Court Upholds Employer's Overtime-Reducing Workweek Change

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The U.S. Court of Appeals for the 8th Circuit (with jurisdiction over Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota) has re-affirmed that the federal Fair Labor Standards Act permits an employer to change its employees' seven-day workweek, even when one of the stated reasons for the change is to reduce FLSA overtime costs.

The underlying lawsuit in *Abshire v. Redland Energy Services, LLC* was brought by drilling-rig operators whose schedule was to work seven, consecutive, twelve-hour days from Tuesday through Monday, followed by seven, consecutive days off. Originally, the employer had also designated a Tuesday-through-Monday workweek for these employees. The employer had used this timeframe to determine how many FLSA overtime hours the operators had worked.

The employer decided to change the operators' workweek to a Sunday-through-Saturday one, such that their future hours worked in the seven-day schedule would fall into two, separate workweeks. This had the effect of lowering the operators' number of overtime hours worked in a single workweek, which in turn decreased the amount of FLSA-required overtime wages they were due. The employer argued that it had made the change to increase payroll-administration efficiencies and to reduce the employees' FLSA overtime hours and pay.

The operators contended that the FLSA prohibited the employer from changing the workweek in order to reduce their overtime compensation. In rejecting this argument, the court embraced the propositions that:

◊ There is no general FLSA principle requiring that an employee's overtime pay be maximized under his or her schedule;

◊ A workweek may be established from the outset so as to limit FLSA-required overtime under an employee's schedule;

◊ Changing the workweek in a way that has this effect is therefore also lawful; and

◊ Even if an employer's motivation for changing the workweek is to avoid overtime expense, this

intention does not in itself mean that the change is an unlawful evasion of the FLSA's overtime requirements.

The court also brushed aside a claim that the FLSA requires a "legitimate business purpose" for adopting a new workweek. The court said that, so long as the change is intended to be permanent and is otherwise implemented in accordance with FLSA principles, the employer's reasons for doing this are irrelevant.

This employer's communication of the workweek change could have complicated its defense had the employees made more of it than they apparently did. The announcement said, "There will be no adjustment to your work week, which will remain Tuesday-Monday [but] you will begin to have a reduction in overtime hours as your work week will be split into 2 payroll periods." Using "work week" to mean "schedule", and using "payroll period" to refer to the FLSA "workweek", risks exactly the confusion and potential vulnerability that we remarked upon in our earlier summary of FLSA-related workweek requirements.

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