Fisher Phillips Victory Serves As First Blow In One-Two Punch Against Strict Reading Of Vehicle Reimbursement Law

Insights
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In a win secured by members of Fisher Phillips Wage and Hour Law Practice Group, a Colorado federal court just held that employers may “reasonably approximate” vehicle-related expenses for reimbursement purposes under federal wage law. The August 26 decision deals a significant blow to the viability of minimum wage claims brought under the FLSA’s “free and clear/anti-kickback” regulations that seek to tie reimbursement of delivery driver vehicle expenses to the IRS standard business mileage rate. Less than a week after the victory in *Kennedy v. Mountainside Pizza, Inc.*, the Department of Labor landed another haymaker by releasing an opinion letter that affirms the court’s reasoning.

Background Of Reimbursement Cases

Under the Fair Labor Standards Act (FLSA), covered non-exempt employees must receive no less than the federal minimum wage “free and clear” – and not subject to any deductions for expenses that primarily benefit the employer. This obligation has spawned a cottage industry of litigation against restaurants and other businesses with delivery drivers based on allegations that drivers are under-reimbursed for out-of-pocket expenses related to driving their own vehicles to make deliveries, resulting in claims that they are paid less than the minimum wage.

Plaintiffs, particularly those in regions of the nation with below-average vehicle-related costs, often allege that the IRS rate – which is reflective of an array of national average metrics – is the relevant reimbursement benchmark. Their employers, on the other hand, typically take the position that the FLSA requires reimbursement at a “reasonably approximate” rate, not the IRS rate or any other pre-determined rate.

In November 2019, the Southern District of Ohio gave some momentum to plaintiffs’ theory of liability when it expressly adopted a standard that tied reimbursement of vehicle-related expenses to the IRS rate (*Hatmaker v. PJ Ohio, LLC*). The Ohio federal court deviated from existing majority precedent and held that companies employing delivery drivers must either track and pay the drivers’ actual expenses or pay them at the IRS rate. These recent developments completely repudiate the holding in *Hatmaker*.

***Kennedy* Rejects *Hatmaker* And Its Standard For Reimbursement Under FLSA**

The Colorado federal court in *Kennedy* – the first court to directly address the Ohio ruling – challenged that rationale and the propriety of adopting the *Hatmaker* reimbursement standard.

Like scores of other nearly identical suits pending in courts across the nation, *Kennedy* involves claims brought by a pizza delivery driver alleging that her employer subjected drivers to a flawed vehicle reimbursement system, which purportedly resulted in a sub-minimum wage. The parties cross-motion for summary judgement addressed the proper reimbursement methodology in a delivery driver case under the FLSA.

In a well-reasoned opinion, the Colorado federal court rejected *Hatmaker* and its reimbursement standard, and instead held that reimbursement at a "reasonably approximate" rate is enough. In so holding, the court explained that the plain meaning and interpretation of the FLSA and its applicable regulations, as confirmed by well-established District of Colorado precedent, permits employers to reasonably approximate delivery-related vehicle expenses for purposes of compliance with the FLSA. It rejected the reasoning and standard adopted in *Hatmaker* because it found that reliance on the DOL Field Operations Handbook (FOH) – the only place where the DOL even refers to the IRS rate – was inappropriate.

Specifically, the court found that because the applicable reimbursement regulations are not ambiguous as to reimbursement options, no deference may be afforded to the FOH that contains the DOL's purported interpretation of such regulations. And even if the regulations were ambiguous, the court went on to find that the FOH would not be entitled to controlling weight because the FOH specifically disclaims to be the DOL's "authoritative" or "official" position.

Finally, the court concluded that pragmatic concerns further support use of a "reasonably approximate" rate. It said that a bright line rule requiring reimbursement at the IRS rate would result in under-reimbursement of drivers working in regions of the nation with above-average vehicle costs, and a windfall to those working in below-average regions.

Labor Department Confirms *Kennedy's* Holding And Adopts "Reasonable Approximation" Standard

Less than a week later, the DOL released an opinion letter that confirmed the *Kennedy* Court's analysis. The agency adopted the "reasonable approximation" method of reimbursing delivery drivers for the business use of their personal vehicles under the FLSA, and ultimately noted that *Hatmaker*'s holding "contradicts the plain text of the regulations."

What Do Employers Need To Know?

With two direct rebukes of *Hatmaker* and its narrow expense reimbursement standard, any momentum gained by drivers bringing under-reimbursement claims to recover damages calculated off of the IRS rate has seemingly been lost, if not reversed. Yet, as before, employers must turn to what constitutes a "reasonably approximate" rate in a delivery driver case. Given the wide range of considerations and potential pitfalls, this is a good time for all impacted employers to connect with counsel to ensure they are best positioned to comply with the requirements of this rapidly developing area of the law.

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