



Employees of the Marijuana Industry Are Protected by Federal Wage and Hour Law

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The U.S. Circuit Court of Appeals for the Tenth Circuit [recently ruled](#) that the federal Fair Labor Standards Act (“FLSA”), which imposes minimum wage and overtime requirements, protects employees who work in the state-sanctioned marijuana industry. *Kenney v. Helix, TCS, Inc.*, 2019 WL 4557433 (10th Cir. Sep. 20, 2019). The decision is a reminder that employers must exercise care when managing employees engaged in the use, sale, or cultivation of both medical and recreational marijuana.

The case arose when a security guard sued his employer for violating the FLSA by failing to pay him overtime when he regularly worked more than 40 hours per workweek. The employer claimed that the FLSA did not apply to the guard because he worked in Colorado’s state-sanctioned marijuana industry, which violates the federal Controlled Substance Act (“CSA”). The employer argued that the FLSA could not protect an employee whose labor violates federal policy underlying the CSA.

In reaching its decision, the court explained that employers are not excused from complying with the FLSA simply because they are violating other federal laws. Therefore, the court rejected the employer’s argument that granting FLSA protection to the security guard would give overtime benefits to employees engaged in “drug trafficking.” In doing so, the court emphasized that the FLSA’s broad definition of “employee” that benefits all workers.

The court also denied the employer’s claim that the security guard fell within the FLSA’s list of employees who are explicitly exempted from minimum wage or overtime laws. Such employees include delivery drivers, agricultural workers, and certain non-profit employees. The court explained that the exemptions must be narrowly construed, and since Congress had repeatedly refused to exempt security guards, the plaintiff did not fall within the exemption.

GableGotwals' Labor & Employment attorneys are well-versed in recent developments regarding the state-sanctioned marijuana industry and how those developments impact employers. If you need help in any of these areas, please contact any [GableGotwals Labor & Employment attorney](#).



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