

Seventh Circuit Court of Appeals Upholds Rural Hospital's EMT "On Call" Policy

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Two EMTs employed by a hospital in a small rural Wisconsin city filed a Fair Labor Standards Act lawsuit challenging their employer's "on call" policy. The policy required first-out EMTs on-call to be sober and able to respond by being at the hospital within seven minutes of being paged. The EMTs claimed these restrictions during their on-call hours converted their time into hours worked, for which they should be paid their regular hourly wage rather than on-call pay for all on-call hours. They also sought overtime for all weeks in which they had worked more than 40 hours per week counting the on-call hours as regular hours of work.

Judge Shabaz of the U.S. District Court for the Western District of Wisconsin rejected the employees' claims and upheld the hospital's requirement of a seven-minute response time. The court found as a matter of law that the restrictions imposed on the EMTs while on-call were not so onerous as to require compensation under the Fair Labor Standards Act. The EMTs appealed.

Recognizing that labor and management can structure their relations so that each side gains, the Seventh Circuit Court of Appeals affirmed the district court's decision. It found that the EMTs could "use the time effectively for personal pursuits" at home or in the city as they could sleep, eat, and do many other activities while on-call. In reaching its decision, the court noted the following points:

- The hospital permitted a flexible schedule that included three 48-hour periods every two weeks during which the EMTs were not working or on-call.
- There was flexible swapping of on-call shifts.
- An EMT had approximately a 50% chance of being called during an on-call shift.
- There were only .65 calls per 14 to 16 hours of on-call time.
- The entire city was within the seven-minute response time.

The court rejected the EMTs argument that the seven-minute response time precluded them from effectively using the on-call time for personal pursuits. It acknowledged that a seven-minute response time may not be compatible with effective use of on-call time for personal pursuits in urban areas like Milwaukee. But this was not the case in the countryside. The court did note, however, that the seven-minute response time may be the lower limit of what is permissible under the FLSA. Recognizing the uncertainty inherent in the FLSA regulations and prior judicial decisions, the court looked to the private arrangement the parties themselves chose. The EMTs had sought first-out status and had agreed to the pay arrangement they subsequently challenged. The court thought that arrangement was best for both parties. It noted that a contrary decision would likely result in the elimination of the on-call system and the creation of full staffing for all shifts so that premium pay could be avoided. As a result, the employees would earn less money while spending more time at the hospital and less time at home. The hospital would have to pay more to maintain 24-hour EMT coverage. The court did not believe the FLSA compelled such a "lose-lose" situation.

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