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# UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

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LOREN BENNINK,

*Plaintiff-Appellant*,

*v*.

CINCINNATI BELL TELEPHONE COMPANY, LLC,

*Defendant-Appellee*.

No. 26-3150

Appeal from the United States District Court for the Southern District of Ohio at Cincinnati.
No. 1:23-cv-00774—Douglas Russell Cole, District Judge.

Decided and Filed: October 29, 2026

Before: GIBBONS, LARSEN, and RITZ, Circuit Judges.

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## COUNSEL

**ON BRIEF:** Brian J. Butler, THE BUTLER TRIAL FIRM, Cincinnati, Ohio, for Appellant. Neal Shah, Grace A. Kuntz, FBT GIBBONS LLP, Cincinnati, Ohio, for Appellee.

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## OPINION

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RITZ, Circuit Judge. Loren Bennink claims that his employer, Cincinnati Bell Telephone Company, LLC, failed to pay him overtime wages, violating the Fair Labor Standards Act (FLSA) and breaching its contract with him. The district court granted summary judgment to Cincinnati Bell, finding that Bennink is an exempt computer employee under the FLSA and no contract existed. We affirm.

I.

A.

Bennink has a long history with Cincinnati Bell. From 2005 to 2008, Bennink worked at Startek, which provides contact center services to a variety of customers and industries, first as a bid and sales engineer manager and then as Senior Director of Bid and Sales Engineering. When Cincinnati Bell sought to outsource its contact center operations, Bennink was deeply involved in preparing Startek's proposal. In 2009, as the two companies finally agreed to a deal, Bennink transitioned into an independent contractor role with Startek as an "IT Consultant." RE 12-7, Bennink Resume, PageID 599. In this new capacity, he took on "developing" the interactive voice response technology (IVR) system for Cincinnati Bell as the "point IT project manager." RE 12, Bennink Dep., PageID 97. Many of us are familiar with IVR, even if not by that name—it is the interactive automated system that customers often encounter when they call into a help desk. Think "press 1 if you are calling about your bank statement; press 2 if you are calling to cancel your credit card . . ."—that kind of thing.

Providing Cincinnati Bell with an effective IVR system was no small effort. It took approximately two years to launch the new system, during which time Bennink was sorting through documentation and technical specifications from the company's previous IVR system, documenting a new proposed system, and determining how to connect the new system to Cincinnati Bell's databases—a "huge endeavor," in Bennink's own words. *Id.* at PageID 100.

Cincinnati Bell eventually decided to bring its contact center operations in-house. Bennink helped the company adjust its IVR system yet again, "guiding them through the dark" himself because Cincinnati Bell's internal employees "weren't necessarily the people who developed the documentation when Startek was building [the IVR system]." *Id.* at PageID 116. Since Bennink had been so heavily involved in the IVR project from the start, he "had a lot of knowledge . . . of the designing of the requirements . . . from an operations perspective, as well as a technical perspective." *Id.*

Following Bennink's efforts on that project, Cincinnati Bell offered to bring him on as a W-2 employee in May 2016. The offer letter described Bennink as a "Contingency 3 – IT"

employee—a classification the company considers exempt from FLSA coverage under that statute's computer employee exemption. RE 12-2, Offer Ltr., PageID 507; *see* 29 U.S.C. § 213(a)(17). The offer letter provided that Bennink would be compensated at "a rate of $70.06 per hour" or, if he declined medical coverage, "a rate of $75.00 per hour." RE 12-2, Offer Ltr., PageID 507. The letter further stated that "employment with [Cincinnati Bell] is on an at-will basis," and twice stated that the offer "d[id] not constitute an employment contract." *Id.* at PageID 507-08. Bennink signed the offer and declined health insurance. He was subsequently paid $6,000 per pay period, *i.e.*, $3,000 weekly, for almost the entirety of his time with Cincinnati Bell.

Bennink stayed in this role for several years. He worked across departments to determine if updates to the IVR system could be made to enhance the customer experience. He communicated with other IT experts to ensure the changes were enacted. And he documented any changes made to the system. When Cincinnati Bell contracted with another IT service provider, Avaya, to support both the IVR system and other IT needs, Bennink was the point of contact for that relationship. He would also "troubleshoot[] infrastructure issues," explaining what the problem was from a design perspective and engaging with other IT support members to determine how to resolve the issue. *Id.* at PageID 232-33. When Cincinnati Bell acquired Hawaii Telecom in 2021, Bennink took the lead on the integration of Hawaii Telecom's contact center operations into Cincinnati Bell's, largely due to his "history and experience from designing . . . this all with Cincinnati Bell over . . . many years." RE 12, Bennink Dep., PageID 236-27.

On his resume, Bennink described his position with Cincinnati Bell as an "Ops/IT Solutions & Services Engineer" and stated that he "design[ed], implement[ed], and maintain[ed] IT solutions and services, such as IVR call flow designs, dial plans, and various end user support applications." RE 12-7, Bennink Resume, PageID 598. He highlighted that he "leveraged in-depth knowledge of contact center technologies, platforms, and tools," and accomplished "successful contact center infrastructure migrations (both on premise and Cloud based solutions)." *Id.*

But eventually Bennink's many responsibilities became too much for one person. Handling the Hawaii Telecom migration project on top of his other responsibilities left Bennink working long hours, as many as eighteen in a day, and often at odd times to account for the time zone difference. After unsuccessful attempts to raise his workload concerns with his supervisors, Bennink left Cincinnati Bell in June 2023.

B.

Bennink later sued Cincinnati Bell. He alleged that the company (1) violated the FLSA by failing to pay him overtime wages for hours worked beyond forty in a given week and (2) breached his employment contract by failing to pay him $75 per hour for all hours worked, including those above forty per week. Following discovery, the parties filed cross-motions for summary judgment. Cincinnati Bell argued that Bennink was exempt from FLSA coverage either as a computer employee, 29 U.S.C. § 213(a)(17), an administrative employee, 29 U.S.C. § 213(a)(1); 29 C.F.R. § 541.200, or a highly compensated employee, 29 U.S.C. § 213(a)(1); 29 C.F.R. § 541.601. Cincinnati Bell also argued that no valid contract existed between the parties.

The district granted summary judgment in favor of Cincinnati Bell, finding that Bennink was exempt from FLSA coverage as a "computer employee" under 29 U.S.C. § 213(a)(17) and no contract between the parties existed. *Bennink v. Cincinnati Bell Tel. Co., LLC*, No. 1:23-CV-774, 2026 WL 291004, at *5, *10 (S.D. Ohio Feb. 4, 2026). Bennink timely appealed.

II.

A.

"We review the district court's grant and denial of summary judgment de novo." *Jones v. Producers Serv. Corp.*, 95 F.4th 445, 449 (6th Cir. 2024). Summary judgment is appropriate when there is "no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). We draw all reasonable inferences in favor of the nonmoving party. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). But once the moving party has satisfied its initial burden, the nonmoving party must "use specific facts to demonstrate that a genuine issue for trial exists; otherwise, summary

judgment is warranted." *Caudle v. Hard Drive Express, Inc.*, 91 F.4th 1233, 1237 (6th Cir. 2024) (citation modified).

B.

First we address Bennink's FLSA claim. The FLSA requires employers to pay their employees a set minimum wage, plus time-and-a-half for overtime hours. 29 U.S.C. §§ 206(a), 207(a)(1). However, many categories of employees are exempt from these requirements. *See* 29 U.S.C. § 213. The employer bears the burden of proving that an employee falls within an exemption by a preponderance of the evidence. *E.M.D. Sales, Inc. v. Carrera*, 604 U.S. 45, 54 (2025); *Thomas v. Speedway SuperAmerica, LLC*, 506 F.3d 496, 501 (6th Cir. 2007). Whether an FLSA exemption applies is a mixed question of law and fact: "how the [employee] spent their working time" is a question of fact, but "whether their particular activities excluded them from the overtime benefits of FLSA is a question of law." *Icicle Seafoods, Inc. v. Worthington*, 475 U.S. 709, 714 (1986). When interpreting one of FLSA's many exemptions, we may not construe the statutory language in an artificially narrow way but rather must "give the exemption . . . a fair reading." *Encino Motorcars, LLC v. Navarro*, 584 U.S. 79, 89 (2018).

1.

The FLSA exempts from the statute's overtime protections "any employee who is a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker" with one of the specified "primary dut[ies]." 29 U.S.C. § 213(a)(17). In particular, 29 U.S.C. § 213(a)(17)(B) exempts employees who have the primary duty of "design, development, documentation, analysis, creation, testing, or modification of computer systems or programs . . . based on and related to user or system design specifications."[1] Computer employees "who [are] compensated on an hourly basis" must be "compensated at a rate of not less than $27.63 an hour" to be exempt. 29 U.S.C. § 213(a)(17). Although the parties dispute whether Bennink was paid on an hourly or salary basis, both agree he was paid at a rate well over

[1]Cincinnati Bell did not argue that Bennink's work entailed using "systems analysis techniques . . . to determine hardware, software, or system functional specifications" as required for the exemption in § 213(a)(17)(A) or was related to "machine operating systems" as required for the exemption in § 213(a)(17)(C). So we address only the duties described in § 213(a)(17)(B).

the statutorily required hourly rate of $27.63. So we focus on the responsibilities targeted by the statute.

Notably absent from the statute is any requirement of a particular degree, level of education, or job title. That textual absence is a meaningful one. In 1990, Congress first directed the Department of Labor to consider certain computer employees a subcategory of "professionals" exempt under 29 U.S.C. § 213(a)(1). Pub. L. No. 101-583, § 2, 104 Stat. 2871, 2871 (1990). In the resulting regulations, the Department required that these employees exercise independent discretion and apply "highly specialized knowledge" often attained through education. *See* 57 Fed. Reg. 46742, 46744-45 (Oct. 9, 1992). But in 1996, with the enactment of Section 213(a)(17), Congress chose to single out computer employees instead of lumping them in with other professionals. Small Business Job Protection Act of 1996, Pub. L. 104-188, § 2105, 110 Stat. 1755, 1929; *see also Pioch v. IBEX Eng'g Servs., Inc.*, 825 F.3d 1264, 1268 (11th Cir. 2016) (describing the history of 29 U.S.C. § 213(a)(1) and 29 U.S.C. § 213(a)(17)). In doing so, Congress adopted the list of relevant duties from the previous Department of Labor regulations—but omitted the language about education, independent judgment, and highly specialized skills. 69 Fed. Reg. 22122, 22158-59 (Apr. 23, 2004). *Contrast* Small Business Job Protection Act, 110 Stat. 1755, 1929, *with* 57 Fed. Reg. 46742, 46744-45 (Oct. 9, 1992).

The regulations as they stand today similarly reiterate the relevant duties while making no mention of education or a highly specialized skillset. 29 C.F.R. § 541.400. And throughout the history of the computer employee exemption, the Department of Labor has repeatedly emphasized that "job titles vary widely and change quickly in the computer industry" and therefore "are not determinative of the applicability of this exemption." *Id.*; 57 Fed. Reg. 46742, 46744 (Oct. 9, 1992); 69 Fed. Reg. 22122, 22158 (Apr. 23, 2004).

Given the text of the statute and this background, our focus becomes the employee's "primary duty." The Department of Labor's regulations interpreting that phrase are helpful. Of course, we "may not defer to an agency interpretation of the law simply because a statute is ambiguous." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413 (2024). Nonetheless, we may give "[c]areful attention to the judgment of the Executive Branch" to "help inform [our] inquiry." *Id.* at 412-13. Here, we think the Department gets it right.

The Department of Labor determines an employee's "primary duty" by looking for those tasks and responsibilities that are the "principal, main, major or most important duty that the employee performs," based on "the character of the employee's job as a whole." 29 C.F.R. § 541.700(a). That makes sense, since "primary" means "first in rank or importance: chief, principal." *Primary*, Merriam-Webster's Unabridged Dictionary, https://perma.cc/3R72-VKZQ (last visited Oct. 26, 2026). Although time spent on a particular activity is a factor, a duty may still be the employee's most important even if not the most time-consuming. 29 C.F.R. § 541.700(b); *Speedway SuperAmerica*, 506 F.3d at 504. And we have previously noted that we "cannot rely on the plaintiff's or employer's *description* of the plaintiff's position or authority; instead we must 'look at the plaintiff's *actual duties*.'" *Speedway SuperAmerica*, 506 F.3d at 503 (quoting *Ale v. Tenn. Valley Auth.*, 269 F.3d 680, 692 (6th Cir. 2001)).

First, 29 U.S.C. § 213(a)(17)(B) requires that the relevant responsibilities—"design, development, documentation, analysis, creation, testing, or modification"—concern "computer systems or programs." Here, much of Bennink's work revolved around Cincinnati Bell's IVR system. Although the statute does not define "computer system or program[]," 29 U.S.C. § 213; 29 C.F.R. § 541.400, we have little trouble concluding that an IVR system is one. An IVR system is complex and technical. It automatically routes a user's call based on a programmed menu, pulling in information from various databases and other systems. In fact, even while disputing that his role involved working on a computer system, Bennink himself describes "the various computer systems that contributed to IVR's functionality" and how part of his role was working with others to ensure the requested IVR updates "were even feasible within the computer systems." CA6 R. 15, Appellant Br., at 18, 22. This description corroborates our assessment of the IVR system. After all, a program made up of smaller computer systems is still a computer system.

Many of Bennink's responsibilities regarding the IVR system fell within several of the duties described in 29 U.S.C. § 213(a)(17)(B), namely, "documentation," "design," and "development." For one, Bennink extensively documented the IVR system, mapping out where and how the system routed callers based on their needs. He worked in collaboration with others in IT, updating the map to reflect changes made by programmers or giving the programmers

direction on what should be updated to make the system more effective. Although Bennink insists that this responsibility was little more than creating "complicated flowcharts," CA6 R. 15, Appellant Br., at 8, his documentation was essential to helping others in the company understand how the current system worked, and therefore how it could be successfully changed in the future. In *Bohn v. Park City Group, Inc.*, 94 F.3d 1457, 1463-64 (10th Cir. 1996), the Tenth Circuit determined that technical writing responsibilities likely could fall within the "documentation" exempted under the regulatory language Congress later adopted in the FLSA, especially where the writing dealt with "*internal* documentation process[es] . . . requiring knowledge of the system architecture." This is precisely the kind of work Bennink performed when he created an internal document that aligned with both end-user needs and technical specifications. And unlike when *Bohn* was decided, the computer employee exemption no longer requires "theoretical and practical application of highly specialized knowledge." *Contrast id.* at 1463 (quoting 29 C.F.R. § 541.303(c) (1992)), *with* 29 C.F.R. § 541.400.

Bennink's documentation responsibilities also bled over into "design" and "development." 29 U.S.C. § 213(a)(17)(B). In a system like IVR, which exists solely to route customers to the relevant assistance, "the design is the flow." RE 12, Bennink Dep., PageID 191. Bennink met with the team members who would be using or supporting the IVR, taking their feedback and determining how the system should be structured to meet user needs while complying with technical demands. By gathering these inputs and proposing the flow of the IVR, Bennink was designing and developing the system.

These responsibilities sharply contrast with those in *Martin v. Indiana Michigan Power Co.*, 381 F.3d 574, 580-81 (6th Cir. 2004), where we concluded that an IT employee did not fall within the old, regulatory version of the computer employee exception. In that case, the plaintiff was not involved in "making actual, analytical decisions about how [the company's] computer network should function," but rather was involved in tasks like installing hardware and configuring desktops, which were "performed to predetermined specifications in the system design created by others." *Id.* at 580. Bennink's work gathering the needs of both internal teams and end-users and creating a map to guide the programming of the IVR system was, by contrast, "substantively affecting the system." *Id.* at 581. Although no other circuits have conducted an

in-depth analysis of the current version of the exemption, several district courts have similarly distinguished between IT employees who merely follow predetermined steps to resolve technological issues and those who contribute to decisions about how pieces of a system should work together. *See, e.g.*, *Ross v. Creative Image Techs., LLC*, No. 3:13-CV-00003-CRS, 2014 WL 2890467, at *4 (W.D. Ky. June 25, 2014); *Ortega v. Bel Fuse, Inc.*, No. 15-21229-CIV, 2016 WL 1588393, at *13 (S.D. Fla. Apr. 20, 2016). We take the same approach here.

To be sure, not all of Bennink's work fell cleanly within the exemption. Bennink relied on other team members to carry out the actual programming of the system and ensure that the necessary data would be pulled in accordance with the goals laid out by his document. He also often acted as a project manager, coordinating across teams, negotiating deadlines and budgetary requirements, or preparing for the launch of a new IT solution.

But it is not surprising that a job like Bennink's was multi-dimensional. On this record, Bennink's responsibilities concerning documentation, design, and development of the IVR system were the "main" or "most important" part of his job, making them his "primary duty." 29 C.F.R. § 541.700(a). Although the parties do not present an exact breakdown of how much time Bennink spent on his various responsibilities, the evidence demonstrates that Bennink's IVR-related responsibilities were key to his role at Cincinnati Bell. Bennink himself believed he was brought on as an employee at Cincinnati Bell in large part because of his IVR expertise. These skills later made him an integral part of the efforts to migrate and update Hawaii Telecom's IVR system, a task he admitted was sensitive, complex, and time-consuming. Because these responsibilities were so central to Bennink's initial hiring and his workload, we conclude that they were his primary duty.

Finally, Bennink's attempts to downplay his own responsibilities or skills are unconvincing. Bennink makes much of the fact that he has no formal training in computer systems or coding. But he admits that the statute's lack of an explicit educational requirement "reflects the reality that someone [could] learn[] such skills through work experience or self-study." CA6 R. 15, Appellant Br., at 19 n.1; *see also Bohn*, 94 F.3d at 1462 (noting, even under the old, regulatory version of the computer employee exemption, that no formal degree is required). His own descriptions of his work in his deposition make clear that his career has

brought him extensive insight into what makes an IVR system effective. Indeed, he was more than capable of carrying out the duties listed in 29 U.S.C. § 213(a)(17)(B) without a formal degree and did so for years at Cincinnati Bell.

In sum, Cincinnati Bell has met its burden to show that Bennink's responsibilities were intimately intertwined with the design, development, and documentation of the IVR system, making him an exempt computer employee. Because we conclude that Bennink is exempt under the computer employee exemption, we need not determine whether Bennink would be exempt under the administrative and highly compensated employee exemptions.

C.

Bennink also claims that even if Cincinnati Bell was not obligated to pay him overtime wages under the FLSA, his contract with the company provided that he would be paid $75 for every hour worked, meaning that Cincinnati Bell breached the contract by paying him for only up to forty hours per week.

As an initial matter, Bennink cannot claim a breach of contract based on his offer letter alone. To show a breach of contract under Ohio law, Bennink must first prove the existence of a contract. *Lucarell v. Nationwide Mut. Ins. Co.*, 97 N.E.3d 458, 469 (Ohio 2018). "A 'meeting of the minds' between parties is an essential element of a valid contract." *Fry v. FCA US LLC*, 143 N.E.3d 1108, 1114 (Ohio Ct. App. 2017) (quoting *Noroski v. Fallet*, 442 N.E.2d 1302, 1304 (Ohio 1982)).

Even drawing all inferences in Bennink's favor, Bennink cannot show that his offer letter created a valid contract between him and Cincinnati Bell. Two facts are insurmountable. First, Bennink's offer letter, which he signed, stated twice that it "does not constitute an employment contract." RE 1-2, Offer Ltr., PageID 9-10. Second, in his deposition, Bennink himself stated that he "d[idn't] think there was a meeting of the minds" when the parties exchanged the offer letter. RE 12, Bennink Dep., PageID 147. To find that the offer letter itself constituted a valid contract here, where one party clearly stated that it did not intend to enter into a contract and the other party admits to understanding that lack of intent, would require us to ignore the fundamentals of contract law.

It is true that despite the lack of an initial contract, Bennink went on to work as an at-will employee for Cincinnati Bell for several years. And Ohio recognizes that at-will employment is generally "contractual in nature." *Lake Land Emp. Grp. of Akron, LLC, v. Columber,* 804 N.E.2d 27, 32 (Ohio 2004); *see Lunsford v. Sterilite of Ohio, L.L.C.*, 165 N.E.3d 245, 251 (Ohio 2020). But even if at-will employment necessarily creates some sort of contractual relationship, enforcing any contract provision requires sufficiently definite terms. *See Lake Land*, 804 N.E. 2d at 247 (recognizing that employment is contractual when the "employer agrees to pay the employee at an agreed rate"); *Brown v. Fukuvi USA Inc.*, 2022-Ohio-1608, 2022 WL 1514910, at *8-9 (Ohio Ct. App. 2022); *Hopkins v. U.S. Bancorp,* No. 1:16-CV-552, 2017 WL 3537181, at *2 (S.D. Ohio Aug. 17, 2017). Ohio courts allow the trier of fact to consider the facts and circumstances surrounding at-will employment, including the custom and course of dealing between parties, to determine whether "implied or express contractual provisions . . . alter[ed] the terms" of employment. *Mers v. Dispatch Printing Co.,* 483 N.E.2d 150, 154 (Ohio 1985). So the ultimate question is whether Bennink can demonstrate that a $75 hourly rate (including hours beyond forty per week) was a term the parties agreed upon.

In contrast to cases where employees have alleged that specific conversations or company documents provided guarantees about their employment, *see, e.g.*, *id.* at 154 n.3 (noting that the appellant relied on "oral assurances . . . at the time of his hiring that he could not be terminated"); *Wright v. Honda of Am. Mfg., Inc.*, 653 N.E.2d 381, 385 (Ohio 1995); *Clayton v. Cleveland Clinic Found.*, No. 101854, 2015 WL 1851517, at *2 (Ohio Ct. App. Apr. 23, 2015), Bennink argues only that he was being paid $75 per hour as a contractor before joining Cincinnati Bell. So, he believed the offer was intended to be under "precisely the same terms." CA6 R. 15, Appellant Br., at 47. But the offer letter containing the $75 per hour rate did not say whether this would be on an hourly or salary basis, nor did it provide any details regarding overtime pay or hours to be worked per week. And Bennink does not provide any evidence of other, later assurances made by Cincinnati Bell on such matters. The mere mention of a rate of pay similar to his previous rate as a contractor, without any assurances as to whether that rate was to be on an hourly or salaried basis, is insufficient to show that the parties agreed to a $75 hourly rate.

And regardless of the parties' initial understanding regarding Bennink's compensation, in at-will employment relationships, either party "may propose to change the terms of their employment . . . at any time." *Lake Land*, 804 N.E.2d at 32. If the employer proposes reducing the employee's compensation, "the employee's remedy, if dissatisfied, is to quit." *Id.*; *see also Whisman v. Ford Motor Co.*, 157 F. App'x 792, 800-01 (6th Cir. 2005). Here, Bennink was paid $6,000 per pay period, or $3,000 per week (the equivalent of $75 x forty hours), no matter how many hours he worked since October 2016. Although Bennink argued below that he did not assent to any change in the terms, this argument is unavailing. Bennink reviewed his paychecks, which stated he was being paid "$3,000 weekly." RE 16-2, Pay Statements, Page ID 1201-1310. Bennink, moreover, knew he was unable to log more than 40 hours per week and that he was categorized as an "exempt" employee. For its part, management knew that Bennink was working many hours, partly because of Bennink's own complaints about his schedule—complaints where he did not mention any issues concerning his compensation. So even if Bennink and Cincinnati Bell had initially agreed to a $75 hourly rate for all hours worked, we conclude on these facts that Bennink agreed to continued employment on a salary basis.

III.

For these reasons, we affirm.