

Federal Appeals Court Affirms the Importance of Implementing Proper Timekeeping Policies to Guard against Overtime Claims

On January 27, 2016, the United States Court of Appeals for the Fifth Circuit issued an opinion that highlights the importance of implementing proper timekeeping policies in order to guard against allegations that employees are entitled to overtime compensation resulting from “off-the-clock” work.

In *Fairchild v. All American Check Cashing*, the plaintiff-employee alleged, among other things, that she was entitled to unpaid overtime compensation under the Fair Labor Standards Act even though she had failed to report the overtime worked in the employer’s timekeeping system. In this regard the employee alleged that the employer should have known that she was working overtime hours since those hours were somehow reflected in her computer usage statistics.

In a victory for employers, the Court found that the employee was not entitled to overtime compensation because she had violated the employer’s written timekeeping policies by failing to obtain approval for overtime work and because she failed to accurately record her time. Moreover, the Court found that the employer had no knowledge of such overtime worked, rejecting the employee’s claim that her employer had constructive knowledge that she was working overtime hours reflected in her computer usage reports. The Court reasoned that “mere access” to such information was insufficient to constitute constructive knowledge and thereby refused to impose a duty on the employer to investigate the computer usage reports to ascertain whether the employee had been working overtime.

The Fifth Circuit’s decision reflects the continued importance of establishing clear written employee timekeeping policies and procedures, which, if properly crafted and implemented, can guard against employer liability for overtime claims. Among other things, employers should consider communicating to employees written policies that:

- Prohibit employees from working beyond 40 hours in any given workweek without the employer’s prior consent.
- Require employees to fully report all time worked utilizing the employer’s timekeeping system (whether it be electronic, paper timesheet based, etc.) and prohibit employees from working any “off-the-clock” or unreported time.
- Require employees to immediately report to the employer’s officers any instance of a supervisor or other employee requesting that the employee work any such “off-the-clock” or unreported time.
- Prohibit retaliation against employees for accurately reporting all time worked.

Of course, employers that are aware (or that reasonably should be aware) of an employee’s overtime work or unreported hours must take active steps to ensure that the employee is properly compensated for all time worked and that proper timekeeping practices are followed.

Employers are urged to consult with employment counsel to ensure that their written timekeeping policies and practices sufficiently protect them from overtime pay litigation, which

is often enormously expensive and damaging to the employer's business operations.

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