

No Knowledge of Overtime Work? No Wages Due

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The U.S. Court of Appeals for the Seventh Circuit recently found in favor of a manufacturing industry employer in an overtime lawsuit. According to the court, federal wage and hour law does not require overtime pay when the employer had no actual or constructive knowledge of the work. *Kellar vs Summit Seating, Inc.*, 09-cv-464 (Dec. 14, 2011).

In *Kellar*, the former employee was hired in 2001 as a cutter's helper and three years later she was promoted to the position of sewing manager. She had a variety of responsibilities and was paid on an hourly basis.

According to the employee, she regularly arrived at work between 15 and 25 minutes before her 5:00 a.m. shift. She then spent at least 20 minutes unlocking doors, turning on lights and preparing coffee for other employees. No one told her she needed to come in before her shift. She came in early because she felt it would have been a "hassle" to show up precisely at her designated start time and still get her subordinates' workstations "up and running" so they could go straight to work when they arrived.

In February 2009, the employee resigned and sued her employer for overtime compensation under the Fair Labor Standards Act (FLSA).

The employee's sister, who also worked for the employer, claimed that her sister did not work before the start of her shift but chatted and drank coffee. In addition, the employee was aware that the employer's handbook required preapproval for working overtime. Kellar also admitted that she never 1) told the owners about working before the start of her shift; 2) reported errors with her pay checks; 3) requested overtime pay or 4) suggested to HR that her schedule needed to be adjusted to account for her pre-shift work.

The district court dismissed the employee's complaint because her pre-shift activities were preliminary and minimal. The lower court also found that the employer did not know she was engaging in pre-shift work. The worker appealed but, while the Court of Appeals disagreed with the district court that the pre-shift work was preliminary and minimal, the Appeals court did find that the employer did not know or have reason to know that the employee was working prior to her shift. Troy Thompson, "Employee Not Entitled to Overtime When Employer Unaware of Work," www.axley.com (Jan. 10, 2012).



Restaurant Slip and Fall Prevention (continued)

Commentary

The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay and recordkeeping standards for employees.

Hours worked ordinarily include all the time during which an employee is required to be on the employer's premises, on duty, or at a prescribed workplace. Under the FLSA, non-exempt employees must receive overtime pay for hours worked over 40 hours per workweek at a rate not less than one and one-half times the regular rate of pay.

To state a claim for overtime under the FLSA, the employee must show that the employer had actual or constructive knowledge of the overtime work performed. Constructive knowledge is a legal term that means the employer is presumed to know something regardless of whether the employer does, in fact, have knowledge. An employer is presumed to have constructive knowledge if knowledge is obtainable by the exercise of reasonable care. Thus, if the employer should have known, exercising reasonable care, that the employee in this case was working overtime, the court may have ruled for the employee.

Employers should keep detailed time records for employees. In addition, managers and supervisors must be observant and know if workers are starting to work early or staying late after their shifts to make sure there is no expectation of overtime. A policy, like the employer's policy requiring preauthorization of overtime in this case, can be an important risk reduction tool.

Should you have any questions or need further assistance, please visit our website, send an email or call us.



Arthur J. Gallagher & Co.

McDonald's Risk Management Team
4350 W. Cypress St., Suite 300
Tampa, FL 33607

800.869.8402
bsd.McDLossPrevention@ajg.com

www.ajg.com/McDonalds

