

City Not Liable for Overtime with Respect to Police Officers' Off-Duty Use of Work-Issued BlackBerrys

Labor & Employment Law Update

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A Fair Labor Standards Act (FLSA) collective action lawsuit, filed over five years ago by Chicago police officers who claimed they were not paid overtime for their off-duty use of work-issued BlackBerrys, went to a bench trial in August, and the federal judge recently ruled in the City's favor. Although the court, in *Allen, et al. v. City of Chicago*, Case No. 10-C-3183 (N.D. Ill. Dec. 10, 2015), found that the police officers were performing compensable overtime work on their devices while off-duty, the police officers failed to prove that there was an unwritten policy to deny them compensation for that work.

The police officers used their BlackBerrys to communicate by telephone and email with others in connection with police investigations. Some of the police officers testified that they felt obligated to monitor their BlackBerrys while off duty and return phone calls and emails, but were afraid to turn in overtime requests. There was no official policy of denying overtime requests for using the devices while off duty. The city had a policy of requiring police officers to complete and submit overtime reports. Dozens of other police officers had in fact submitted overtime reports for work done on their BlackBerrys, which the city approved and paid. There was no proof the supervisors knew if or when the police officers were working on their devices off duty without submitting overtime reports. There was also no proof that the supervisors had created a culture or unwritten policy discouraging the police officers from reporting any overtime work.

Under the FLSA, an employer must pay overtime to non-exempt employees for all hours worked in excess of 40 in a work week. (There are some exceptions to the standard work week for certain types of workers, including police officers, but not overtime generally). This includes work that is requested not only by an employer, but also work that is "suffered or permitted." Consequently, if an employee voluntarily continues to work at the end of the work shift, the hours are compensable. This is true even if the employee was not authorized to work overtime and is subject to discipline.

The case highlights the risks associated with issuing mobile work devices to hourly and salaried non-exempt employees. There is a need for employers to have a clear policy setting out a reasonable process for employees to report overtime, including any off-duty work on mobile devices that is necessary for their job. The policy should be uniformly enforced and any attempt to discourage employees from reporting overtime should not be tolerated.

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