
**Federal Court Report**

**Business Development Managers Found to Be Exempt from Overtime**

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Employees hired as business development managers to persuade corporate customers to purchase General Motors (GM) vehicles are exempt and not entitled to overtime, according to the 11th U.S. Circuit Court of Appeals.

GM developed a program to use business development managers in an effort to increase fleet sales for its dealers. Those employees were responsible for identifying new corporate customers, persuading those customers to purchase GM vehicles for their fleets and then transitioning the sales opportunities to GM dealers.

The business development managers worked for a company called Nexus Business Solutions through an outsourcing arrangement with GM. They filed a collective action, alleging that Nexus owed them overtime under the Fair Labor Standards Act (FLSA). The 11th Circuit held they were not entitled to overtime because they were covered by the administrative exemption.

The administrative exemption has three requirements: 1) the employee must be paid a salary of at least $684 per week, 2) the employee must mainly perform "office or non-manual work related to the management or general business operations of the employer" or its customers, and 3) the employee's primary duty must include "the exercise of discretion and independent judgment with respect to matters of significance." The third requirement is met only when an employee's work involves "the comparison and the evaluation of possible courses of conduct, and acting or making a decision after the various possibilities have been considered."

The business development managers agreed that the first two requirements for the exemption were satisfied. Their only argument was that they did not meet the third requirement—the exercise of discretion and independent judgment with respect to matters of significance.

The employees argued that their jobs were too repetitive and too restricted to involve discretion and independent judgment. They contended that their jobs involved asking pre-determined questions, following literal scripts, regurgitating pre-approved phrases, and using canned presentation materials, with little or no deviation on their part. The 11th Circuit disagreed.

The court explained that the business development managers had a hand in choosing which leads to develop, they performed customized research before meeting with selected leads and they delivered presentations that necessarily required some degree of customization. The court also noted that the employees themselves described their primary role as being to "develop business leads and opportunities for dealerships," that they act as "'facilitator[s] and liaison[s]' between the customer and the dealerships," and that the focus of their job is "developing those new relationships and bringing them to the dealer." All of this required creative thinking and tailoring to each individual customer—in other words, discretion and independent judgment.

The court also concluded that the business development managers exercised discretion and independent judgment with respect to matters of significance. As to this aspect of the third requirement, the court explained that securing new customers for GM is "undoubtedly a matter of significance from the perspective of Nexus" because Nexus's entire business involves supplying employees to GM. The matters about which these employees exercise discretion, the court explained, "goes straight to the heart of GM customer recruitment efforts—and straight to the core service that Nexus provides."

*Brown v. Nexus Business Solutions LLC*, 11th Cir., No. 20-13909 (April 1, 2022).

**Takeaway:** When an employer classifies an employee as exempt under the FLSA, the employer has the burden of proving that all the requirements of an exemption are met. Job titles are not determinative, and the employee's actual job duties must be carefully evaluated to determine whether the second and third requirements of the exemption are met. Employers should critically evaluate whether all employees classified as exempt meet all the requirements of an exemption.

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