

Employer's Lack of Knowledge of Employee's Overtime Dooms FLSA Claim

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A sewing manager at a Midwestern manufacturing company sued her employer for violations of the Fair Labor Standards Act (FLSA), alleging that the employer failed to pay her overtime. The former manager testified that she regularly arrived to work between 15-45 minutes prior to the official start of her shift and spent that time unlocking doors, turning on lights, turning on the compressor, punching-in, preparing coffee for the rest of the employees, reviewing schedules, gathering and distributing materials to her subordinates' workstations and cleaning up workstations. Her timecards often reflected that she punched in early. The former manager was aware that her employer had a policy requiring employees to request pre-approval to work overtime, and on one occasion she had even reprimanded one of her subordinates for punching in too early. The former employee admitted that she never complained or made her employer aware that she needed to be paid for arriving early. The district court dismissed the claim finding that the employee's pre-shift activities were preliminary and *de minimis*, and that her employer did not know that she was engaging in pre-shift work. The U.S. Court of Appeals for the Seventh Circuit disagreed with the district court's conclusions about the preliminary and *de minimis* nature of the work. But it affirmed the dismissal because it agreed that the sales manager did not show that the employer knew, or had reason to know, that she was working before her shift. Although the employee had pointed to her timecards to impute knowledge on behalf of her employer, the court noted that punching in early does not necessarily mean that an employee is working pre-shift. More persuasive was the fact that the employee had weekly meetings with her managers where she failed to disclose the pre-shift work or to complain about improper compensation. Additionally, she was aware of the overtime policy and had enforced it. Employers should note that the mere promulgation of a rule against overtime work is insufficient to justify the nonpayment of overtime if an employer has the opportunity through reasonable diligence to acquire knowledge that an employee worked outside of his or her official work hours.

Kellar v. Summit Seating Inc., No. 11-1221 (7th Cir. Dec. 14, 2011)

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FLSA, Overtime