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ELEVENTH CIRCUIT RULES ON COMPENSABILITY OF DRIVING TIME

Following the Supreme Court's recent decision in *IBP, Inc. v. Alvarez* (see our *Labor & Employment Bulletin* of November 9, 2005), the Eleventh Circuit Court of Appeals recently ruled that certain driving time at the beginning and end of the workday may be compensable "time worked" under the Fair Labor Standards Act.

The case involved a county engineer who was required to use a county vehicle to drive between job sites he inspected during the workday. The engineer wasn't allowed to take the county car home at night; instead, he had to drive his personal vehicle to a secure county parking facility in the morning to pick up the car, drop the car back off in the evening, and then drive his personal car home. At issue was whether the driving time from the county parking lot to the engineer's first work-site of the day, and from the last job site of the day back to the county parking lot, was compensable time. The court found that this time was compensable, reasoning that the driving time was part and parcel of the principal activities of the engineer:

Ultimately, the employees who used the county vehicles had no choice but to begin and end their work day not at a work site, but at a county parking facility. And without the county vehicles the employees could not perform the principal activities for which they were employed—driving throughout Hillsborough County and inspecting public works constructions sites. Needless to say, getting a county vehicle from the parking site and returning it to the parking site was integral and indispensable to the plaintiff's principal activities.



The case is *Burton v. Hillsborough County, Florida*, No. 05-10247 (11th Cir., May 18, 2006).

TWO NEW LAWS IMPACT ALABAMA EMPLOYERS

Two state laws affecting employers in Alabama recently went into effect.

Act No. 2006-545 requires that every Alabama employer grant its employees time off to vote in any municipal, county, state, or federal political party primary or election. To be eligible, the employee must (1) provide the employer reasonable notice and (2) be eligible to vote and registered to vote on the date on which the primary or election is held. The employee is entitled to time off of no more than one hour. Furthermore, if the employee's schedule commences at least two hours after the opening of the polls or ends at least one hour prior to the closing of the polls, then the employer is not required to provide time off. The employer may specify the hours during which the employee take leave to vote.

The law does not state whether the voting leave must be paid or unpaid. However, in implementing this statute, employers are cautioned not to "dock" the pay of employees who are paid on a salary basis and are considered exempt from the overtime requirements of the Fair Labor Standards Act.

Act No. 2006-428 prohibits an employer from terminating a member of a volunteer firefighter or emergency medical service who, in the line of duty, responds to an emergency call prior to the time the employee is to report to work and which emergency call results in a loss of time from employment. Furthermore, the employer may request that the employee who has missed work because of an emergency call supply the employer with a statement from the fire department or emergency medical service stating that the employee responded to an emergency call and the time thereof.

Act No. 428 permits an employer to charge the lost time against the regular compensation of the employee. However, as with Act No. 545, employers generally should not make such partial-day deductions from the pay of FLSA-exempt, salaried employees.



SAVE THE DATE
Balch & Bingham's 2006 Labor and
Employment Seminars will be held in:
Birmingham, AL: September 28-29
Biloxi, MS: October 26-27

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