

# Making Employees Watch the Clock Can be Good for Employers



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[A few months ago](#), we reminded our readers about the need to maintain accurate time records for non-exempt employees. This consideration is especially important for those employers who are subject to the Fair Labor Standards Act (FLSA), meaning that most readers of this article should take note. An appeal currently pending in the Seventh Circuit Court of Appeals (covering Illinois, Indiana, and Wisconsin) once again reminds us of the importance of maintaining accurate time records and policies – and how good recordkeeping practices and policies helped reach a verdict in favor of the employer.

In December 2015, an Illinois federal judge issued a verdict in favor of the employer, the Chicago Police Department, and denied the plaintiff police employees' allegations that they were entitled to overtime under the FLSA for off-the-clock work. Specifically, the cops alleged that they were required to respond to messages on their smart phones after normal working hours, but were not compensated for such time. The plaintiffs also claimed that the department had an unwritten policy not to pay employees for such work, as their supervisors encouraged or pressured them to exclude the alleged off-the-clock work from their time sheets. In issuing its decision, however, the court concluded that there was no such employer policy that permitted off-the-clock work, and further determined that the employees had not submitted overtime requests for the alleged off-the-clock work and there was no department policy to deny overtime requests when employees properly included off-

the-clock work in their time sheets. Ultimately, the court decided that although the employees may have performed job duties off-the-clock, they had not followed the proper procedures to receive compensation for such time worked and had therefore were not entitled to overtime payments under the FLSA.

The employees appealed this decision, maintaining that by distributing smart phones and requiring the employees to respond to messages, the department must have known that off-the-clock work would occur. In opposing such claims and urging the appeals court to affirm the earlier trial court's ruling, the department argued that it believed – pursuant to its policies – that the employees had in fact submitted overtime requests for any work performed after regular hours, and received compensation for all time reported.

As it did when arguing the case at the trial court level, the employer referred the appeals panel to the neighboring Sixth Circuit Court of Appeals (covering Kentucky, Michigan, Ohio, and Tennessee) analysis in a 2012 case. In that case, the court had ruled that an employee's failure to properly record her time and submit accurate time records precluded an FLSA lawsuit against her employer. In that opinion, the Sixth Circuit noted that "Under the FLSA, if an employer establishes a reasonable process for an employee to report uncompensated work time the employer is not liable for non-payment if the employee fails to follow the established process." Further, the court concluded that "[w]hen the employee fails to follow reasonable time reporting procedures, she prevents the employer from knowing its obligation to compensate the employee and thwarts the employer's ability to comply with the FLSA."

As of now, it is unclear whether the Seventh Circuit will adopt the Sixth Circuit's analysis on the issue and affirm the verdict in favor of the police department, or if it will find that constructive notice of employees' working off-the-clock is sufficient to establish an FLSA violation. What does remain clear is that it is always in an employer's best interest to distribute written policies prohibiting employees from performing work off-the-clock, inform employees of the process to immediately report any uncompensated work time so that they can receive compensation accordingly, and, as always, consult with counsel for further guidance.

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