

5th Cir.: Failure to Record Hours Worked Was Willful FLSA Violation

By Fiona W. Ong 4/24/2015

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An employer that failed to keep records of the extended hours worked by an employee willfully violated the Fair Labor Standards Act (FLSA), according to the 5th U.S. Circuit Court of Appeals.

Under the FLSA, there is a two-year statute of limitations, meaning that a plaintiff's recovery is limited to the two-year period preceding the filing of his or her claim. If the violation is willful, however, the statute of limitations is extended one more year, for a total of three years. To prove a willful violation, the plaintiff must show that "the employer either knew or showed reckless disregard" as to whether its conduct was unlawful. Because a successful plaintiff under the FLSA is generally entitled to liquidated damages in the amount of double the wages owed, the practical effect of the additional year to the statute of limitations for willful conduct is another year of pay, doubled.



The defendant owned a shopping center that included a food store, grocery store, gas station and gaming establishment. The defendant hired the plaintiff in 1992 to provide services including customer sales and cleaning at the shopping center, as well as personal errands for the defendant. The plaintiff typically worked from 7:00 a.m. to 7:00 p.m. Monday through Wednesday, and 7:00 a.m. to 9:00 p.m. Thursday through Sunday—a total of 92 hours per week for which she was paid roughly \$400.00 in cash.

The plaintiff kept detailed records of her hours worked and compensation received; the defendant, however, maintained no records at all. Following 18 years of employment, the plaintiff was terminated in 2010, and she subsequently sued for violation of the overtime provisions of the FLSA.

At trial, the court determined that the defendant's testimony was unreliable and that he failed to provide any evidence in support of his position that the employee, whom he attempted to characterize as an independent contractor, worked only 4-5 hours a day. The trial court found that the plaintiff was an employee, was owed overtime wages and that the failure to pay such wages was willful, thereby triggering the three-year statute of limitations.

On appeal, the 5th Circuit affirmed the trial court's finding of willfulness. It focused on the lack of employment records, stating, "When an employer whose employee works over 90 hours per week chooses neither to keep records of their employee's time nor acknowledge their employee's presence for those extended hours, that employer can easily be said to have disregarded the possibility of violating the FLSA." The 5th Circuit also noted the "egregiously disproportionate ratio between the hours [plaintiff] worked and the wages she was paid."

Ramos v. Al-Bataineh, 5th Cir., No. 13-20749 (March 30, 2015).

Professional Pointer: In addition to ensuring that employees are paid for all hours worked, including overtime, accurate records can help an employer avoid a finding that an FLSA violation was willful, which triggers the extended statute of limitations.

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