Health Care Alert: Sixth Circuit Ruling Provides Further Direction on Unpaid Time

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A recent pro-employer decision by the federal Sixth Circuit Court of Appeals has provided some helpful guidance for employers looking to avoid and defend against claims for unpaid time under the federal Fair Labor Standards Act (FLSA). *White v. Baptist Memorial Health Care Corp.*, 699 F. 3d (6th Cir. 2012). The Sixth Circuit is the federal court of appeals for Ohio, Michigan, Tennessee and Kentucky. While this case is of particular interest to the minority of employers who have a policy of automatic deductions for meal breaks, the court's decision includes helpful lessons for all employers in Ohio and the other states within the Sixth Circuit. Although the case was decided over a year ago, it was not until recently -- when the U.S. Supreme Court declined to hear an appeal of the Sixth Circuit's decision -- that employers could rely on this decision.

The case involved a nurse's FLSA meal break claim against a hospital. The hospital had a policy of taking automatic meal break deductions for employees working shifts of six or more hours. The policy provided that, if a meal break were missed or interrupted due to work, the employee would be paid for the time worked during the meal break. The policy instructed employees to record all time missed for work during meal breaks in an exception log in order to get paid for that time. The meal break policy was in writing and the plaintiff signed an acknowledgment that she understood the policy. In addition to the exception log, the hospital had a general procedure for reporting and correcting payroll errors. Plaintiff admitted that she had been paid for her time worked during meal breaks every time she used the exception log or the procedure for reporting errors. However, there were times when she worked during meal breaks but did not use the exception log or error procedure. The lawsuit arose out of the nurse's claim that she and others were not paid for some of the work they performed during meal breaks.

The Sixth Circuit ruled in favor of the employer. The court cited its prior rulings finding that automatic meal deductions are not unlawful under the FLSA. As for the claim that the plaintiff worked during meals, but was not paid, the court ruled that, if an employer establishes a

reasonable process for reporting uncompensated work time, it is not liable for non-payment if the employee fails to follow that process. The court also found that evidence of an employee following the policy and getting paid prevents the employee from later arguing the employer should be responsible for the employee's willful non-compliance with the policy. The court found no evidence that the employer had discouraged employees from reporting time worked during meal breaks or that it had been notified that employees were failing to report time worked during meal breaks. The plaintiff had told her supervisors and Human Resources that she was missing meal breaks, but never told them she was not being paid for time worked during breaks. The court concluded that the employer had no liability to the plaintiff, since it did not know or have reason to believe she was not being compensated for missing her meal breaks. Because the lead plaintiff did not have a viable claim, the court also decertified the FLSA collective action.

There are a number of lessons for employers to learn from this decision:

1. Automatic meal deduction policies are lawful, provided that they are implemented properly;
2. Employers can protect themselves by having written policies requiring and providing a method for reporting of time worked for which an employee was not paid;
3. Employers should require employees to sign forms acknowledging receipt and understanding of any such policy; and
4. Supervisors should be trained in the policy and advised to make an immediate report whenever an employee claims to be working "off the clock."

Even the best policies and training cannot prevent a rogue supervisor from discouraging employees from reporting all time worked. However, if an employer implements the above precautions, it should at least be able to limit liability to employees supervised by that one supervisor and avoid system-wide FLSA liability.