



## News & Trending

PUBLICATIONS & ALERTS

### ETRENDS - FAILURE TO USE EMPLOYER'S TIMEKEEPING SYSTEM DEFEATS EMPLOYEE'S CLAIM FOR OVERTIME

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In the recent case of *Brown v. ScriptPro, LLC*, the 10th Circuit Court of Appeals ruled that it was the employee's burden to provide evidence of the amount of overtime he allegedly worked and that his failure to use his employer's timekeeping system defeated his claim for overtime pay. Brown worked for ScriptPro, LLC, a developer and manufacturer of automated prescription drug dispensing systems, as a customer service operations analyst for approximately 1½ years. His employment was terminated in November 2008. After his termination, Brown sued ScriptPro and alleged, among other claims, a violation of the Fair Labor Standards Act ("FLSA"). He claimed that he was entitled to be paid for approximately 80 hours of overtime that he worked from his home during the period of July 2008 to October 2008.

Under the FLSA, an employer has the obligation to keep accurate records of the time an employee works and must pay for all the time the employer "suffers or permits" the employee to work. No particular form of recordkeeping is required, but the FLSA does require that an employer record certain information for each of its employees, including the number of hours worked. (DOL Fact Sheet # 21) ScriptPro used a computer-based time keeping system, KRONOS, which its employees could access from home. Brown, however, did not enter any of his overtime into ScriptPro's timekeeping system and he had no other record of any sort to document the hours he alleged he worked.

The Court of Appeals upheld the trial court's grant of summary judgment in favor of ScriptPro on Brown's claim for overtime pay. The Court quoted the United States Supreme Court in the case of *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 687 (1946) in explaining that not only does the plaintiff have the burden of proving that he performed work for which he was not compensated, but also he must produce "sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference." Although Brown provided uncontroverted evidence that he did work overtime, he failed to provide evidence to prove the amount of overtime by "justifiable or reasonable inference." Brown chose not to use ScriptPro's timekeeping system even though he could access it from home and he had no other record to document the hours he alleged he worked. The Court of Appeals determined that there was no failure by ScriptPro to keep records of Brown's time but, "there was a failure by Mr. Brown to comply with ScriptPro's timekeeping system." Therefore, ScriptPro did not violate the FLSA by failing to pay overtime.

The *Brown* case is helpful for employers in that it delineates the plaintiff's burden in a claim for overtime wages and it also serves as a reminder that employers should have clear policies regarding the recording of work time, particularly if remote work is permitted.

**Please contact Susan Parrott with any questions.**

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