Labor and Employment Alert: Sixth Circuit Holds That Plaintiff's Own Testimony is Good Enough to Defeat Summary Judgment Under the FLSA

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The Fair Labor Standards Act (FLSA) requires employers to keep records of nonexempt employees' hours worked each day, total hours worked each workweek, regular hourly rate, and straight and overtime wages. There is no required form for these records, but the records must include accurate information about the hours worked and the wages earned. A recent case from the Sixth Circuit Court of Appeals reinforces the importance of good record keeping when it comes to tracking employees' work time. In *Moran v. Al Basit*, the Sixth Circuit answered "one simple question: Where Plaintiff has presented no other evidence, is Plaintiff's testimony sufficient to defeat Defendant's motion for summary judgment? We hold that it is."

Moran worked as an auto mechanic and claimed that he regularly worked at the shop 65 to 68 hours per week – without being paid overtime. Other than his own testimony about his daily and weekly work schedule, Moran submitted no other evidence to support his claim.

The company, on the other hand, claimed Moran never worked more than 30 hours per week. In moving for summary judgment, the company submitted paystubs, reflecting that Moran was paid for 30 hours per week, and timesheets showing the total hours worked each day and week. The company's owner claimed that he updated these timesheets regularly by reviewing the shop's security cameras and noting when an employee entered and left the shop. He would then calculate the daily hour totals, write the total on the timesheet, and discard his calculations. The company also submitted an affidavit from Moran's supervisor who claimed that the plaintiff worked 30 hours or less each week. After the district court granted the company's motion, Moran appealed to the Sixth Circuit Court of Appeals.

The Sixth Circuit reversed. The Court explained that, under the FLSA, the employer has the duty to keep proper records of wages and hours and employees seldom keep their own records. So, it wasn't unusual that Moran had only his testimony and not some other documentary

evidence. “It is unsurprising, and in fact expected, that an employee would have difficulty recalling the exact hour he left work on a specific day months or years ago.” And while Moran’s testimony about the hours he worked and when he worked “lack[ed] precision,” employees are not required “to recall their schedules with perfect accuracy in order to survive a motion for summary judgment.” In addition, the Court noted that Moran’s time sheets purported to show he worked exactly 30 hours every week despite the fact that his schedule varied notably week to week.

The company contended that Moran’s testimony was inconsistent with “the allegedly contemporaneous timesheets.” Moran, however, denied the validity of the timesheets (which the Court pointed out were handwritten), and, therefore, the “timesheets do not amount to objective incontrovertible evidence of [Moran’s] hours worked.” Whether Moran’s testimony is credible is for a jury to determine. Given this, the Court remanded the case to the district court – which means that Moran will have the opportunity to persuade a jury.

Employers have an obligation under the FLSA to maintain accurate wage-hour records. Employers may also have an obligation to maintain those records under state law or a state’s constitution. Ohio’s constitution, for example, requires that employers maintain a record of an employee’s hours worked each day. Contact your Vorys lawyer if you have questions about these record keeping requirements.