

Court of Appeals Rules that Even Rigorous Timekeeping and Reporting Policies Cannot Overcome Imputed Knowledge of Overtime

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On January 15, The Eleventh Circuit rejected an oft-used defense in employment cases – that an employee’s violation of company policy should relieve the employer from liability under the equitable defense of “unclean hands” or “*in pari delicto*” (Latin for “in equal fault”).

In *Bailey v. TitleMax of Georgia*, plaintiff Santonias Bailey brought suit under the Fair Labor Standards Act (“FLSA”). Bailey generally alleged that he had not been paid for overtime during his year of employment at a Georgia TitleMax store because he underreported his hours by working off the clock, and because his supervisor edited his time records.

In defense, TitleMax asserted that Bailey was responsible for any unpaid overtime because he violated company policy by: (1) failing to accurately report his hours; (2) verifying the time shown on his timecards; and (3) failing to report any work-related problems to a supervisor, a higher-level manager, or an anonymous employee hotline. Ruling on the employer’s motion for summary judgment, the district court agreed with TitleMax and dismissed Bailey’s claims.

On appeal, the Eleventh Circuit reversed. It found that, in accordance with federal regulations, Titlemax “knew or had reason to know” that Bailey worked overtime because his supervisor “both encouraged artificially low reporting and squelched truthful timekeeping.”

While employers often (and successfully) defend discrimination cases by pointing out that they had a complaint process that the employee failed to use, the Eleventh Circuit pointed to the goals of the FLSA to counteract the inequality of bargaining power between employers and employees. Accordingly, the Court found that TitleMax could not succeed solely by pointing to its rigorous timekeeping and complaint policies, notwithstanding plaintiff’s failure to follow them.