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Sixth Circuit Upholds Decertification of FLSA Collective Action Challenging Automatic Meal Break Deductions

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In a significant victory for employers, the U.S. Court of Appeals for the Sixth Circuit, in *Frye v. Baptist Memorial Hospital, Inc.*, 2012 U.S. App. LEXIS 17791 (6th Cir. 2012),¹ upheld decertification of an FLSA collective action challenging the use of an automatic 30-minute deduction for unpaid meal breaks. The opinion represents the first time the Sixth Circuit expressly considered automatic deduction policies in the context of a collective action.

Factual Background

Baptist Memorial Hospital provides employees an unpaid 30-minute lunch break each workday. As is common in many industries, the hospital automatically deducts the unpaid meal break from employees' hours worked. In the event employees perform any work during their meal breaks, they are instructed to report such work through exception procedures made available by the hospital. These exception procedures vary from department to department and may consist of writing down meal-break work in a formal log, submitting a written note to a supervisor, or verbally informing a supervisor of the work performed.

The plaintiff-employee filed a collective action under the FLSA, arguing the hospital's automatic deduction policy resulted in employees not being paid for meal-break work. The plaintiff maintained that the automatic deduction policy unlawfully "shifts the burden" of ensuring employees are paid for all time worked from the employer to its employees. The plaintiff further argued that the hospital failed to train employees adequately on use of its exception procedures, resulting in unreported and unpaid meal-break work.

The Court Decisions

Emphasizing the lenient standard used by most courts at the conditional certification stage, the district court conditionally certified a class consisting of all employees subject to the automatic meal break deduction at three of the hospital's facilities. Over 400 employees from dozens of departments opted into the action, in positions ranging from nurses to administrative support staff to food service employees.

After conducting extensive written discovery and deposing a representative sample of the opt-in plaintiffs, the hospital moved to decertify the collective action. The district court granted

¹ The hospital was represented in this action by Littler.

decertification, finding the plaintiff failed to show the class members were similarly situated. The district court first noted that the opt-ins were subject to disparate factual and employment settings, as they worked in varied departments and positions. These differences in employment settings bore directly on the frequency, duration, and reason for any work performed during meal breaks. The district court also found that the opt-in plaintiffs' otherwise disparate claims were not tied together by a common violation. Although the plaintiff sought to rely on the automatic deduction policy itself as the common thread, the district court rejected this argument, noting that automatic deduction policies are lawful under the FLSA. Thus, the plaintiff needed to demonstrate that the hospital implemented its policy in such a way as to violate the FLSA. In holding the plaintiff could not make such a showing, the district court found that the vast majority of opt-in plaintiffs were aware of the policies for reporting work during meal breaks, were paid when they reported such work, and were not discouraged from or retaliated against for reporting work performed during meal breaks.

On appeal, the Sixth Circuit affirmed the district court's decision. Regarding decertification, the Sixth Circuit agreed that the plaintiff's evidence was insufficient to demonstrate that opt-in plaintiffs were similarly situated and experienced a common FLSA violation. Echoing the district court, the Sixth Circuit first held that automatic deduction policies are lawful under the FLSA. It then found that the evidence overwhelmingly supported the district court's conclusion that the opt-in plaintiffs were aware of the exception procedures for reporting time worked during meal breaks, successfully used such procedures to get paid for meal-break work, and were not disciplined for or otherwise discouraged from reporting meal-break work. Moreover, the Sixth Circuit found that, to the extent some opt-in plaintiffs voluntarily failed to report work performed during meal breaks, the hospital had no reason to know of such work and therefore was not liable to pay for it. Finally, while not foreclosing the possibility that a burden-shifting theory could serve as the basis for a collective action under appropriate circumstances, the Sixth Circuit rejected the plaintiff's argument that the hospital had unlawfully shifted the burden to employees by failing to monitor whether they worked during deducted meal breaks, finding no evidence to support such a theory.

In affirming summary judgment on the plaintiff's claims, the Sixth Circuit also held that a named plaintiff is required to file a written consent to join a collective action and that this requirement could not be satisfied simply by hiring counsel to prosecute a collective action, filing a complaint as the lead plaintiff, or appearing for deposition. As a result, the Sixth Circuit also affirmed the district court's holding that the plaintiff's claims were time-barred.

Conclusion

Frye is a welcome decision for employers facing the continuing threat of FLSA collective actions based on automatic meal break deduction policies. This case highlights the fact that such automatic deduction policies are not *per se* illegal. The case also demonstrates the importance of an employer's ability to show that employees understand the policies and procedures in place to reverse automatic deductions and that employees are paid for missed or interrupted meal breaks when they follow the employer's exception procedures. In these types of cases, employers can make strong arguments that automatic deduction claims are inherently unsuitable for class resolution because, in addition to determining whether each opt-in plaintiff in fact worked through a meal period without receiving compensation, the court must make individual determinations as to why the employee did not follow the policies and procedures for reversal of the automatic deduction.

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