



April 11, 2008

Hello,

**EMPLOYERS MUST PAY FOR TIME EMPLOYEES ARE ATTENDING
MEDICAL APPOINTMENTS ORDERED BY THE EMPLOYER**

by Thomas P. Brady

In a case of first impression, the United States Eighth Circuit Court of Appeals held that an employer must pay an employee for attending a workers' compensation doctor's appointment ordered by the employer's third party workers' compensation administrator.

In *Howser v ABB, Inc.*, Howser received extensive medical attention for work related injuries. On September 23, 2004, she left work to attend a doctor's appointment scheduled by her employer's third party workers compensation administrator. The purpose of the appointment was to re-evaluate her work-related injury. Her employer offered to compensate her from her accrued leave bank but she refused. When she was not paid for the 3.8 hours it took for the doctor's appointment, she sued under the Fair Labor Standard Act. The lower court granted her judgment.

On appeal, the Eight Circuit cited Department of Labor regulations, 29 C.F.R. § 785.43 (2007), which state that "[t]ime spent by an employee in waiting for and receiving medical attention on the premises or at the direction of the employer during the employee's normal working hours on days when he is working constitutes hours worked." (Emphasis added). The employer argued that because the third party workers' compensation administrator sent Howser to the doctor, it was not done "at the direction of the employer." The court rejected this argument finding that the third party administrator was an agent of the employer. Therefore, the employer was required to pay Howser for the 3.8 hours she was attending the doctor's appointment. The court also rejected the employer's argument that she waived her right to the payment when she refused the employer's offer to reimburse her from her accrued leave bank.

Although the other federal courts have not addressed this issue, the analysis used by the Eight Circuit is supported by the cited regulation. If employers are ordering employees to attend doctor appointments during normal working hours, the employee should be compensated for the time.

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