

FLSA Applies to Cannabis Industry Workers

By Nathan Pangrace and Madison Lisotto Whalen

The U.S. Court of Appeals for the Tenth Circuit recently ruled that the Fair Labor Standards Act (“FLSA”) applied to workers in the cannabis industry. This decision that state-licensed marijuana businesses are required to follow federal labor laws could have far-reaching effects in the ever-growing cannabis industry.

The case arose when an employee filed suit against his employer, Helix TCS, Inc. (“Helix”), an operating services platform for producers, manufacturers, and distributors in the legal cannabis industry. The employee was a security guard protecting marijuana growers and sellers who alleged that he had been misclassified as an exempt worker and was entitled to overtime pay.

Helix moved to have the suit dismissed on the basis that the plaintiff was not subject to FLSA protection because he was working with illegal schedule 1 drugs under the federal Controlled Substances Act (“CSA”). The district court rejected this argument holding that employers were not exempt from FLSA compliance because their businesses did not comply with federal law. This was affirmed by a three-judge panel on appeal by the Tenth Circuit. The panel stated, “Denying FLSA protection to workers in the marijuana industry would consequently encourage employers to engage in illegal markets where they are subject to fewer requirements.” Workers in the cannabis industry are protected under federal labor laws even though the industry itself is not legal under federal laws.

The FLSA has been amended various times after the enactment of the CSA and employees in the marijuana industry have never been excluded, although other categories of workers have been excluded, such as computer employees, seasonal employees, seamen or women on foreign vessels, apprentices and independent contractors. The U.S. Supreme Court has also used an expansive interpretation of the word “employee” under the FLSA.

This decision is being hailed by some as one more step towards legalization for the cannabis industry and adds credibility to the industry as a whole. This also means that workers in the cannabis industry, in addition to receiving federal employment protections, may receive a greater share of the profits.

If you are interested in how federal labor laws affect your employees, or any other employment or cannabis-related issues, please contact any of the referenced attorneys.

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