Late Payment Resulted In An FLSA Violation

Insights
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A recent decision by the U.S. Court of Claims underscores important propositions under the federal Fair Labor Standards Act to the effect that:

- Failing to pay non-exempt employees the FLSA-required minimum-wage or overtime compensation by the next regular payday for the workweek (or by the next regular payday for the longer pay-period in which the workweek ends) after they can be determined violates the FLSA, and
- Such violations give rise to claims under the FLSA for "liquidated damages", even if the employee is later paid the underlying required wages.

Martin v. U.S. arose from the federal government's "shutdown" from October 1 through October 16, 2013. Employees who worked during this time were not paid on their normal paydays for their work after October 1. Instead, they did not receive this compensation until approximately two weeks after their regular paydays had come and gone.

There was apparently no dispute that the employees then received all of the FLSA-required wages that they were due. However, the employees contended that the failure to pay these sums *on time* was unlawful under the FLSA so as to entitle them to an additional amount equal to the untimely-paid FLSA wages as "liquidated damages" under the FLSA's Section 16(b), 29 U.S.C. § 216(b).

"No Harm, No Foul" Did Not Apply

The court acknowledged that the FLSA "contains no explicit timeline" for paying the required wages. However, the court concluded from U.S. Supreme Court cases and from other authorities that an employer violates the FLSA when it does not pay its workers the necessary FLSA minimum wages or overtime compensation on the regular paydays for their work performed.

In so doing, it noted a U.S. Labor Department interpretation saying, "The courts have held that a cause of action under the [FLSA] for unpaid minimum wages or unpaid overtime compensation and for liquidated damages 'accrues' when the employer fails to pay the required compensation for any workweek *at the regular payday for the period in which the workweek ends*." 29 C.F.R. § 790.21(b) (emphasis added). The court further relied in part upon USDOL's general FLSA interpretation that "overtime compensation earned in a particular workweek must be paid on the regular pay day for the period in which such workweek ends." 29 C.F.R. § 778.106.

Premature To Grant Liquidated Damages

Even though the court saw the facts as being sufficient to state an FLSA violation, it also ruled that whether or in what amounts to award liquidated damages could not yet be decided.

For one thing, under the federal Portal-to-Portal Act's Section 11, a court may reduce or eliminate FLSA liquidated damages "if the employer shows to the satisfaction of the court that the act or omission giving rise to [the violation] was in good faith and that he had reasonable grounds for believing that his act or omission was not [a violation] . . .." 29 U.S.C. § 260. The court determined that the government had not so far had an adequate opportunity to present evidence relevant to this defense.

The Bottom Line

This is not the first time that a court has found that the untimely payment of FLSA-required wages in itself violates the FLSA notwithstanding that the wages were eventually paid, or that FLSA liquidated damages can be awarded for such a violation. Neither are these concepts limited to government employment.

Furthermore, a number of other jurisdictions impose time-of-payment requirements and related enforcement remedies under their own laws.

Employers should not assume that "close enough is good enough" where the timely payment of wages is concerned.