Does my employer have to pay for "off the clock" activity? The Bullet Point: Volume 3, Issue 22

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Employer Liability for "Off the Clock" Activity

***Heimbach v. Amazon.com*, Sixth Circuit Court of Appeals, Docket: 18-5942, Opinion Date: November 4, 2019**

In this Sixth Circuit appeal, Plaintiffs were hourly workers at an Amazon fulfillment center where they were required to undergo an anti-theft security screening after clocking out without compensation. The district court dismissed the purported class action under the Pennsylvania Minimum Wage Act (PMWA), citing the Supreme Court's 2014 decision in Integrity Staffing Solutions, Inc. v. Busk, which interpreted the Fair Labor Standards Act (FLSA) and the Portal-to-Portal Act to find post-shift security screening non-compensable.

The Sixth Circuit certified two questions to the Pennsylvania Supreme Court: Is the time spent on an employer's premises waiting to undergo and undergoing mandatory security screening compensable as "hours worked" under the PMWA; and, Does the doctrine of de minimus non curat lex ("judges will not sit in judgment of extremely minor transgressions of the law") bar claims brought under the PMWA?

The Bullet Point: Employers should be aware that "off the clock" procedures and processes will be scrutinized by the Courts. While the U.S. Supreme Court has applied the doctrine of de minimus non curat lex to the FLSA to hold that employers are not required to compensate employees for small amounts of time that are administratively difficult to track, what constitutes a "small amount of time" may vary by situation and reviewing court.

Standard of Review for Administrative Decisions

***Shelly Materials v. City of Streetsboro Planning & Zoning Comm.*, Slip. Op. No. 2019-Ohio-4499.**

In this appeal, the Ohio Supreme Court clarified the standard a court of appeals must apply to an administrative appeal pending before it.

The Bullet Point: Under Ohio law, the scope of review of an administrative appeal is not de novo but that the appeal " 'often in fact resembles a de novo proceeding." "The court weighs the evidence to determine whether a preponderance of reliable, probative, and substantial evidence supports the administrative decision, and if it does, the court may not substitute its judgment for that of" the administrative agency. Further, the court may

not "blatantly substitute its judgment for that of the agency, especially in areas of administrative expertise." Nevertheless, the court of common pleas has "the power to examine the whole record, make factual and legal determinations, and reverse the administrative agency's decision if it is not supported by a preponderance of substantial, reliable, and probative evidence."

Parol Evidence Rule

Autumn Health Care v. Peoples Bank, N.A., 5th Dist. Licking No. 19-CA-19, 2019-Ohio-4545.

In this appeal, the Fifth Appellate District affirmed in part and reversed in part the trial court's decision to exclude a writing related to a contract under the parol evidence rule.

The Bullet Point: The parol evidence rule provides that "absent fraud, mistake or other invalidating clause, the parties' final written integration of their agreement may not be varied, contradicted, or supplemented by evidence of prior or contemporaneous oral agreements, or prior written agreements." The parol evidence rule "effectuates a presumption that a subsequent written contract is of a higher nature than earlier statements, negotiations, or oral agreement by deeming those earlier expressions to be merged into or superseded by the written document." The parol evidence rule "is a rule of substantive law that prohibits a party who has entered into a written contract from contradicting * * * the terms of the contract with evidence of alleged or actual agreement." However, if a written contract does not contain the complete and exclusive statement of all the terms of the agreement, a factual determination of the parties' intent may be necessary to supply the missing term.

Settlement Agreements

Parker v. Smith, 8th Dist. Cuyahoga No. 107711, 2019-Ohio-4346.

In this appeal, the Eighth Appellate District affirmed the trial court's decision to strike a portion of a settlement agreement but enforce the remainder.

The Bullet Point: Settlement Agreements are considered contracts under Ohio law. To that end, when a contract contains a provision offensive to Ohio law or policy, "that provision is void while the remainder of the contract remains enforceable."

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