

A Lesson in Labor Law: The Importance of Seeking Legal Advice

AUTHOR: JAMES KEANEY

On October 17, 2023, the United States District Court for the Eastern District of Pennsylvania issued a memorandum and order wherein it refused to follow the “norm” in automatically awarding double damages in a case for unpaid wages under the Fair Labor Standards Act (FLSA).

The key to the Court’s reasoning centered around the employer’s affirmative efforts, prior to the litigation, to seek legal counsel to review and provide an opinion on the legality and risks of the practices at issue—that is, paying (or not paying) for time spent by its workers donning, doffing, and showering at the beginning and end of their shifts.

Under the FLSA, if an employee prevails in claiming unpaid overtime or minimum wages, the law typically requires courts to award double damages (known as “liquidated damages”), unless the employer can prove that it acted in good faith and had reasonable grounds for believing it had been in compliance with the FLSA. Historically, this has proven to be a difficult and elusive standard for employers to meet when faced with FLSA litigation.

However, this Court’s recent decision recognizes the standard *can* be met, so long as employers can prove they took their FLSA obligations seriously and actively worked with counsel in good faith to understand and comply with the same. And the case shows that the consequences of such proactive efforts by employers can be very significant in reducing potential liabilities.

In this case, a jury found that the employer was liable for over \$22 million dollars in unpaid wages. But, by proving that it had, among other things, consulted legal counsel in good faith on the practices at issue, the employer saved itself from having to pay an additional \$22 million dollars.

This case certainly brings to mind the old adage that an ounce of prevention is worth a pound of cure. So, if you have any questions or concerns regarding the FLSA or wage and hour issues more generally, now is the time to act. Do not hesitate to contact a member of our Labor & Employment Team here at Sandberg Phoenix for assistance and guidance.