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Labor and Employment Alert: Court Finds That a Company's Clear Wage-Hour Policy Defeats a Claim For Unpaid Overtime

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A recent case from the Fifth Circuit Court of Appeals highlights the importance of well-drafted and strictly enforced wage-hour policies. In *Ambrea Fairchild v. All American Check Cashing, Inc.*, 811 F.3d 776 (5th Cir. 2016), All American's overtime policy prohibited hourly employees from working overtime without prior approval and required employees to accurately report all of their hours worked in its timekeeping system. While employed, the company paid Fairchild for the overtime that it authorized and that she recorded. Fairchild claimed, however, that during two time periods she also worked additional unpaid overtime that she did not report.

Under the Fair Labor Standards Act (FLSA), non-exempt employees must be paid overtime compensation for all hours worked over 40 in a work week. "An employer who is armed with [knowledge that an employee is working overtime] cannot stand idly by and allow an employee to perform overtime work without proper compensation, even if the employee does not make a claim for the overtime compensation." On the flip side, the Court explained that an employee cannot prevail on an FLSA overtime claim if that "employee fails to notify the employer or deliberately prevents the employer from acquiring knowledge of the overtime work."

With regard to the first time period she claims she worked unpaid overtime, Fairchild did not seek authorization to work overtime or report the overtime hours in the company's timekeeping system. She testified she intentionally failed to report her unauthorized overtime specifically because the company prohibited that overtime. The Court explained that Fairchild was not entitled to deliberately evade the company's policy because that "would improperly deny All American's right to require an employee to adhere to its procedures for claiming overtime." "When the employee fails to follow reasonable time reporting procedures she prevents the employer from knowing its obligation to compensate the employee and thwarts the employer's ability to comply with the FLSA."

The Court rejected Fairchild's argument that her computer usage reports gave All American constructive knowledge that she was working overtime. While All American could have "potentially discovered" the overtime had it culled through these records, there was no reason here for the company to do so. "Mere 'access' to this information is insufficient for imputing constructive knowledge."

As to Fairfield's second time period involving unpaid overtime, the Court rejected her contention that, because the company "permitted [her] to get her job done," the company implicitly approved or required her to work overtime. Again, the Court noted that All American had expressly told her not to work overtime unless it had been approved. Thus, the Court held that Fairchild cannot prevail when "she worked at her own discretion and ... deliberately failed to report in violation of All American's policy."

The case makes clear that having a policy that requires its employees to both request and report overtime can assist an employer in defending against claims for unpaid overtime. Of course, the employer must still accurately capture all hours worked, require its managers to consistently enforce its wage-hour policies, and ensure that its records are accurate. Contact your Vorys lawyer if you have questions about your wage-hour policies.