Even Well-Intentioned Flex Time Policies Can Lead To Wage And Hour Disputes

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A recent decision from the Third Circuit Court of Appeals involving an employer's "flex time" policy is a timely reminder that an employer's good faith intentions in formulating a policy will not necessarily protect the employer from litigation. In Secretary of Labor v. American Future Systems, Inc., the employer had implemented a "flex time" policy that was intended to allow hourly paid employees the ability to take breaks whenever they wanted, for however long they wanted. The practical effect of the policy was that employees could log off of their computers and stop working at any time. The Department of Labor (DOL) challenged this policy on the grounds that breaks of shorter than 20 minutes need to be treated as paid breaks, but were unpaid under the employer's policy. Because the employer in this case did not differentiate between shorter breaks of less than 20 minutes and longer breaks, the Third Circuit held that the employer's policy violated the Fair Labor Standards Act. The DOL's distinction between short breaks of 20-minutes or less (which need to be paid) and longer breaks (which can be unpaid) is an important rule of thumb to follow whenever an employer is developing or applying break time or timekeeping policies. An employer's benevolent motivation will not foreclose the possibility of a claim stemming from the failure to pay employees who take short breaks throughout the day.

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