



Nurse's Unpaid Overtime Claim Teaches Lessons

Insights

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A recent case filed by an Illinois nurse who claims that she is owed unpaid overtime by her former employer illustrates the importance of proper timekeeping procedures and accurate records. The court's decision in *Roberts v. Advocate Health Care* demonstrates the types of off-the-clock wage claims that employees may bring against you, and offers lessons on how records can support or undermine your defense of those claims.

Nurse Alleges Forced Off-The-Clock Work

Nurse Sharon Roberts worked as a team lead in the cardiac catheterization lab of Advocate Illinois Masonic Medical Center from 2009 to 2013. Following her termination from employment, she sued the hospital for unpaid overtime, claiming that she was forced to perform eight to 12 hours of unpaid overtime each week during her employment.

The first category of off-the-clock work, according to Roberts' allegations, consisted of frequently being forced to work through her lunch break. She claimed, for example, that she often had to respond to messages received on her hospital-issued pager. She also alleged that her supervisor consistently convened impromptu meetings after she had clocked out for the day.

The second category of alleged off-the-clock work consisted of Roberts claiming that she received communications via email, text, and page from her supervisor outside regular business hours, and that she was forced to spend unpaid time reading and responding to these communications.

Key Question: What Did The Hospital Know?

To succeed on her claims, Roberts would have to prove not only that she performed overtime work for which she did not receive proper compensation, but that the hospital had actual or constructive knowledge of her overtime work. The court emphasized that while an employer may not "sit back and accept the benefits of the overtime without compensating for them," the law "stops short of requiring the employer to pay for work it did not know about, and had no reason to know about."

In this case, the nurse relied on the nature and amount of her alleged unpaid overtime to argue that the hospital either knew or should have known about all of the off-the-clock work she claims to have performed.

Hospital's Timekeeping System Plays Crucial Role

In coming to a decision, the court spent considerable time discussing the hospital's timekeeping

procedures. Although hospital employees were required to punch in before beginning their shift and punch out at the end of their work day, the judge noted that the hospital offered employees three methods by which they could correct inaccuracies in their punch times.

First, employees could correct their punch times through the computerized timekeeping system the day after the inaccurate punch times. Second, employees could submit a payroll adjustment form. And third, employees could report uncompensated time to human resources, which would investigate and correct any pay discrepancy it discovered.

Although Roberts claimed that she never saw the hospital's pay policy, she testified that she nonetheless was aware of the actions she could have taken to ensure she was paid for all time worked. In fact, on multiple occasions, she submitted payroll adjustment forms to correct her time entries, including for missed lunch breaks. When asked why she had not attempted to correct her time entries that she now claimed were inaccurate, she testified that she was "just busy and forgot."

Ultimately, the court delivered a mixed bag of results to the employer. While it dismissed a portion of Roberts' claim, it also gave renewed life to another portion of her claim and kept hopes alive that the case might one day proceed to trial.

You Win Some...

With regard to the post-shift meetings and missed lunch breaks, the court was not convinced by Roberts' argument and evidence. The judge labeled Roberts' argument that her supervisor should have had knowledge about the alleged off-the-clock work as "speculative," pointing out that "the fact that something is theoretically possible is not enough" to allow Roberts to succeed.

The multiple mechanisms that Roberts had at her disposal to correct her time records were a compelling factor that led the court to side with the hospital. Another convincing factor: Roberts admitted that she never provided actual notice to her supervisor or any other supervisor about the alleged unpaid overtime.

...And You Lose Some

The court had a harder time, however, reaching a conclusion about Roberts' allegation that the hospital should have known about overtime hours spent responding to post-shift communications. This was due largely to the "mountain" of email, pager, and text records with which Roberts deluged the court to support her claim.

The problem with these submissions, according to the court, was that there was no feasible way to match up the messages with Roberts' pay records to determine whether she was on-call or working a paid shift. Noting that the hospital did not lessen the court's burden of making sense of the records, the court did not dismiss this portion of the claim.

The judge advised the hospital to go back to the drawing board and prepare a chart or other usable summary of the records to help better explain its defense. The court said that once the issues

related to the records were narrowed, it would reconsider the motion and determine whether the case would live or die.

Lessons To Be Learned

The *Roberts* decision provides three valuable lessons for all employers who face wage and hour claims. First, the case highlights the value of a comprehensive timekeeping system that provides multiple methods for employees to correct inaccuracies.

Second, the decision is a reminder that an employee must do more than merely speculate that you “should have known” about alleged unpaid overtime – such a claim must be supported by evidence. And third, even the strongest defense to unpaid overtime claims will benefit from an organized presentation of evidence to make the court’s (or jury’s) job as easy as possible.

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