

Paying Wages in Pennies or Chicken—Cool or Not Cool?

Law and the Workplace Blog on July 29, 2022

Who says wage and hour law is boring? Not us. We came across two wage and hour stories this year that are too awesome not to share.

Auto-Repair Shop Owner Pays Employee's Final Wages in Pennies, Is Sued by DOL

As the New York Times [reported](#) back in January, the U.S. Department of Labor filed a retaliation lawsuit against the owner of a Peachtree City, Georgia auto-repair shop for dumping a mound of 91,500 “oil-soaked” pennies in a former employee’s driveway as payment of his final wages. The employee called the DOL after his resignation in January 2021 to complain that the shop had stiffed him on his final paycheck of \$915. The shop owner initially told the agency he would not pay the wages, but hours later delivered the mountain of pennies (with a dry weight of approximately 572 lbs.) to the employee’s driveway, together with a copy of his final pay stub and a note featuring an expletive. The DOL’s [lawsuit](#)—filed in the Northern District of Georgia—also charged the shop owner with a host of other overtime and record keeping violations.

In fairness to the shop owner, the FLSA allows—and, indeed, [requires](#)—payment of wages “in cash or negotiable instrument payable at par,” an issue discussed in [our recent blog](#) on cryptocurrency in payroll. (Same with [Georgia law](#), which allows payment in “lawful money of the United States.”) But the issue here is the FLSA’s [anti-retaliation provision](#), which makes it unlawful “to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under [the FLSA].”

The shop owner—who is representing himself in the lawsuit—filed an answer in May noting that under [Title 31 of the U.S. Code](#), “United States coins ... are legal tender for all debts, public charges, taxes, and dues.” As such, he argues, “paying an employee in United States currency, no matter the denomination ..., cannot be considered a retaliatory ... action.” We’ll see what Chief Judge Timothy C. Batten, Sr. does with this one. Earlier this month, he signed a scheduling order and the case will now head into the discovery phase.

Chick-fil-A Franchisee Offers to Pay Drive-Through Workers in Chicken, Not Money

As the Washington Post [reported](#) this week, a Henderson, North Carolina Chick-fil-A recently posted an ad seeking “volunteers” to work its drive-through operation. The catch? It’s not a paying job in the money sense—successful applicants instead would “earn” five free entrées per one-hour shift worked. In response to community backlash, the restaurant—owned by a franchisee—noted that the opportunity was intended for people who “think it’s a good fit for them.” (For its part, a spokesperson for Chick-fil-A stated that “it was a program at an individually owned restaurant” and “[t]his was not endorsed by Chick-fil-A, Inc.”)

While the FLSA [allows individuals to volunteer time to religious, charitable, civic, humanitarian, or similar non-profit organizations](#) without contemplation or receipt of compensation, it’s a [non-starter in the private sector](#). Absent an exemption, drive-through workers would be employees entitled to the minimum wage and overtime protections under federal and state law. And as noted above, the FLSA requires wages to be paid in cash or negotiable instrument payable at par, not in chicken sandwiches (or even deluxe or spicy chicken sandwiches). That said, [Section 3\(m\) of the FLSA](#) allows an employer, under certain circumstances, to count the reasonable cost of a meal provided to an employee as a credit toward the minimum wage.

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