

Wage & Hour

LAW UPDATE

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Wage and Hour Law Update

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Florida Federal Judge Rules Business E-mails Sent During Lunch Not Compensable

While an employee must be paid for all hours worked under the FLSA, time which is “de minimis” may, depending on the circumstances, not be considered compensable “work.” Compensable “work” also does not include periods where the employer did not “suffer or permit” the employee to perform work. A federal judge in Florida recently invoked these concepts in rejecting a plaintiff’s claim that time spent sending e-mails during her lunch hour should be compensable. *Lewis v. Keiser Sch.*, 2012 U.S. Dist. LEXIS 147150 (S.D. Fla. Oct. 12, 2012).

Plaintiff alleged that she spent time sending work-related e-mails during her lunch hour; and that such activity constituted “work.” She further claimed the e-mails were evidence that that other work related to the e-mails must have been performed. However, because the e-mails themselves “were not lengthy and could not have taken more than a few minutes to draft and send,” the court held, they were not compensable. As to the alleged compensable time emanating from the alleged “additional work performed during lunch time,” the court found the Plaintiff herself had created the record of being at lunch (and thus *not* working). Further, the fact that certain managers might have received those e-mails during her lunch hour did not demonstrate that the employer understood her to be performing work off the clock, i.e., that it suffered or permitted her to work, the Court held. *Id.* at *7 citing *LaFollette v. City of Gatlinburg*, 2012 U.S. Dist. LEXIS 69809, 2012 WL 1830957, at *12 (E.D. Tenn. May 18, 2012) (evidence was insufficient to show employer knew of work performed at lunch by employee who had clocked out).

Lewis is a favorable decision for employers defending claims brought by non-exempt employees alleging off-the-clock work based on their access to or minimal usage of electronic communication systems, whether e-mail, text message or otherwise. However, employers must review their compensation policies with respect to non-exempt employees to ensure that all compensable time is appropriately recorded and paid and that non-payment of any such time is supported by policy and practice.

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