



LEGAL ALERT

September 13, 2017



Steps to Consider to Limit Overtime Issues When Employees Can Work By Email, Laptop and Smartphone

Police employees recently filed suit against the Chicago Police Department claiming it did not compensate them for work they did off-duty on their mobile electronic devices. The Court noted employers are required to pay for all overtime work they know about, even if the work was not requested, the employer did not want the work done and even if the employer had a rule against doing the work. To avoid liability for overtime pay, an employer must take steps to exercise control and ensure that the work is not performed. The Court emphasized however that the federal regulations do not require payment for overtime if the employer did not know about, or with reasonable diligence would not know, about the work. One method of "controlling" the work is by establishing a reasonable process for an employee to report uncompensated work time. The Court held that when the employee fails to follow reasonable time reporting procedures there is generally no liability for overtime pay since it prevents the employer from knowing its obligation to compensate the employee. The officers here worked time they were not scheduled to work. Their supervisors knew about some of the work. The officers had a way to report that time, but they did not use it, through no fault of the Department. Further, reasonable diligence did not, in the Court's view, require the employer to investigate further, given the large volume of overtime claims which had to be managed by the Department. Allen v. City of Chicago, No. 16-1029 (7th Cir. 2017)

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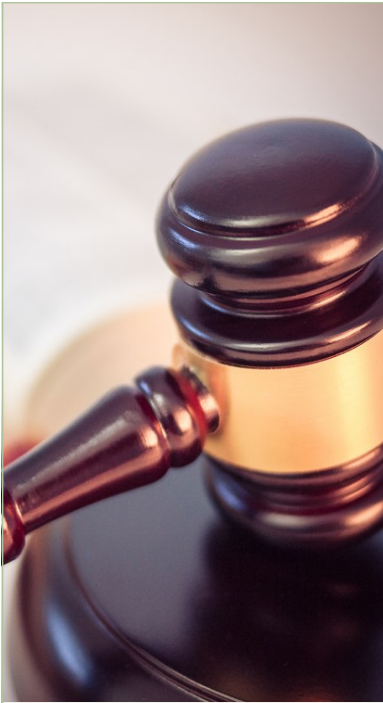
Inside This Issue

Full Decision..... 1
Summary of Decision 2-3

For a full copy of the decision:

http://caselaw.findlaw.com/us-7th-circuit/1869800.html

A more detailed summary of the decision is set forth herein.



NO OVERTIME LIABILITY FOR UNCOMPENSATED WORK DURING MEAL TIMES

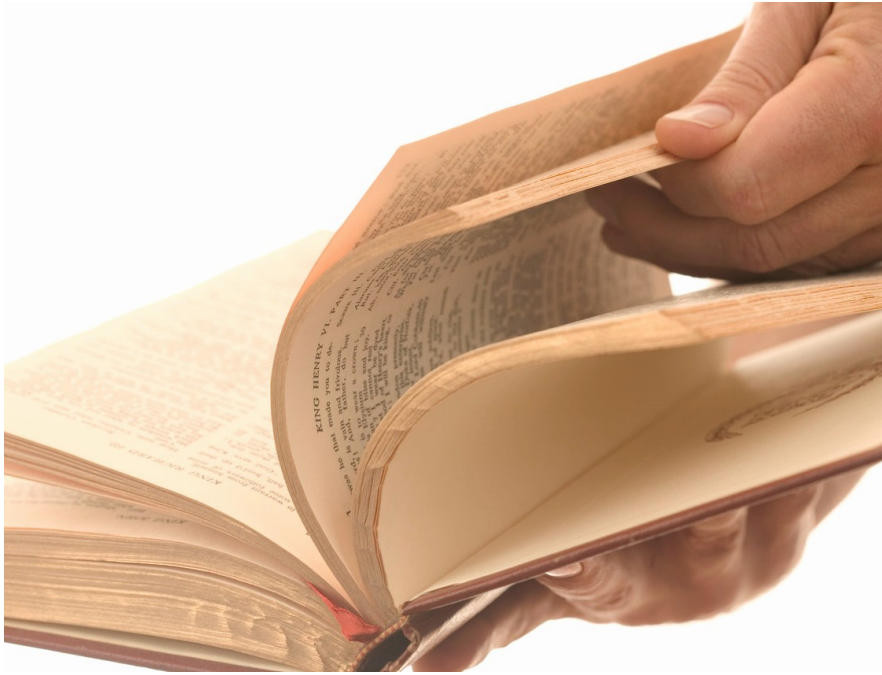
In another case raising overtime claims under the Fair Labor Standards Act a nurse was not paid for working during her meal breaks because she usually did not work during that time period. If work was required during a meal period, the employer policy was for employees to record their work in a log book in order to be paid for the time. The employer also had an additional process for employees to use in order to report any payment mistakes or omissions. The nurse claiming she was owed for overtime did not use either one of these procedures. The Court relied on the fact that the nurse had never told her supervisors or employer that she was not being compensated for work performed during her meal breaks, despite the fact that the employer had a system for claiming payment for such work. *White v. Baptist Memorial Health Care Corp*, 699 F.3d 868 (W.D. Tenn. 2012).

SUMMARY OF DECISION

The Court began by summarizing the rules related to employer liability for overtime pay for employees. Under the Fair Labor Standards Act, employment is not limited to requiring certain hours of work, but also includes the concept “to suffer or permit to work”. By including the concept of “allowing” additional work, the Act intends to prevent evasion by employers from avoiding overtime payments even if the employer has policies limiting overtime but “looks the other way” when employees work overtime hours. The Court noted that an employer cannot simply accept the extra work and rely on its rules that overtime is not allowed to avoid payment for overtime. Employers are required to pay for all work they know about and all work they reasonably should know about. Reasonably “should know about” means that knowledge of an employee’s work an employer would learn about through reasonable diligence. The Court clarified that this standard means what an employer “should” have known, not what an employer “could” have known. To avoid overtime liability then an employer must “exercise its control and see that the work is not performed.” 29 C.F.R. § 785.13. This rule is not absolute however. It does not extend so far that it would require an employer to pay for work that the employer did not know about, and had no reason to know about. One method available to employers to “control” overtime is by establishing a reasonable process for an employee to report uncompensated work time. The Courts have held, in interpreting the requirements of the Act, that where an employer gives its employees a form on which to record their work hours, and the employee does not use the form or process, the employer generally is not responsible for overtime. If the employee does not follow a reasonable process for reporting their time, the employer is prevented from learning about the work.

The police officers claiming overtime pay in this case had scheduled shifts, but the nature of their work required them at times to work outside their regular shift hours during what would otherwise be off-duty time. The police officers were issued department mobile smartphones and sometimes used them for “off-duty” work.

The process established by the Chicago Police Department for these officers to be paid for overtime was to submit “time due forms” to their supervisors. The form provides space to describe the work. The officers usually set forth a short, general statement on the form. There is no requirement to state how work was done. After submission of the form, a supervisor approves the time, and the payment is processed. This process was complied with by many officers. Others however did not submit the forms for off-duty work performed on their smartphones. While the officers convinced the Court that they worked overtime on their smartphones, they also had to show that the Department actually or constructively knew they were not reporting that work. The Court determined that certain off-duty work performed on smartphones was compensable and that the Department was aware that officers sometimes worked off-duty on their



phones, but found that Department supervisors did not know or have reason to know that some officers were not submitting slips and therefore were not being paid for that work. The Court further found it would have been impractical for the supervisors to check all the time forms against the actual work performed since the supervisors approved a large number of forms daily and that some of the forms were handed in long after the work was done. In addition, the officer never took the step to tell their supervisors they were not being paid for this “overtime” work.

The officers here worked time they were not scheduled to work. Their supervisors knew about some of the work. These officers had a way to report that time, but they did not use it, through no fault of the Department. Further, reasonable diligence under the circumstances of this case did not, in the Court’s view, require the employer to investigate further.

Allen v. City of Chicago, No. 16-1029 (7th Cir. 2017)

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