4 PJI 14 | FAIR LABOR STANDARDS ACT - 29 USC §201 ET SEQ

In this case, [Plaintiff] claims that [his/her employer(s)] [name(s) of defendant(s)] did not pay [Plaintiff] the [minimum wage/overtime pay] required by the federal Fair Labor Standards Act, also known as the FLSA.

To succeed on [his/her] claim against [name(s) of [individual manager/supervisor] [and/or] [company] defendant(s)], [Plaintiff] must prove each of the following facts by a preponderance of the evidence:

> First: [Plaintiff] was an employee of [name(s) of defendant(s)] and was [engaged in commerce or in the production of goods for commerce] [employed by an enterprise engaged in commerce or in the production of goods for commerce]; and
>
> Second: [Name(s) of defendant(s)] failed to pay [Plaintiff] the [minimum wage/overtime pay] required by law.

[In the verdict form that I will explain in a moment, you will be asked to answer questions about these factual issues.]

For the first element, [Plaintiff] must prove by a preponderance of the evidence that [he/she] was an employee [engaged in commerce or in the production of goods for commerce/employed by an enterprise engaged in commerce or in the production of goods for commerce].

The term "commerce" has a very broad meaning and includes any trade, transportation, transmission, or communication between any place within a state and any place outside that state. [Plaintiff] was engaged in the "production of goods" if [he/she] was employed in producing, manufacturing, mining, handling, or transporting goods, or in any other manner worked on goods or any closely related process or occupation directly essential to the production of goods. [An "enterprise engaged in commerce or the production of goods for commerce" means a business that has employees engaged in commerce or the production of commercial goods for commerce and has annual gross sales of at least $500,000.]

[Minimum wage claim: The minimum wage required by the FLSA during the period involved in this case was $ [minimum wage] per hour. [To determine whether the employer(s) [has/have] paid the minimum wage, [it/they] [is/are] entitled to a credit for the reasonable costs of furnishing certain non-cash items to [Plaintiff] [unless those costs are excluded from [Plaintiff]'s wages under the terms of a union contract that applies to [Plaintiff]], such as meals and lodging for the employee's benefit, and the employee voluntarily accepts them.]

[Overtime claim: The FLSA requires [an] employer(s) to pay an employee at least one-and-one-half times the employee's "regular rate" for time worked over 403 hours in a workweek. Put another way, if an employee works more than 40 hours in one workweek, the employer(s) must pay the employee the overtime rate of 1.5 times the regular rate for all time worked after the first 40 hours. This is commonly known as time-and-a-half pay for overtime work.]

[The employee's regular rate for one week is the basis for calculating any overtime pay due to the employee. The "regular rate" for a week is determined by dividing the total wages paid for the week by [40/the total number of hours [Plaintiff]'s weekly salary was intended to compensate]. To calculate how much overtime pay was owed to [Plaintiff] for a certain week, subtract 40 from the total number of hours [he/she] worked and multiply the difference by the overtime rate. [Name(s) of defendant(s)] failed to pay [Plaintiff] the required pay if [he/she/it/they] paid [him/her] less than that amount.]

[Exemption: In this case, [name(s) of defendant(s)] claim[s] that [he/she/it/they] [is/are] exempt from the FLSA's overtime provisions. To establish that [he/she/it/they] [is/are] exempt, [name(s) of defendant(s)] must prove each of the following facts by a preponderance of the evidence: [List essential elements of the claimed exemption].

If you find that [name(s) of defendant(s)] [is/are] exempt, you will not decide the issue of [Plaintiff]'s damages. But if you find that [name(s) of defendant(s)] [is/are] not exempt, you must decide the issue of [Plaintiff]'s damages.]

The amount of damages is the difference between the amount [Plaintiff] should have been paid and the amount [he/she] was actually paid. [Plaintiff] is entitled to recover lost wages from the date of your verdict back to no more than two years before [he/she] filed this lawsuit [date of complaint] unless you find that the employer(s) either knew or showed reckless disregard for whether the FLSA prohibited [its/their] conduct. If you find that the employer(s) knew or showed reckless disregard for whether the FLSA prohibited [its/their] conduct, then [Plaintiff] is entitled to recover lost wages from date of your verdict back to no more than three years before [he/she] filed this lawsuit.

[Inadequate Records: The law requires [an] employer(s) to keep records of how many hours [his/her/its/their] employees work and the amount they are paid. In this case, [Plaintiff] claims that [name(s) of defendant(s)] failed to keep and maintain adequate records of [his/her] hours and pay. [Plaintiff] also claims that [name(s) of defendant(s)]'s failure to keep and maintain adequate records has made it difficult for [Plaintiff] to prove the exact amount of [his/her] claim.

If you find that [name(s) of defendant(s)] failed to keep adequate time and pay records for [Plaintiff] and that [Plaintiff] performed work for which [he/she] should have been paid, [Plaintiff] may recover a reasonable estimation of the amount of [his/her] damages. But to recover this amount, [Plaintiff] must prove by a preponderance of the evidence a reasonable estimation of the amount and extent of the work for which [he/she] seeks pay.]

[Individual Liability: An individual can also be liable for a plaintiff's damages under the FLSA if the individual played a substantial role in causing the FLSA violation. To determine whether the individual is liable, you must consider all the relevant circumstances rather than any one technical factor. [Plaintiff] must prove that [name(s) of individual defendant(s)] had operational control over [name(s) of company defendant(s)/the enterprise that is covered by the FLSA]. In other words, [name(s) of individual defendant(s)] must have controlled significant aspects of [name(s) of company defendant(s)]'s day-to-day functions, including employee compensation, or had direct responsibility for the supervision of [Plaintiff].]

SPECIAL INTERROGATORIES TO THE JURY

Do you find from a preponderance of the evidence:

1. That [Plaintiff] was an employee of [Defendant] and was [engaged in commerce or in the production of goods for commerce/employed by an enterprise engaged in commerce or in the production of commercial goods]?

Answer Yes or No _____________

If your answer is "No," this ends your deliberations, and your foreperson should sign and date the last page of this verdict form. If your answer is "Yes," go to the next question.

2. That [Defendant] failed to pay [Plaintiff] the [minimum wage/overtime pay] required by law?

Answer Yes or No _____________

If your answer is "No," this ends your deliberations, and your foreperson should sign and date the last page of this verdict form. If your answer is "Yes," go to the next question.

[3. That [Plaintiff] was exempt from the Fair Labor Standards Act as an [describe pertinent exemption, e.g., "administrative," "executive"] employee?

Answer Yes or No _____________

If your answer is "Yes," this ends your deliberations, and your foreperson should sign and date the last page of this verdict form. If your answer is "No," go to the next question.]

[4. That [Defendant] knew or showed reckless disregard for whether the FLSA prohibited its conduct?7

Answer Yes or No _____________]

5. That [Plaintiff] should be awarded damages?

Answer Yes or No ____________

If your answer is "Yes," in what amount? $____________

SO SAY WE ALL.

DATE: ____________________ ____________________________
Foreperson's Signature

((Rev. 03/2022) | Judicial Council of the United States Eleventh Judicial Circuit)

Annotations and Comments

The Fair Labor Standards Act ("FLSA") is found at 29 U.S.C. §201 et seq. Pattern Instruction 4.14 is intended to be used in cases where the plaintiff alleges that the defendant employer failed to pay the minimum wage or overtime pay required by the FLSA. Pattern Instruction 4.14 contains bracketed instructions for each type of FLSA claim.

I. Elements and Defenses

A.

1. "Employee"

Pattern Instruction 4.14 instructs that the plaintiff must have been an employee of the defendant. For cases in which this issue is disputed, the instruction and verdict form should be adapted accordingly. For pattern instructions concerning issues of joint employers or independent contractors, please see Pattern Instructions 4.24 and 4.25, infra.

The employee must also be "engaged in commerce" within the meaning of the FLSA or "employed by an enterprise engaged in commerce." For a discussion of the "engaged in commerce" requirement, please see *Martinez v. Palace, 414 F. App'x 243 (11th Cir. 2011)* (per curiam) (finding that a cook at a local restaurant in Alabama was not "engaged in commerce" within the meaning of the FLSA).

2. "Employer"

Pattern Instruction 4.14 may be used when a plaintiff claims the existence of more than one employer, an individual as well as a company. The FLSA defines an "employer" as "any person acting directly or indirectly in the interest of an employer in relation to an employee . . . .” 29 U.S.C. §203(d). “[T]he FLSA contemplates at least some individual liability, and it is consistent with Congress’s intent to impose liability upon those who ‘control[] a corporation’s financial affairs and can cause the corporation to compensate (or not to compensate) employees in accordance with the FLSA.’” *Lamonica v. Safe Hurricane Shutters, Inc., 711 F.3d 1299, 1313 (11th Cir. 2013)* (first alteration added; quoting *Baystate Alt. Staffing, Inc. v. Herman, 163 F.3d 668, 678 (1st Cir. 1998)*).

In *Patel v. Wargo, 803 F.2d 632 (11th Cir. 1986)*, the Eleventh Circuit acknowledged “‘[t]he overwhelming weight of authority is that a corporate officer with operational control of a corporation’s covered enterprise is an employer along with the corporation, jointly and severally liable under the FLSA for unpaid wages.’” Id. at 637–38 (alteration added; quoting *Donovan v. Agnew, 712 F.2d 1509, 1511 (1st Cir. 1983)*). The Eleventh Circuit later clarified that corporate supervisors other than officers may be personally liable under the FLSA if they are involved in the company’s day-to-day functions or have some direct responsibility for the supervision of the employee. See *Lamonica, 711 F.3d at 1310, 1313* (citing *Alvarez Perez v. Sanford-Orlando Kennel Club, Inc., 515 F.3d 1150, 1160 (11th Cir. 2008)*); see also id. at 1313–15 (finding two non-officer supervisors with substantial ownership interests in the corporate employer who exercised control over the company’s day-to-day functions were individually liable under the FLSA).

For cases in which individual liability is at issue, the instruction and verdict form should be adapted accordingly. For pattern instructions concerning issues of joint employers, please see Pattern Instruction 4.25, infra.

B. Amount of Work Performed:

Inaccurate or Inadequate Employer Records When an employer’s records are “inaccurate or inadequate and the employee cannot offer convincing substitutes,” then an employee has carried his burden of proving that he has performed work for which he was not properly compensated. *Anderson v. Mt. Clemens Pottery Co., 328 U.S. 680, 687 (1946)*, superseded by statute on other grounds as stated in *Carter v. Panama Canal Co., 463 F.2d 1289, 1293–94 (D.C. Cir. 1972)*. “The burden then shifts to the employer to come forward with evidence of the precise amount of work performed or with evidence to negative the reasonableness of the inference to be drawn from the employee’s evidence.” Id. at 687–88.

C. Regular Rate of Pay

When an employee is compensated solely on a weekly salary basis, the regular hourly rate of pay, on which time and a half must be paid, is computed by dividing the salary by the number of hours the salary is intended to compensate. *Rodriguez* *v. Farm Stores Grocery, Inc., 518 F.3d 1259, 1268 (11th Cir. 2008)*. For overtime claims involving an employee who is paid a constant weekly salary for fluctuating hours, it may be necessary to modify the instruction so that the jury is instructed on the "fluctuating workweek method" for calculating damages. See generally *Lamonica, 711 F.3d at 1310–12*; see also 29 C.F.R. §778.114 (explaining how to use the fluctuating workweek method).

D. Exemptions

Pattern Instruction 4.14 leaves it to the court to fashion an instruction regarding the elements of a claimed exemption. The most common exemptions from the overtime pay requirement exist for employees in a "bona fide executive, administrative, or professional capacity" as defined by regulations of the Secretary. 29 U.S.C. §213(a)(1). The elements of the exemptions may be found at 29 C.F.R. §541.1 et seq.

In a suit under the FLSA, the employer carries the burden of proving an overtime pay exemption. *Hogan v. Allstate Ins. Co., 361 F.3d 621, 625 (11th Cir. 2004)* (per curiam).

II. Remedies

A. Public Employees

Pursuant to the Fair Labor Standards Act, 29 U.S.C. §201 et seq., a public employee working overtime has the choice to be reimbursed either in the form of wages or compensatory time. 29 U.S.C. §207(a)(o). A public employer may only substitute compensatory compensation for overtime pay pursuant to a collective bargaining agreement or agreement between the employer and employee if there is no applicable collective bargaining agreement. 29 U.S.C. §207(o)(2)(A); *Chesser v. Sparks 248 F.3d 1117, 1120 n.1 (11th Cir. 2001)*.

B. Liquidated Damages, Good Faith and Willful Violations

The FLSA provides for liquidated damages and states that such damages shall be paid unless the "employer shows to the satisfaction of the court that the act or omission giving rise to such action was in good faith and that he had reasonable grounds for believing that his act or omission was not a violation of the Fair Labor Standards Act," in which case "the court may, in its sound discretion, award no liquidated damages or award any amount thereof not to exceed the amount specified in section 216" of the FLSA. 29 U.S.C. §260. Under the plain language of the statute, this is a question for the court to determine not the jury. Thus, the court and the jury answer what is essentially the same question for two different purposes. The willfulness or good faith question is answered first by the jury to determine the period of limitations and then, if there is a verdict for the employee, again by the judge to determine whether to award liquidated damages. *Morgan v. Family Dollar Stores, Inc., 551 F.3d 1233, 1282 (11th Cir. 2008)*.

When the jury finds an employer has violated the FLSA and assesses compensatory damages, the district court generally must add an award of liquidated damages in an equal amount. 29 U.S.C. §216(b) ("Any employer who violates the provisions of... section 207 of this title shall be liable to the employee or employees affected in the amount of... their unpaid overtime compensation... and in an additional equal amount as liquidated damages."); *Alvarez Perez v. Sanford-Orlando Kennel Club, Inc., 515 F.3d 1150, 1163 (11th Cir. 2008)*. However, the district court has discretion to reduce or deny liquidated damages "if the employer shows to the satisfaction of the court that the act or omission giving rise to such action was in good faith and that he had reasonable grounds for believing that his act or omission was not a violation of the [FLSA]." *Morgan, 551 F.3d at 1282* (alteration in original) (internal quotation marks omitted); see also 29 U.S.C. §260. A district court must find that an employer acted in good faith in violating the FLSA before it may award less than the full amount of liquidated damages. *Joiner v. City of Macon, 814 F.2d 1537, 1539 (11th Cir. 1987)*. If the jury finds that the employer acted willfully, however, then the court cannot find that the employer acted in good faith, and the court must award liquidated damages. A jury's finding that the employer acted willfully precludes the court from finding that the employer acted in good faith when it decides the liquidated damages question. *Alvarez Perez, 515 F.3d at 1166*.

The statute of limitations for a claim seeking unpaid overtime wages under the FLSA is generally two years. "But if the claim is one 'arising out of a willful violation,' the statute of limitations is extended to three years." *Morgan, 551 F.3d at 1280* (quoting 29 U.S.C. §255(a)).

To prove willfulness and therefore obtain the benefit of the three year statute of limitations, an employee must establish that the employer "knew, or showed reckless disregard for, the fact that its conduct was forbidden by the FLSA." *Morgan, 551 F.3d at 1283*.