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SUPREME COURT HOLDS EMPLOYERS MAY COMPEL COMP TIME USE

■ Stephen Allred

On May 1, 2000, the United States Supreme Court issued its decision in *Christensen, et al. v. Harris County, et al.*[1] The issue in this case was whether the county employer could require its employees to use their accrued compensatory time under the Fair Labor Standards Act (FLSA).[2] As discussed below, the Court held that the county could do so. This bulletin summarizes the Court's opinion and offers guidance for North Carolina public employers in dealing with the requirements of the FLSA.

Background

The FLSA permits public employers to compensate nonexempt employees for overtime work by granting them compensatory time in lieu of cash payment. If the employees do not use their accumulated compensatory time, the employer must pay cash compensation when employees exceed the limit on compensatory time hours accrued (240 hours for most employees, 480 hours for public safety employees), or leave their positions.[3]

The public employer in this case, Harris County, Texas, adopted a policy requiring its employees to schedule time off in order to reduce the amount of accrued time. The county deputy sheriffs sued, claiming that the FLSA did not permit an employer to compel an employee to use compensatory time in the absence of an agreement permitting the employer to do so. The District Court granted summary judgment in favor of the deputies and entered a declaratory judgment that the policy violated the FLSA. The Fifth Circuit reversed, holding that the FLSA does not speak to the issue and thus does not prohibit the county from implementing its policy.

1. No. 98—1167
2. 29 U.S.C. §§ 201-219, as amended.
3. §§ 207(o)(3)—(4).

The Supreme Court Ruling

The majority opinion was authored by Justice Thomas, joined by Chief Justice Rehnquist, and Justices O'Connor, Kennedy, and Souter. Justice Scalia joined in most aspects of the majority opinion. The Court held that nothing in the FLSA or its implementing regulations prohibits a public employer from compelling the use of compensatory time. Section 207(o)(5) provides that an employee who requests to use compensatory time must be permitted to do so unless the employer's operations would be unduly disrupted. The deputies argued that the wording of § 207(o)(5) implicitly prohibited compelled use of compensatory time in the absence of an agreement. The Court found that argument unpersuasive.

Section 207(o)(5) simply ensures that an employee receive some timely benefit for overtime work, stated Justice Thomas. The best reading of the FLSA, he added, is that it ensures liquidation of compensatory time; it says nothing about restricting an employer's efforts to require employees to use the time. Because the statute is silent on this issue and because the county's policy is entirely compatible with § 207(o)(5), he concluded, the deputies could not show that the county has violated § 207.

The majority opinion pointed to two other features of the FLSA to support this interpretation. First, the Court noted that employers are permitted to decrease the number of hours that employees work, and employers also may cash out accumulated compensatory time by paying the employee his regular hourly wage for each hour accrued. The county's policy merely involves doing both of these steps at once. Second, nothing in the Department of Labor's regulations implementing the FLSA even arguably requires that an employer's compelled use policy must be included in an agreement.

The Dissent

Justice Stevens filed a dissenting opinion, in which Justices Ginsburg and Breyer joined. He noted that although public employers may compensate their employees for overtime by granting them compensatory time, this rule is really an exception from the employees' basic right to be paid in cash. In his view, the fact that no employer may lawfully make any use of "comp time" without a prior agreement with the affected employees is of critical importance in answering the question whether a particular method of using that form of noncash compensation may be imposed on those employees without their consent. Because their consent is a condition without which the employer cannot qualify for the exception from the general rule, their agreement must encompass the way in which the compensatory time may be used, he stated.

Implications for North Carolina Public Employers

This opinion resolves a split in the federal circuit courts on a matter that had not yet been addressed by the Fourth Circuit Court of Appeals, which covers North Carolina. Thus, we now have clear guidance on the question of whether public employers may require their employees to use accumulated comp time when they wish to take leave.

To the extent North Carolina public employers have these policies in place, they may rest assured that they are lawful. For public employers who may wish to consider adopting a policy in which nonexempt employees may be required to use accumulated comp time, they may now do so.

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