

A yellow triangle pointing downwards, located to the left of the 'BLOGS' header.

BLOGS

Archives; Employment Law Updates; Wage & Hour

Overtime on Split-Day Pay Employer Beware

A note of caution to Minnesota-based employers federal enforcement of the Fair Labor Standards Act (FLSA) should not be your only concern when drafting employee compensation plans; the Minnesota Department of Labor and Industry is actively auditing employers in search of those avoiding their overtime requirements under the Minnesota Fair Labor Standards Act (MFLSA). This past Wednesday, the Minnesota Supreme Court upheld **a million dollar** compliance order issued by the Department against an employer utilizing split-day compensation plans. The court held that an employer must pay an employee at least one and one-half time for any hours worked in excess of 48 hours in a given week (overtime hits after 48 hours under the MFLSA as opposed to 40 hours under the FLSA), regardless of how that employee was compensated prior to meeting those 48 hours. Further, the court held that an employer may not exclude time and one-half pay for work performed within the employees first 48 hours of work when calculating the employees regular rate of pay.

In the case in question, the home health aide employer utilized a split-day plan for employee compensation. The employees were compensated at a standard rate for the first 5.5 hours of their 16-hour shift and paid time and a half for the remaining 10.5 hours. This compensation plan was used even if the employee worked more than 48 hours in a given workweek. The Department audited the employer after a complaint was made that the employer did not pay its employees overtime. The Department determined the employer violated MFLSA and issued a compliance order. The employer appealed arguing that it was allowed to pay employees time and one half before the employee has worked more than 48 hours and then credit the payment towards whatever it would be required to pay under its overtime requirements.

The court dismissed the employers crediting argument and instead held that an employer is required to pay an employee time and one half for any hours worked after 48 in a workweek, regardless of how the employee was compensated up to that point. The court also held that the employees one and one-half pay had to be included in the regular rate of pay overtime calculation because the pay was for hours worked *before* the employee reached the statutory limit of 48 hours. Although an employer may try to argue that crediting was allowed under the FLSA (because, in certain situations, the extra compensation provided at a premium rate may be excluded from the regular rate of pay) split-day plans are prohibited under the FLSA. We now know that there will be no credit for the extra

Related People

Caitlin R. Gehlen

Partner

Minneapolis

612.632.3448

caitlin.gehlen@lathropgpm.com



compensation at an hourly rate under the MFLSA and that split-day plans are prohibited under the MFLSA.

Wage and hour class or collective actions are one of the most difficult employment law challenges facing companies today. As this case demonstrates, the law can be difficult to interpret and penalties are steep if you are wrong. It is important for an employer to remember it must comply with both the FLSA and the MFLSA and that certain requirements or exemptions under one may not apply under the other.