

EMPLOYMENT LAW UPDATE

Juan C. Araneda

Jennifer A. Becker

David P. Borovsky

Robert J. Buccieri

Chip Cox

Kim Dincel

Edward F. Donohue, III

Kathleen M. Ewins

Howard M. Garfield

Jason A. Geller

J. Michael Higginbotham

John B. Hook

William L. Jacobson

Anna Kapetanakos

Joseph P. McMonigle

Douglas J. Melton

Jessica B. Rudin

Steven Sharaftian

Jennifer W. Suzuki

Jeanette Traverso

Karen L. Uno

Seth E. Watkins

Gerald G. Weisbach

Kevin D. Whittaker

Irene K. Yesowitch

March 26, 2004

Issue No. 105

Federal Law

Leever v. City of Carson
04 C.D.O.S. 1937 (March 4, 2004, 9th Cir.)

Agreements To Waive Overtime Pay Must Take Into Account Some Approximation Of Overtime Hours Employee Works To Be Valid.

By Jason A. Geller and David P. Borovsky

Plaintiff Paula Leever, a former police officer assigned to the “canine unit”, sued the City of Carson, her former employer, for alleged violations of the overtime provisions of the Fair Labor Standards Act (“FLSA”). As part of her responsibilities, Leever was required to care for and kennel her police dog-responsibilities she claimed consumed 28 off-duty work hours each week.

The FLSA contains an exemption from overtime requirements for employees who, like Leever, work from their homes for extended periods of time, and for whom it would be difficult to compute the exact number of hours actually worked from home. In such circumstances, the FLSA permits the employer and employee to agree on an alternative means for compensating the employee for overtime. In order to qualify for the exemption, an employer must prove that such an agreement was in place, and that it was reasonable, taking into account all the pertinent

facts. The City and the union in which Leever was a member had negotiated a standard salary differential of \$60 per bi-weekly pay period as compensation for the off duty work of canine officers.

The Ninth Circuit Court of Appeal held that the City failed to show that its agreement with Leever was reasonable. Specifically, the City failed to show that its agreement accounted for the actual number of off-duty hours that Leever might reasonably be required to work each week, or that the salary differential provided to Leever bore any resemblance to the compensation to which she would have otherwise been entitled in overtime pay. The City could not prove that it made any efforts to determine the actual number of hours that Leever had worked as a basis for the agreement.

Employers who rely on such exemptions under Federal law should ensure that any salary differentials provided to employees for at-home work would be

deemed “reasonable” under the FLSA and be able to articulate the basis for the compensation in the agreement.

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