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Sixth Circuit Rules that Moonlighting Police Officers are Employees, not Independent Contractors

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The Sixth Circuit Court of Appeals recently concluded that all officers of a private security and traffic control company were “employees,” rather than independent contractors under the Fair Labor Standards Act (“FLSA”). The case is [Acosta v. Off Duty Police Services, Inc.](#), Nos. 17-5995 and 17-6071 (6th Cir. Feb. 12, 2019).

Off Duty Police Services (“ODPS”), in Louisville, Kentucky, offers private security and traffic control services. A majority of ODPS’ workers are sworn officers, who also work full time for a law enforcement entity. ODPS also employs unsworn workers, who generally do not have a background in law enforcement. The jobs performed by both groups of workers are essentially the same, although sworn officers receive a higher hourly wage. Since ODPS classified both sworn and unsworn workers as independent contractors, it never paid overtime wages.

The Department of Labor sued ODPS under the FLSA, alleging that all of the workers were entitled to overtime wages. The district court held that ODPS’ unsworn workers were employees under the FLSA, but the sworn officers were independent contractors because they “simply were not economically dependent on ODPS and instead used ODPS to supplement their incomes.”

On appeal, the Sixth Circuit began its ruling by stating “[t]he way we work in America is changing. The relationships between companies and their workers are more fluid and varied than in decades past. Our task in this appeal is to apply traditional legal protections to one such relationship.”

The Court relied on the “economic realities” test in affirming in part and reversing in part the district court’s decision. The “economic realities” test consists of six non-determinative factors aimed at answering the ultimate question of “the worker’s economic dependence or independence from the alleged employer.” In balancing the factors, the Sixth Circuit determined that five of the six factors supported a finding that all of ODPS’ workers were employees under the FLSA.

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