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Local Services Providers Receive Clarification of Enterprise Coverage Under the FLSA

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Earlier this week, the Eleventh Circuit issued rare guidance to local service providers as to which employees must be paid overtime under the Fair Labor Standards Act (FLSA). In doing so, the Court clarified the distinction between “goods” and “materials” for purposes of the ultimate consumer exception to FLSA enterprise coverage.

The plaintiff was a Miami Beach, Florida valet who parked and retrieved cars, but did not wash them, handle claim tickets, or answer the phone.The valet worked more than 100 hours per week but his employer did not pay an overtime premium for hours beyond 40. The district court granted the employer’s summary judgment motion, finding neither the valent nor the employer was covered under the FLSA, and therefore the valet was not entitled to an overtime premium.

The FLSA covers employees under two circumstances: (1) where an employee is engaged in commerce or the production of goods for commerce (“individual coverage”) and (2) where an employee works for an “enterprise” engaged in commerce or the production of goods for commerce (“enterprise coverage”). 29 U.S.C. §§ 206(a), 207(a). On appeal, the parties disputed whether the “enterprise coverage” prong of the FLSA applied.

The valet conceded on appeal the employer did not engage in commerce or the production of goods for commerce, but contended his employer was a covered enterprise because his parking of cars constituted the “handling” of “materials” which were previously moved in or produced for commerce. The valet could not argue the cars constituted “goods,” because the “coming to rest” doctrine”—under which courts require the employer to be the one who brought the good or material into the state—would foreclose his claim.

The question before the appellate court, then, was whether the cars parked by the valet constituted “materials” and thereby triggered enterprise coverage. In concluding the cars were not “materials,” the appellate court explained that “materials” meant “tools or other articles necessary for doing or making something.” Thus, “plates used by a caterer would be ‘materials’ but those same plates, for sale at a department store, would be ‘goods.‘” The appellate court qualified this definition by noting an item qualifying as a “material” must also have a “significant connection with the employer’s commercial activity. As a result, “plates purchased for décor by an accountant’s office would not be ‘materials’ because they would not have a significant connection to the business of accounting.” In this case, the appellate court noted the valet merely performs a local service with respect to items left in his care and returns the goods to the customer afterward. The cars are therefore not tools necessary to do a job, but rather goods serviced by the employee, and therefore no enterprise coverage lies.

While this decision is narrow, employers offering purely local services should consider whether it might make sense to more strictly segregate certain employees by their function. For example, if an employee is similar to a valet and merely performs a service such as parking a car and returning it, then it might be more economical to ensure those employees only perform these duties and do not, for example, answer telephone calls, so as to avoid the necessity of paying an overtime premium.

Each such determination must be made on a case by case basis and involves a consideration of the business’ operations as a whole. The law may also vary depending on your geographical location. If you have any questions about this decision and its impact on your business, please contact your regular Hinshaw attorney.

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Topics

FLSA, Fair Labor Standards Act, Eleventh Circuit Court Of Appeals, Enterprise Coverage

