

SECOND CIRCUIT REVIEW

Expert Analysis

The ‘Advanced Knowledge’ Prong of the FLSA’s ‘Learned Professional’ Exemption

In *Isett v. Aetna Life Insurance*, No. 18-3271 (2d Cir. Jan. 14, 2020), the U.S. Court of Appeals for the Second Circuit clarified the standard for determining whether an employee utilizes “advanced knowledge” necessary to qualify for the “learned professional” exemption to the Fair Labor Standards Act’s (FLSA) overtime-compensation mandate. In an opinion written by Circuit Judge José A. Cabranes and joined by Circuit Judge Reena A. Raggi and District Judge Edward R. Korman, sitting by designation from the Eastern District of New York, the Second Circuit ruled that an employee uses “advanced knowledge” if her “primary” duties require the exercise of discretion and judgment characteristic of her profession. The court applied this two-step inquiry for the first time in the



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context of an employee who acts in a manner consistent with the central characteristics of the profession at issue, but does so outside of that profession’s traditional employment setting.

Background and District Court Proceedings

Sharon Isett, a registered nurse, worked for Aetna Life Insurance Company for five years as an appeals nurse consultant. In her role, Isett was tasked with reviewing insured patients’ clinical files and analyzing whether, under Aetna’s guidelines, requested services were medically necessary requiring Aetna to pay for them. Isett was authorized to make a final affirmative determination of medical necessity, or, instead, to defer to a superior medical director’s judgment. Coverage denials,

in contrast, specifically required the medical director’s sign off.

In 2014, Isett filed a class action against Aetna in Connecticut federal district court, alleging that she and others similarly situated had been unlawfully misclassified as exempt from the FLSA’s overtime-compensation requirement. Following discovery, the parties cross-moved for summary judgment on the issue of whether the FLSA’s overtime-payment exemption for “learned professionals” applied to Isett’s claims. Because Aetna appeals nurse consultants, like Isett, “use their advanced knowledge, training and experience as registered nurses to make correct decisions concerning the need for treatment,” the district court held that Isett was a “learned professional” not entitled to overtime compensation. *Isett v. Aetna Life Ins. Co.*, Civ. No. 14-1698, 2018 WL 4697278, at *2 (D. Conn. Sept. 30, 2018).

Fair Labor Standards Act

The FLSA was enacted to protect “the minimum standard of living necessary for [the] health,

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efficiency, and general well-being of workers.” 29 U.S.C. §202(a). Among its provisions, the FLSA mandates that employees who work more than forty hours per week be compensated for those excess hours at a higher rate. See *id.*

§207(a)(1). Exempt from the FLSA’s reach, however, are individuals employed in a “bona fide executive, administrative, or professional capacity.” *Id.* §213(a)(1). In *Isett*, only the third category was at issue.

The FLSA does not itself define what it means to be a “professional.” The Secretary of Labor has promulgated regulations specifying that an employee is a “learned professional” subject to exemption only if (1) her work requires “advanced knowledge,” (2) “in a field of science or learning,” (3) “customarily acquired by a prolonged course of specialized intellectual instruction.” 29 C.F.R. §541.301(a). Work requiring “advanced knowledge” is “predominantly intellectual in character,” and “includes work requiring the consistent exercise of discretion and judgment, as distinguished from performance of routine mental, manual, mechanical or physical work.” *Id.* §541.301(b).

Second Circuit’s Precedent

The Second Circuit first examined the meaning of the “advanced knowledge” prong of the “learned professional” exemption in *Pippins v. KPMG*,

759 F.3d 235 (2d Cir. 2014). There, the court surveyed the approaches of its sister circuits, observing that the application of “advanced knowledge” takes one of two forms: substantive interpretation of data, or meaningful decision-making capacity, quotidian or otherwise, characteristic of a member of the employee’s profession. Ultimately, the *Pippins* court explained, the “learned professional” exemption “applies if workers rely on advanced knowl-

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edge of their specialty to exercise discretion and judgment that is characteristic of their field of intellectual endeavor.” *Id.* at 243.

Applying this formulation, the *Pippins* court held that junior audit associates who perform “entry-level accounting tasks” under close supervision, and who are “automatically promoted to a more senior accounting position after two years of satisfactory employment,” use “advanced knowledge” in their work and are properly classified under the professional exemption. See *id.* at 237-38.

Second Circuit’s Opinion

While *Pippins* represented the Second Circuit’s first opportunity

to interpret the “advanced knowledge” requirement, *Isett* was the court’s first occasion to apply the *Pippins* formulation “in the context of professional work performed in non-traditional settings,” namely, a registered nurse conducting medical-necessity review for an insurance company. *Isett v. Aetna Life Ins. Co.*, 947 F.3d 122, 131 (2d Cir. 2020).

The court began by clarifying the “rule of *Pippins*”: An employee uses “advanced knowledge” if she “acts in a manner that requires the discretion and judgment characteristic of an employee practicing the profession at issue.” *Id.* Applying that framework, the court explained, involves a “two-step” inquiry: (1) identifying the qualities or skills characteristic of the profession at issue and (2) determining if the employee’s “primary duty” reflects those qualities or skills. *Id.* at 131, 136, 138.

With respect to *Isett*’s claims and the first step of the inquiry, there was no dispute that registered nurses can, and indeed generally do, exhibit the qualities or skills sufficient to satisfy the “advanced knowledge” requirement. Indeed, the Secretary’s regulations provide that “[r]egistered nurses who are registered by the appropriate State examining board generally meet the duties requirements for the learned professional exemption.” 29 C.F.R. §541.301(e)(2). Yet *Isett* contended that the distinctive “qualities and skills” that endow

registered nurses with the status of “professionals” are characteristic only of nurses performing traditional clinical duties, such as bedside nursing or administering medication, as opposed to non-traditional roles such as she performed.

The Second Circuit disagreed. *First*, the Secretary’s regulation relating to registered nurses, by its express terms, did not limit its “learned professional” characterization to nurses performing clinical work with patients. *Second*, the “advance knowledge” inquiry focuses not on an employee’s *duties*, but the *qualities* and *skills* characteristic of the employee’s profession. *Third*, to that end, there was “no support for the proposition that only those registered nurses who perform clinical duties” use advanced knowledge, whereas “registered nurses who work outside of a clinical setting primarily perform routine mental and physical work.” *Isett*, 947 F.3d at 132. That court observed that the “practice of registered nursing is characterized primarily by the ability to act independent of direction, or under minimal supervision, on the basis of collected clinical data”—an apt description of both clinical and non-clinical nurses. *Id.* at 133.

At the second step of the inquiry, the Second Circuit considered the “critical legal question” of “whether nurse consultants act in a manner that reflects the central characteristics of registered nurses.” *Id.* at 133-34. Put differently,

Isett’s claim turned on whether she “acted independently—or, at a minimum, under limited supervision—on the basis of collected clinical information when she approved insurance coverage of medical services.” *Id.* at 134. The court concluded that she did.

Isett’s role, the court summarized, consisted of examining a patient’s file, applying medical criteria found in highly technical guidelines to a patient’s unique and varying facts, and determining whether the requested services are medically necessary. Most importantly, it was within

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Isett’s discretion to unilaterally approve coverage for medical services, requiring Aetna to pay, or to instead seek the intervention of a supervisory medical director. Because it is a “hallmark of informed professional judgment to understand when a problem can be dealt with by the professional herself” versus “when the issue needs to be brought to the attention of a senior colleague,” *Isett*’s ability to do so “reflect[ed] the professional discretion and judgment of registered nurses.” *Id.* at 134, 136 (quoting *Pippins*, 759 F.3d at 248).

In sum, *Isett*’s primary duty as an appeals nurse consultant

required the discretion and judgment characteristic of registered nursing—the ability to act independently or under limited supervision on the basis of collected clinical data. Accordingly, the court determined that her job required the use of “advance knowledge.”

Conclusion

The Second Circuit’s decision in *Isett* builds on *Pippins* to clarify the scope of the FLSA’s “learned professional” exemption, particularly its “advanced knowledge” requirement. In that way, *Isett* offers helpful and unique guidance to employees working in non-traditional employment settings, as well as to their employers. Going forward, federal district courts will be asked to apply *Isett*’s holding and reasoning to different employment scenarios, and potentially to other FLSA exemptions.