Iowa Minimum Wage and FLSA: Spoerle Decision Suggests Iowa Employers Check Their Application of "Hours Worked" Standards

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The Fair Labor Standards Act (FLSA) sets federal minimum wage and overtime standards for covered employers and covered employees. A frequently litigated question arising under that law is: what constitutes "time worked" under the statute?

Section 218(a)
Unlike many federal laws, the FLSA has a provision, 29 U.S.C. §218(a), clearly stating it does not preempt other federal, state, or local law(s) that establish either a higher minimum wage or a lower maximum workweek for overtime purposes than that of the FLSA. That is, an employer must comply with the most employee-protective law, and compliance with the FLSA is not a defense for noncompliance with the more stringent provisions of the other laws.

Section 203(o)
Under the Fair Labor Standards Act, time spent putting on ("donning") or taking off ("doffing") integral and indispensable safety gear is generally regarded as "working time" and thus must be paid; however, the FLSA allows labor and management to vary that general rule through the collective bargaining process. Section 203(o) provides in part:

> Hours Worked.—In determining for the purposes of sections 206 and 207 of this title the hours for which an employee is employed, there shall be excluded any time spent in changing clothes or washing at the beginning or end of each workday which was excluded from measured working time during the week involved by the express terms of or by custom or practice under a bona fide collective-bargaining agreement applicable to the particular employee.

Spoerle v. Kraft Foods Global, Inc.
The issue addressed in the Seventh Circuit's August 2, 2010 decision, *Spoerle v. Kraft Foods Global, Inc.*, was: if a CBA expressly excludes donning and doffing from hours worked, can the "collective bargaining" exception under the FLSA preempt a Wisconsin state law that does not contain an equivalent exception?

Chief Judge Easterbrook explained the facts of the case:

> Kraft Foods requires the employees who prepare meat products at its Oscar Mayer plant in Madison, Wisconsin, to wear safety gear, such as steel-toed boots and hard hats, plus a smock that keeps other garments clean. Workers must wear hair nets and beard nets to protect the food from dandruff and other contaminants. It takes each worker a few minutes at the start of every day to put these items on, and a few more at day's end to take them off. Kraft Foods and Local 538 of the United Food and Commercial Workers Union have agreed that this time is not compensable. Section 203(o) permits unions and management to trade off the number of compensable hours against the wage rate; the workers get more, per hour, in exchange for agreeing to exclude some time from the base.
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> The plaintiffs in this suit disagree with the tradeoff struck in the collective bargaining agreement and want the time included — and at the higher hourly rate that the union obtained by agreeing to exclude these few minutes a day.

The Seventh Circuit determined that the language of Section 203(o) limits its application to the claims brought under the FLSA, and contains nothing which would limit or restrict the expansiveness of Section 218(a). Thus, the state law reigned supreme.

The Seventh Circuit also rejected contentions that the preemptive effect of federal labor laws when dealing with a collective bargaining agreement should preclude the state law claims. It observed that resolution of the Wisconsin "pay" claim required a court to look only at state law and apply a formula of "hours worked" times "hourly wage."

Practice Pointer
This decision has implications for employers operating in multiple jurisdictions (where the employer has to worry about compliance with not only the Fair Labor Standards Act, but also various state laws). It also has clear implications for Iowa businesses which employ individuals only in Iowa.

Compliance with both minimum wage and maximum hours provisions of any law is a mathematical calculation. Whether one complied with the obligation to pay one and one-half times the "regular rate" for all hours worked in excess of the maximum (e.g., "40"), can be determined by multiplying the "hours worked" (as determined under the "most beneficial to the employee" law) times the "regular rate." While not directly mentioned in the Seventh Circuit's opinion, the district court judge made the following observation: Thus, §209(o) sets a higher 'maximum work week' than Wisconsin law . . . because it excludes certain activities from the calculation that would otherwise qualify as 'work' . . .". 626 F.Supp.2nd 913, 914 (W.D. Wisc. 2009). Similarly, whether one has complied with a minimum wage requirement is determined by dividing total gross pay by total "hours worked."

Unlike the FSLA, which addresses both minimum wage and maximum hours ("overtime pay"), Iowa has only a minimum wage law – Iowa Code Chapter 91D. The Labor Services Division of Iowa Workforce Development has, by rule found at 347 Iowa Administrative Code §5.3(13), defined the term "hours worked." While not as detailed as the Wisconsin rule, the Iowa rule appears to be patterned after the tests of federal law. That said, an Iowa employer which is subject to both the federal and state laws would be well advised to check not only its compliance with the FSLA "hours worked" standards, but also those found in the Iowa agency rules.

If you have questions regarding the Fair Labor Standards Act or Iowa's minimum wage law, please contact attorney Russ Samson at 515-246-4548 / rsamson@dickinsonlaw.com or another member of the firm's Iowa Employment Law and Labor Law Group at employmentlaw@dickinsonlaw.com.