

Employment & Labor Law FLASHPOINTS November 2023

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Compliance with Employer's Practice Is Relevant to Whether Overtime Is Due for Incidental Activities

On October 5, 2023, the U.S. Court of Appeals for the Seventh Circuit held that “an employer’s knowledge of an employee’s incidental activity is immaterial when it has no obligation to pay for that activity in the first instance because the employer’s custom or practice of payment only demands compensating employees who have satisfied the custom or practice’s requirements — which are inextricable from the custom or practice itself.” *Meadows v. NCR Corp.*, 83 F.4th 649, 654 (7th Cir. 2023).

Relevant Facts

NCR Corporation manufactures, sells, and supports point-of-sale systems and ATMs. Michael Meadows worked as a customer engineer (CE) for NCR. His primary duty was to service NCR’s point-of-sale systems. Like all CEs, Meadows conducted his work in the field with minimal supervision. 83 F.4th at 651.

NCR has policies governing how CEs are paid. Specifically, CEs are to work during only their official shifts and prohibited from off-the-clock work. CEs must record time worked in an electronic timekeeping system. If a CE worked overtime without permission, they would be paid for the time only if it was recorded in the electronic timekeeping system. Meadows was aware of these policies. *Id.*

On occasion, Meadows recorded unauthorized overtime for before- and after-shift activities, as well as work performed during unpaid meal periods. These activities included reviewing e-mail, mapping the service route, reviewing work orders, responding to work calls, and making sure his company-provided van was stocked with needed parts. In accordance with its practice, NCR paid him for unauthorized overtime that he recorded in the electronic management system. However, he was not paid for time he did not record. *Id.*

Meadows separated from employment with NCR in 2019. He subsequently filed a lawsuit under the Fair Labor Standards Act of 1938 (FLSA), ch. 676, 52 Stat. 1060, and Illinois’ parallel Minimum Wage Law, 820 ILCS 105/1, *et seq.*, seeking compensation for his unrecorded overtime work for before- and after-shift activities and work performed during unpaid meal periods. *Id.*

District Court Decision

The district court concluded that Meadows’s off-the-clock activities were not part of his core responsibilities of servicing NCR devices in the field. Rather, they were incidental, not principal, to

his job. The court explained that, under the FLSA, employers are required to compensate an employee's performance of all principal activities (those that are "integral and indispensable" to an employee's job), but not incidental activities (such as commuting or other otherwise preparing for work) unless an exception applies. 29 U.S.C. §254; 29 C.F.R. §790.8(b). As such, the FLSA required NCR to pay for Meadows's unrecorded time only if NCR elected to do so by contract, custom, or practice. 29 U.S.C. §254(b); 29 C.F.R. §790.8(b).

The district court rejected NCR's argument on summary judgment that it did not know about Meadows's off-the-clock work so it did not have to compensate him. The district court concluded that NCR had constructive knowledge because it had a custom and practice of paying for these types of incidental activities and it had paid Meadows for these types of activities. NCR's motion for summary judgment was denied. *Id.*

A trial proceeded, and the jury rendered a verdict for Meadows. The district court denied NCR's motion for a new trial, finding that "NCR could not escape liability by imposing a recording requirement on its custom of paying for Meadows's incidental activities because NCR had constructive knowledge of those activities." 83 F.4th at 652.

Appellate Court Decision

On appeal, the Seventh Circuit held the district court erred in its rationale for denying NCR's motion for a new trial. Here, NCR had no custom or practice of compensating unrecorded off-the-clock activities. Its policies were clear that unauthorized overtime would be paid only if the activity was recorded in the electronic recordkeeping system. If an incidental activity is not compensable, then an employer's knowledge that an employee performed that activity is irrelevant. Indeed, "a court need not consider an employer's knowledge of an employee's activities until it: (1) defines the employer's contract, custom, or practice of compensating incidental activities, which includes all conditions on compensation; and (2) finds that the contract, custom, or practice applies in the instant case because the employee satisfied the relevant conditions — for example, by recording her incidental activities." 83 F.4th at 653. Meadows did not satisfy NCR's relevant conditions for payment because he did not record his incidental activities. Therefore, the Seventh Circuit vacated the lower court decision denying the employer's motion for a new trial following a jury verdict for the plaintiff on his overtime claim. *Id.*

This is an important decision for employers as the Seventh Circuit made clear that if an employer has an established custom or practice of compensating employees for incidental activities, it has discretion to define conditions of payment as part of its established custom or practice.

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