Client Alert: Largest Ever FLSA Verdict Underscores Importance of Employer Compliance with Wage and Hour Laws

BY BENJAMIN J. HINKS AND DANIELLE JUREMA LEDERMAN • MAY 16, 2023

Last week, a federal jury returned a more than $22 million verdict – the largest recorded award under the Fair Labor Standards Act ("FLSA") to date – against East Penn Manufacturing Co., Inc. ("East Penn"), one of the world's largest battery manufacturers.

The verdict reflects the jury's determination that East Penn is required to pay for its violations of the FLSA, the federal law that governs minimum wage, overtime pay, recordkeeping, and child labor standards for both private and public employers. The case, *Su v. East Penn Manufacturing Co., Inc.*, Case No. 5:18-cv-01194, was brought by the U.S. Department of Labor ("DOL") on behalf of 7,500+ East Penn employees seeking unpaid overtime wages.

The DOL initiated the lawsuit in 2018 based on claims that East Penn did not pay its employees for the time they spent changing into or out of protective gear and showering. These protective measures were specifically undertaken to mitigate exposure to workplace hazards, such as lead. The DOL argued that time spent performing these tasks must be counted as hours worked because the time was "necessary and indispensable" to the employees' work. East Penn's failure to appropriately account for this additional work time, the DOL asserted, resulted in employees working more than 40 hours per week without being compensated for the overtime.

In a 2021 summary judgment ruling, the Court found in favor of the DOL on its FLSA claim. The Court based this ruling, in key part, on the fact that East Penn did not dispute employee testimony that they routinely donned and doffed uniforms and protective gear outside of their compensable eight-hour shifts. However, the Court reserved the issue of damages for the jury to determine at trial.

During the course of a 30-day trial in the federal district court for the Eastern District of Pennsylvania, the jury heard testimony from dozens of workers regarding their performance of unpaid work and calculations of back wages and considered volumes of East Penn time records showing employee clock-in and clock-out times. In the end, the jury concluded that East Penn was required to pay the affected workers for this donning and doffing time as well as showering time, resulting in a landmark damages award. In addition to the more than $22 million awarded by the jury, the DOL is seeking liquidated (double) damages, which is an additional penalty available under the FLSA.

This case serves as yet another cautionary tale to employers to ensure compliance with federal (as well as state and local) overtime laws. Specifically, employers must track all hours that employees work and pay an overtime premium at the rate of time and one half for all hours worked over 40 in a given workweek.

Employers are encouraged to contact their employment and labor attorney at Bowditch if they have any questions or

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concerns about this issue.

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