his personal belongings from Chelsea, including his personal knives, knife sharpener, uniforms, and other kitchen tools. Chelsea's management claimed that Lawson also had taken various items belonging to the restaurant and filed a criminal complaint against Lawson alleging that he committed larceny. Lawson was arrested but the charges were later dismissed by the district attorney who stated that his office could not prove the larceny charges beyond a reasonable doubt. Lawson sued Chelsea's management, alleging malicious prosecution and intentional infliction of emotional distress.

In [Lawson v. New York Billiards Corporation](#) (8/10/04), the U.S. District Court for New York denied the restaurant's motion for summary judgment, ruling that there were questions of fact regarding whether Chelsea truly believed that Lawson was guilty of larceny and whether Chelsea had acted with an improper motive in reporting Lawson to the police. Accordingly, Lawson was entitled to present his claim to a jury. The court, however, dismissed Lawson's claim of intentional infliction of emotional distress, concluding that Chelsea's alleged conduct was not sufficiently extreme and outrageous to meet the standard for this claim.

### **Facially Neutral RIF with a Discriminatory Impact on Older Employees Violates ADEA**

Faced with the need to control costs and staffing levels, Knolls Atomic Power Laboratories designed and implemented a reduction in force that led to the layoff of 31 employees, 30 of whom were over the age of 40. The affected employees filed a lawsuit claiming that the RIF violated the Age Discrimination in Employment Act. After a trial, a jury found that KAPL did not intend to discriminate against the over-40 employees but that the RIF had an adverse impact on the employees because of their age. On appeal, KAPL argued that the ADEA does not allow disparate impact claims, and further, that the employees failed to prove the elements of a disparate impact claim. In [Meacham v. Knolls Atomic Power Laboratory](#) (8/23/04), the U.S. Court of Appeals for the Second Circuit rejected both arguments.

The court of appeals ruled that the ADEA permits disparate impact claims. The court acknowledged that employers are free to decide that layoffs are necessary and that whether an employee has skills critical to the performance of the company's functions and the employee's flexibility in skills may be appropriate criteria to use in making the termination decisions. The court ruled, however, that where the criteria are subjective (such as KAPL's assessments of criticality and flexibility), the employer must impose safeguards to protect against managerial bias. In this RIF, the evidence demonstrated that the subjectivity of the criteria disproportionately impacted older employees and KAPL failed to audit or validate the results to guard against bias. Accordingly, the court affirmed the disparate impact verdict against KAPL.

### **Lawsuit May Be an Unfair Labor Practice under the NLRA Only If Objectively Baseless and Motivated by an Intent to Retaliate**

In the National Labor Relations Board's supplemental decision in [Grinnell Fire Protection Systems Company](#) (8/3/04) the NLRB clarified the standard for determining whether a lawsuit filed by an employer constituted an unfair labor practice in violation of the National Labor Relations Act. Under the prior standard, if a lawsuit relating to conduct protected by the NLRA was finally adjudicated and was won by the defendant, the lawsuit was deemed meritless and could give rise to a retaliation claim. The U.S. Supreme Court's decision in [BE & K Construction Co. v. NLRB](#) (2002) questioned the merits of that standard because it could penalize plaintiffs even if the lawsuit was reasonably based, thereby infringing on the plaintiff's First Amendment rights.

Accordingly, in [Grinnell Fire Protection Systems Company](#), the NLRB ruled that even if a lawsuit was retaliatory in motive, it would not violate the NLRA unless it also was objectively baseless. Moreover, the fact that an employer did not prevail in a lawsuit is insufficient to establish that the lawsuit was baseless. Instead, to prove a violation of the NLRA, it must be proven that the employer lacked a reasonable basis in fact and/or law for filing and prosecuting its lawsuit. Applying this standard to the [Grinnell](#) case, the NLRB concluded that even though Grinnell may have had a retaliatory motive for filing and prosecuting its case, the evidence did not establish that the case was either objectively or subjectively basis, and thus, Grinnell's actions did not violate the NLRA.

### **Professor's Failure to Exhaust Internal Grievance Procedures Established by an Employee Manual Bars Court Claims**

Susan Neiman, an assistant professor in the philosophy department at Yale University, was not offered a tenured position within the department. Neiman believed that the decision to reject her application for a tenured position was caused by Yale's failure to follow the tenure procedure set forth in the faculty handbook. Instead of challenging the tenure decision through the grievance process contained in the handbook, however, she filed a lawsuit against Yale for

breach of contract, breach of the implied covenant of good faith and fair dealing, and negligent misrepresentation. Yale moved to dismiss these claims, arguing that Neiman's failure to exhaust the internal grievance procedures barred her from pursuing her claims in court.

In [Neiman v. Yale University](#) (7/20/04), the Connecticut Supreme Court ruled that the exhaustion of remedies doctrine applies to the internal grievance processes provided by academic institutions. In reaching this decision, the court ruled that, where an internal grievance procedure is part of the employment contract, the parties to the contract are bound to follow those procedures. It also recognized that academic institutions are better suited than the courts to make decisions regarding tenure issues. Finally, the court noted that the "internal procedures do not precluded access to the court should the grievant be dissatisfied with ultimate result. They merely ensure that the grievant and the school have an opportunity to resolve the dispute before seeking redress in the courts, thereby conserving judicial processes." Noting that Neiman might have avoided the damages she claims to have suffered had she followed the internal grievance procedures, the court affirmed the dismissal of her lawsuit.

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