

Court Lays Out Guidance for Ensuring Hourly Workers Are Paid for Off-Duty Work

Labor & Employment Law Update

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Addressing an employment issue of interest in an increasingly digital world, the Seventh Circuit Court of Appeals (which has jurisdiction over lower federal courts in Illinois, Indiana, and Wisconsin) recently upheld a prior ruling that the City of Chicago was not liable for paying wages for certain employees' off-duty work time.

In the case of *Allen v. City of Chicago*, employees who alleged they were not compensated for off-duty work performed on their mobile devices were not entitled to recovery for that unscheduled, overtime work. Agreeing with the trial court's decision that the City was not aware of the overtime work, and that the employees were not prevented or discouraged from reporting off-duty work time and seeking pay, the court ruled that the City should not be held liable.

In the decision, the court stated that the City would have been liable for unpaid wages it knew or should have known about the work at issue through the exercise of "reasonable diligence." Under the Fair Labor Standards Act, an employer must pay for all work it knew or should have known was being performed. Moreover, an employer is considered to have knowledge of the work if it should have known about it through the exercise of reasonable diligence. The court's decision further illustrates and offers guidance on how employers can exercise such reasonable diligence:

For instance, it is important that employers institute a method by which any time worked outside of the normal business day can be reported in order to be compensated. In this case, the court found that the City of Chicago exercised diligence by allowing employees to submit "time due slips" on which they listed their off-duty hours worked along with a brief, albeit vague, description of the work performed.

Employers should also establish a reasonable policy and process for employees to report uncompensated work time after noticing a shortfall in pay. Such a process might involve an employee handbook provision that instructs employees to carefully review their paychecks, every pay period, to ensure that the paycheck accurately reflects all time actually worked. The handbook should also instruct employees to contact human resources or another appropriate member of

management if a paycheck is short.

Lastly, in order to avoid landing on the wrong side of a legal decision, employers must take employee complaints under such a policy seriously by thoroughly investigating and adjusting compensation due when it is determined that there is a shortfall in the employee's pay.

Bottom Line: Bearing all of this in mind, especially in the modern workplace, employers that have hourly employees who check e-mail, make calls, or conduct any other work outside of normal business hours on their cell phones, must heed the Seventh Circuit's guidance by implementing and enforcing strong and clear policies that meet the "reasonable diligence" standard to ensure that employees are properly compensated for all hours worked.

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