



A federal court in Arizona recently rejected a defense for Arizona employers seeking to avoid liability for unpaid wages under the Arizona Wage Act (AWA).

In *Arrison v. Walmart*, 2023 WL 4421425 (D. Ariz. July 10, 2023), the district court held that there is no "employer knowledge" requirement under the AWA, rejecting Walmart's attempt to defeat an unpaid wages class action against the company by arguing that it did not know or have reason to believe that its employees were working following a pre-shift COVID-19 screening.

During the COVID-19 pandemic, Walmart began screening employees in its Arizona stores for COVID-19 symptoms. Before entering the store and beginning their shift, each employee needed to complete a screening consisting of a few "yes" or "no" questions and a temperature reading. To cover the time spent in the screening,

Walmart paid each employee for an extra five minutes per shift and allowed employees to adjust their time if the screenings took longer than five minutes. Employees filed suit for unpaid wages under the AWA, alleging that they should have been paid for time spent after screening but before clocking in for their scheduled start times.

Walmart moved for summary judgment on multiple grounds, including the position that Walmart did not "know or have reason to believe" that plaintiffs were working post-screening, and under the Fair Labor Standards Act (FLSA), an employer does not need to pay for work unless it had a reason to know about it. In arguing that Arizona law incorporated the FLSA's employer knowledge requirement, Walmart pointed to a policy statement from the Industrial Commission of Arizona adopting the FLSA's guidance when interpreting "hours worked" for purposes of the Arizona Minimum Wage Act.

The district court rejected this argument, holding that agency guidance regarding the Arizona Minimum Wage Act was not sufficient evidence that the Arizona legislature had a "manifest intent" to incorporate the FLSA's knowledge requirement into the AWA. Absent evidence of such intent, the court was unwilling to read the FLSA knowledge requirement into the AWA.

Employers evaluating whether and how to compensate employees for screening and other pre-shift activities should consult experienced employment counsel to help them consider the potential impacts of the Arizona Wage Act.

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