Legal Update Article

Sixth Circuit Rejects Two Methods for Computing Workers' Vehicle Expenses for Minimum Wage Purposes

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The U.S. Court of Appeals for the Sixth Circuit vacated two district court decisions involving how pizza delivery drivers should be reimbursed for vehicle-related expenses under the Fair Labor Standards Act (FLSA). *Parker v. Battle Creek Pizza, Inc.*, No. 22-2119 (Mar. 12, 2024); *Bradford v. Team Pizza, Inc.*, No. 22-3561 (Mar. 12, 2024). The Sixth Circuit panel remanded both cases.

Ruling on a consolidated interlocutory appeal, the appeals court found neither district court used the correct method for determining whether reimbursements given to delivery drivers for the cost of using their personal vehicles resulted in a minimum wage violation. The appeals court did not offer a uniform or controlling formula to calculate vehicle reimbursement costs to follow for determining whether a minimum wage violation occurred.

The Sixth Circuit has jurisdiction over federal courts in Kentucky, Michigan, Ohio, and Tennessee.

Minimum Wage Claims

Pizza delivery drivers who used their personal vehicles for work alleged in two separate collective actions that the defendant-employers did not reimburse them sufficiently to cover the costs of their vehicle expenses, resulting in the employees earning less than the minimum wage under FLSA.

The FLSA does not require employers to reimburse employees for vehicle expenses. If the cost of using a personal vehicle for work result in the employee's wages falling below the minimum wage, however, the failure to reimburse the costs can violate the minimum wage requirement.

One employer reimbursed drivers 28 cents per mile; the other paid $1.00-$1.50 per delivery. The plaintiffs argued the IRS reimbursement rate (54 cents per mile when the plaintiffs sued) is the only method of reimbursement permitted.

In the first case, a district court judge in the Western District of Michigan held the drivers should be reimbursed based on the standard IRS mileage rate. In the second case, brought in the Southern District of Ohio, the court found that reimbursement of a "reasonable approximation" of the drivers' costs was sufficient.

Neither method properly reimbursed the individual drivers' actual costs, the appeals court concluded.

Use of Standard Mileage Rate Not Accurate

The plaintiffs argued that the IRS mileage rate was the proper reimbursement rate. That

rate, the Sixth Circuit noted, is a national average and does not reflect individual drivers' actual costs, which vary by location, type of vehicle, and driving habits. Thus, the Sixth Circuit held, use of the IRS rate could result in underpayment and overpayment of drivers' expenses.

The plaintiffs argued that Sec. 531.35 of the FLSA regulations was ambiguous. Reference to the Department of Labor's Field Operations Handbook (FOH), which says the IRS rate could be used for FLSA purposes where actual costs are not available, would resolve the ambiguity, they argued.

The Sixth Circuit said the regulation is not ambiguous. The FOH has no interpretive value, according to the court. Indeed, the court noted the FOH itself states that it should *not* be "used as a device for establishing interpretive policy."

"Reasonable Approximation" Not Applicable to Minimum Wage

The defendants asserted that reimbursement based on a "reasonable approximation" of the drivers' vehicle expenses was sufficient as a matter of law for minimum wage purposes — regardless of whether that amount in fact compensates the drivers in full for their costs. The Department of Labor had approved this method of calculation in a 2020 opinion letter.

The appeals court rejected that contention, and the opinion letter too, although employers who relied on that letter would be permitted to assert a good faith defense. The court did not address this issue.

The defendants cited 29 C.F.R. § 778.217 of the FLSA regulations, which allows a "reasonable approximation" of costs when computing employee's expenses for purposes of excluding those expenses from the regular rate for *overtime* purposes. The appeals court, however, rejected applying an overtime regulation to determine whether there is a minimum wage violation.

Difficulty of Proof

Having rejected both the test proffered by the plaintiffs and by the defendants (which also splits the district courts), the Sixth Circuit did not provide a controlling calculation to assess whether a minimum wage violation is triggered. Rather, it conceded that work-related vehicle costs are "undisputedly hard to calculate" because the costs can depend on the location of the work and the condition and year of the vehicle used, which will vary person to person. (Although the court did not address class certification issues, these individualized circumstances would make class certification unlikely in such cases.)

The appeals court suggested the district courts on remand might consider some burden-shifting approach used in discrimination cases, where the employee would be required to make a prima facie showing that the expense reimbursement was inadequate; the employer would then have to establish that the reimbursement "bore a demonstrable relationship" to the employee's actual costs; and the burden would then shift to the employee to disprove the employer's reasoning. Such a regime might be appropriate for the courts to consider on remand, the panel said. The court did not address how a "reasonable relationship" (the test proposed by the defendants and approved by the Department of Labor) is any different from the "demonstrable relationship" suggestion made.

Please contact a Jackson Lewis attorney with any questions.