2014 WL 12633678
Only the Westlaw citation is currently available.
United States District Court, S.D. Florida.

Wanda GILBERT, Plaintiff,
v.
CITY OF MIAMI GARDENS, Defendant.

CASE NO. 12-24234-CIV-LENARD/GOODMAN
|
Signed 10/08/2014

Attorneys and Law Firms

Jessica N. Pacheco, Clyne & Associates, P.A., Coral Gables, FL, Alejandro Tirado-Luciano, Lydecker Diaz, Reginald John Clyne, Quintairos, Prieto, Wood & Boyer, P.A., Miami, FL, for Plaintiff.

Michael Ross Piper, Christopher J. Stearns, Jr., William Hampton Johnson, IV, Johnson Anselmo Murdoch Burke Piper & Hochman, P.A., Fort Lauderdale, FL, for Defendant.

ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

JOAN A. LENARD, UNITED STATES DISTRICT JUDGE

***1 THIS CAUSE** is before the Court on Defendant City of Miami Gardens's Motion for Summary Judgment ("Motion," D.E. 55), filed on June 26, 2014. Plaintiff Wanda Gilbert filed a Response on July 14, 2014 ("Response," D.E. 65), to which Defendant filed a Reply on July 23, 2014 ("Reply," D.E. 71). Upon review of the Motion, Response, Reply, and the record, the Court finds as follows.

I. Factual Background [1]

The City of Miami Gardens ("the City") hired Plaintiff as a crime intelligence analyst ("analyst") on November 1, 2007. (Def. Facts ¶ 6.) Plaintiff's last day of work was October 22, 2010. [2] (Id. ¶ 10.) The City's policies prohibit hourly employees from working any hours "off the clock." (Id. ¶ 2.) The City states that "[a]t various times, employees are offered the opportunity to work additional hours in excess of the typical 40-hour work week," but that they "are never required to work in excess of 40 hours during any week." [3] (Id. ¶ 3.) The City also states that "[a]ll City employees are required to take a lunch break." (Id. at ¶ 4.)

Plaintiff's regular shift was from 7:00 AM to 4:00 PM. (See Response at 4.) However, she asserts that she was required to work overtime and through her lunch break in order to complete her work load. (Pla. Facts ¶ 4.) She states that she did this with the knowledge and approval of Major Anthony Chapman, (id.), the commander of the Investigations Division for which she worked (Def. Facts ¶ 7). Defendant, on the other hand, asserts that Plaintiff never obtained permission to work "off the clock" hours from Major Chapman or Captain (now Major) Trujillo, who was Plaintiff's direct supervisor. (Id. ¶ 8.) Defendant also asserts that neither Chapman nor Trujillo ever ordered Plaintiff to work through lunch, nor ever learned that Plaintiff was working through her lunch. (Id. ¶ 9.) However, Plaintiff states that she "received verbal permission from ... Major Chapman to go into work early due to the fact she had been working on various projects and assignments," and that Major Chapman knew she worked through lunch because he worked through lunch with her. (Pla. Facts ¶ 8.)

***2** Defendant states that Plaintiff prepared, signed, and submitted all of her own timesheets documenting the hours that she worked, including overtime and holiday hours. (Def. Facts ¶ 11.) Plaintiff alleges that these timesheets were "not completely accurate because Defendant intimidated her from submitting her true hours worked." (Pla. Facts ¶ 11.) Defendant maintains that Plaintiff never informed the City that she worked any overtime beyond what was declared on her timesheets. (Def. Facts ¶ 14.) Defendant contends that Plaintiff "cannot identify a single day that she worked 'off the clock' without just payment." (Def. Facts ¶ 15.) However, Plaintiff notes that although she cannot identify precisely what dates she worked through lunch without certain documentation, she has "provided through her expert a report outlining estimated days that she did not eat lunch based on Access Card Records." (Pla. Facts ¶ 15.)

Defendant further argues that it has never asked nor authorized Plaintiff to work "off the clock" hours for the City, (Def. Facts ¶ 17), and that "[t]he City never learned that [Plaintiff] worked—or believed that she worked—'off the clock' hours while she was employed by the City," (id. ¶ 18). However, Thaddeus Knight, the only other analyst employed by Defendant, left the City's employ on March 15, 2010 and his replacement was not hired until August 30, 2010. (Pla. Facts ¶ 34.) Thus, between March 15 and August 30, 2010, Plaintiff was the City's only analyst and she was performing

the work of two analysts; she claims that she was required to work overtime to complete her double work load and that she did so with Major Chapman's knowledge and permission. (Pla. Facts ¶¶ 17-18; Response at 4.)

Plaintiff claims that she did not know that she was entitled to be paid for working through lunch. (Pla. Facts ¶ 39.)[4] She claims that she habitually recorded on her time sheet that she worked eight hours per day, and did not record the time that she worked before 7:00 AM or the time she worked through lunch because she "was not allowed by her supervisor to put the time down because there was no overtime allowed." (Id. ¶¶ 37, 40.) "However, the security access to the building shows that she habitually came to work before 7:00 a.m. Plaintiff was only able to obtain a portion of these records. The City destroyed most of the pertinent records during the relevant time periods." (Id. ¶ 40.) "For instance, on October 22, 2010, she entered the building at 6:45 a.m. and the record indicates she departed at 5:09 p.m. Thus, she worked a total of 10 hours and 24 minutes. Her time record for that day reflects a simple 8 hour day. Thus, on her last day of employment she would be due 2 hours and 24 minutes of overtime." (Id. ¶ 41 (record citation omitted).) As another example, Plaintiff alleges that security access card records reflect that she worked more than eight hours on October 19 and 20, 2010. (See id. ¶¶ 42-43.) In each of these examples, security access card records do not indicate that she ever entered the lunch room. (Id. ¶ 44.)

Plaintiff provided the affidavit of Police Sergeant Jeffery Mason of the City of Miami Gardens Police Department. (See Id. ¶ 47 (citing Mason Aff., D.E. 67-16).) Sergeant Mason averred that Plaintiff "always reported to work very earlier [sic] than her assigned start time and stayed beyond her assigned ending work hours to complete her job assignments." (Mason Aff., D.E. 67-16 ¶ 4.) He further stated that "after the departure of Mr. Thaddeus Knight, [Plaintiff] started her work hours very early, working through her lunch and long hours for approximately six months before the another [sic] analyst was hired to help with the work load." (Id. ¶ 6.)

***3** Plaintiff also provided the affidavit of co-worker Luwani James, who stated that Plaintiff "worked long hours, coming in early, not having lunch and sometimes staying beyond her work hours to complete her job assignments." (James Aff., D.E. 67-17 ¶ 3.) Additionally, James asserts that "[m]anagement was aware of her long hours, because it was well known that she had a practice of working long hours." (Id. ¶ 4.)

Finally, Plaintiff provided a summary of overtime hours she worked based on the available security access records, which indicates that between January 5, 2010 and October 22, 2010, she worked 55 hours and 48 minutes of overtime. (See D.E. 67-10.)

II. Procedural Background

Plaintiff filed her two-count Complaint on November 29, 2012. ("Complaint," D.E. 1.) Count 1 alleges unpaid overtime under the Fair Labor Standards Act, 29 U.S.C. § 207. (Id. ¶¶ 35-42.) Count 2 alleges unpaid wages under the Miami-Dade County, Florida Wage Theft Ordinance, Ordinance Number 10-16 § 1, which is codified at Miami-Dade County, Florida Code of Ordinances, Chapter 22-1, et seq. (Id. ¶¶ 43-47.) The Complaint alleges that Defendant failed to pay her for approximately 1,500 overtime hours worked. (Id. ¶¶ 36, 44.)

On June 26, 2014, Defendant filed its Motion for Summary Judgment arguing that (1) Plaintiff's FLSA claim is barred by the statute of limitations, (D.E. 55 at 2-3), and (2) Plaintiff's claims fail on their merits because Defendant was without knowledge that Plaintiff was working overtime, (id. at 4-6).

III. Legal Standards

On a motion for summary judgment, the Court is to construe the evidence and factual inferences arising therefrom in the light most favorable to the nonmoving party. Adickes v. S.H. Kress & Co., 398 U.S. 144, 157 (1970). Summary judgment can be entered on a claim only if it is shown "that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The Supreme Court has explained the summary judgment standard as follows:

> [T]he plain language of [Rule 56] mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be

> no genuine issue as to any material fact, since a complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial.

Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986) (internal quotation omitted). The trial court's function at this juncture is not "to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249-50 (1986). A dispute about a material fact is genuine if the evidence is such that a reasonable fact-finder could return a verdict for the nonmoving party. Id. at 248; see also Barfield v. Brierton, 883 F.2d 923, 933 (11th Cir. 1989).

The party moving for summary judgment "always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of the 'pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact." Celotex, 477 U.S. at 323. Once the movant makes this initial demonstration, the burden of production, not persuasion, shifts to the nonmoving party. The nonmoving party must "go beyond the pleadings and by [its] own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.' " Id. at 324; see also Fed. R. Civ. P. 56(c). In meeting this burden the nonmoving party "must do more than simply show that there is a metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). That party must demonstrate that there is a "genuine issue for trial." Id. at 587. An action is void of a material issue for trial "[w]here the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party." Id.

IV. Discussion

***4** Defendant raises two arguments in its Motion. First, it argues that Plaintiff's FLSA claim is barred by the statute of limitations. (Motion at 2-3.) Second, it argues that Plaintiff's claims fail on their merits because Defendant did not know Plaintiff was working overtime, and there is no evidence that she worked off-the-clock hours. (Id. at 4-6.)

A. Statute of Limitations

Plaintiff's final day of work was October 22, 2010. (Motion at 2.) She filed her Complaint on November 29, 2012. (D.E. 1.) Defendant argues that Plaintiff's FLSA claim is time-barred by the two year limitations period for FLSA claims. (Id. at 2.) It further argues that there is no evidence of a willful violation of the FLSA that would extend the limitations period to three years under the FLSA. (Id. at 2-3.) Plaintiff argues that there is sufficient evidence that Defendant's actions were willful and that the three-year limitations period should apply. (Response at 10-13.)

"The statute of limitations for claims seeking unpaid overtime wages generally is two years, but if the claim is one 'arising out of a willful violation,' another year is added to it." Alvarez Perez v. Sanford-Orlando Kennel Club, Inc., 515 F.3d 1150, 1162 (11th Cir. 2008) (citing 29 U.S.C. § 255(a)). "To establish that the violation of the Act was willful in order to extend the limitations period, the employee must prove by a preponderance of the evidence that his employer either knew that its conduct was prohibited by the statute or showed reckless disregard about whether it was." Id. (citing McLaughlin v. Richland Shoe Co., 486 U.S. 128, 133 (1988)). "The Code of Federal Regulations defines reckless disregard as the 'failure to make adequate inquiry into whether conduct is in compliance with the Act.' " Id. (citing 5 C.F.R. § 551.104).

The Court finds that whether Defendant willfully violated the FLSA is a jury determination. See, e.g., McGuire v. Hillsborough Cnty., Fla., 511 F. Supp. 2d 1211, 1218 (M.D. Fla. 2007). As one court in this Circuit has explained:

> While the Eleventh Circuit has noted that it has never expressly held that willfulness in a FLSA case is a jury question, it has implied as much. Id. at 1163 n. 3 ("We have been unable to find an FLSA decision of this Court squarely holding that the decision about whether the employer acted willfully for purposes of determining the statute of limitations period is to be decided by the jury. In the district court, the court and the parties assumed that the jury was to decide willfulness, and the parties have assumed that in their briefs and arguments to us. So, we assume it too."). Moreover, numerous district courts in this Circuit have held that willfulness is properly decided by a jury where genuine issues of material fact exist, and the Eleventh Circuit Pattern Jury Instructions provide as much. See Watkins v. City of Montgomery, 919 F. Supp. 2d 1254, 1265 (M.D. Ala. 2013); Fuentes v. CAI Int'l, Inc., 728 F. Supp. 2d 1347, 1359 (S.D. Fla. 2010); Reynolds v. City of Jacksonville, No. 3:08–cv–388, 2009 WL 5067799, at

*7–8 (M.D. Fla. Dec. 16, 2009); McGuire v. Hillsborough Cnty., Fla., 511 F. Supp. 2d 1211, 1218 (M.D. Fla. 2007); Note II.B to Pattern Jury Instruction 4.14, Eleventh Circuit Pattern Jury Instructions (Civil), 2013 revision.

Maldonado v. Alta Healthcare Grp., Inc., —— F. Supp. 2d ——, Case No. 6:12-cv-1552-Orl-36DAB, 2014 WL 1661265, *10 (M.D. Fla. Mar. 26, 2014); see also Kuebel v. Black & Decker Inc., 643 F.3d 352, 366 (2d Cir. 2011) (concluding that "the question of willfulness for FLSA statute of limitations purposes is properly left to trial" where, when viewing the record in the light most favorable to the plaintiff, a jury could find that the employer required the plaintiff to work overtime to finish his work but not record any overtime).

***5** Here, there is sufficient evidence for a reasonable jury to conclude that Defendant's FLSA violations were willful. Plaintiff testified at her deposition that Major Chapman gave her permission to arrive to work at 6:30 AM—thirty minutes before she was scheduled to begin work and thirty minutes before her timesheets reflect that she began working. (See Gilbert Dep., D.E. 67-1 at 19-20.) However, she also testified that her supervisors told her that she could not record a 6:30 AM start time on her time sheet. (Id. at 21.) Additionally, she testified that she "had to work through lunch" to complete her work because it "was the nature of the assignment, it had to be done," (id. at 24), and that at times Major Chapman worked through lunch with her, (id. at 29-30). Plaintiff also testified that she talked to Major Chapman about working through lunch. (Id. at 30.) Additionally, Plaintiff provided security access card records showing that she often arrived before 7:00 AM, left after 4:00 PM, and did not enter the lunch room. (See D.E. 67-14; see also Summary of Key Card Access, D.E. 67-10.) Moreover, Luwani James's affidavit specifically states that (1) "Management was aware of her long hours," and (2) Plaintiff "complained that when she did submit overtime sheets that she was given a hard time by Captain Trujillo who never wanted to approve them." (James Aff., D.E. 67-17 ¶¶ 4-6.)

The Second Circuit has found that a reasonable jury could find "willfulness" where the employer "conveyed to [the employee] that he should do what it takes to finish the job, but not record any overtime." Kuebel, 643 F.3d at 366; see also Smith v. Micron Elecs., Inc., No. CV-01-244-S-BLW, 2005 WL 5328543, at *3 (D. Idaho Feb. 4, 2005) (finding that a question of fact regarding employer's willfulness existed where the evidence showed, inter alia, that employer "did not always authorize overtime, knew that employees were working unrecorded overtime hours, and indicated that employees should work off the clock"). Likewise, here, a reasonable jury could find Defendant willfully violated the FLSA under the evidence presented. Accordingly the Court finds that summary judgment is not appropriate on statute of limitations grounds.

B. Plaintiff's Entitlement to FLSA Overtime

Next, Defendant argues that Plaintiff has not met her burden of establishing a claim for uncompensated overtime work under the FLSA. (Motion at 3.) Specifically, Defendant argues that it did not have knowledge that Plaintiff worked overtime, and that there is no evidence of off-the-clock hours. (Id. at 3-6.) Plaintiff argues that Defendant knew or should have known she worked unclaimed overtime, and that any argument otherwise it "dishonest at best." (Response at 5-10.)

The Eleventh Circuit has explained that to prevail on an FLSA claim, a plaintiff "must prove that they were suffered or permitted to work without compensation." Allen v. Bd. of Pub. Educ. for Bibb Cnty., 495 F.3d 1303, 1314 (11th Cir. 2007). "Courts have interpreted this to mean that a FLSA plaintiff must demonstrate that (1) he or she worked overtime without compensation and (2) the [defendant] knew or should have known of the overtime work." Id. at 1314-15 (citing Reich v. Dep't of Conservation and Natural Res., 28 F.3d 1076, 1082 (11th Cir. 1994)).

1. Plaintiff produced evidence that she worked overtime without compensation.

First, Defendant argues that Plaintiff has not met her burden of producing evidence that she worked uncompensated overtime hours. (Motion at 4-5.) It points to the fact that Plaintiff prepared her own timesheets which "frequently included some overtime" for which she was paid. (Id. at 5.) Defendant asserts that Plaintiff "cannot now claim that her time sheets were inaccurate, and that she is actually owed additional compensation for time that she knowingly failed to report in her time sheets." (Id.)

Plaintiff produced employee history reports and timesheets with her signature reflecting that she only worked eight hours per day. (See D.E. 67-3.) However, she also provided evidence that Major Chapman authorized her to come in at 6:30 AM and knew she worked through lunch, (Gilbert Dep. at 29); three co-workers provided affidavits acknowledging that Plaintiff routinely came in early and worked through

lunch, (Knight Aff., D.E. 67-15; Mason Aff., D.E. 67-16; James Aff., D.E. 67-17 & -18); and Plaintiff produced security access card records (to the extent that they were available) that show that she routinely worked more hours than she recorded on her timesheet. (D.E. 67-14.)

***6** Furthermore, Plaintiff notes that Defendant destroyed many of the security card access records that would support her claim, and argues that "[t]his act of misfeasance should not be held against [her]." (Id. at 8.) The Eleventh Circuit has stated that "[a]lthough a FLSA plaintiff bears the burden of proving that he or she worked overtime without compensation, '[t]he remedial nature of this statute and the great public policy which it embodies ... militate against making that burden an impossible hurdle for the employee.' " Allen, 495 F.3d at 1315 (quoting Anderson v. Mt. Clemens Pottery Co., 328 U.S. 680, 687 (1946)). "It is the employer's duty to keep records of the employee's wages, hours, and other conditions and practices of employment." Id. (citing Anderson, 328 U.S. at 687). The employer is in a superior position to know and produce the most probative facts concerning the nature and amount of work performed and "[e]mployees seldom keep such records themselves." Id. (citing Anderson, 328 U.S. at 687). The Supreme Court in Anderson stated that if an employer has failed to keep proper and accurate records and the employee cannot offer convincing substitutes,

> [t]he solution ... is not to penalize the employee by denying him any recovery on the ground that he is unable to prove the precise extent of uncompensated work. Such a result would place a premium on an employer's failure to keep proper records in conformity with his statutory duty; it would allow the employer to keep the benefits of an employee's labors without paying due compensation as contemplated by the Fair Labor Standards Act.

328 U.S. at 687, superseded by statute on other grounds as stated in Sandifer v. U.S. Steel Corp., —— U.S. ——, 134 S. Ct. 870, 875-76 (2014). Instead, "an employee has carried out his burden if he proves that he has in fact performed work for which he was improperly compensated and if he produces sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference." Id.

> The burden then shifts to the employer to come forward with evidence of the precise amount of work performed or with evidence to negative the reasonableness of the inference to be drawn from the employee's evidence. If the employer fails to produce such evidence, the court may then award damages to the employee, even though the result be only approximate.

Id. at 687-88.

Here, because Defendant destroyed the majority of the security access card records that would show the precise hours that Plaintiff worked, Plaintiff produced evidence in the form of co-worker affidavits, deposition testimony, and the available security access card records that all tend to prove that she was working more than eight hours per day. This is sufficient to survive summary judgment. See Allen, 495 F.3d at 1316-17 (finding that statements made in plaintiffs' depositions and unsworn declarations were sufficient to meet burden of production to overcome lack of records).

In sum, when viewing the evidence in the light most favorable to Plaintiff, the Court finds that Plaintiff produced sufficient evidence for a reasonable jury to conclude that she worked uncompensated overtime "as a matter of just and reasonable inference." Anderson, 328 U.S. at 687. Defendant has not met its burden of producing "either evidence of the precise amount of work performed or evidence to negate the reasonableness of the inference to be drawn from the employee's evidence." Id. at 1316 (citing Anderson, 328 U.S. at 687-88.) Accordingly, Defendant is not entitled to summary judgment based on Plaintiff's "lack of documentation and inability to state with precision the number of uncompensated hours [she] worked and the days on which that work was performed." See id. at 1317-18.

2. Defendant's Actual or Constructive Knowledge

Next, Plaintiff must demonstrate that "the [defendant] knew or should have known of the overtime work." Id. at 1314-15

(citing Reich, 28 F.3d at 1082). That is, Plaintiff's claims are viable "if a reasonable jury could conclude from the evidence that the [defendant] had actual or constructive knowledge." Id. at 1318. "In reviewing the extent of an employer's awareness, a court 'need only inquire whether the circumstances ... were such that the employer either had knowledge [of overtime hours being worked] or else had 'the opportunity through reasonable diligence to acquire knowledge.' ' " Reich, 28 F.3d at 1082 (quoting Gulf King Shrimp Co. v. Wirtz, 407 F.2d 508, 512 (5th Cir. 1969) [5] (quoting People ex rel. Price v. Sheffield Farms-Slawson-Decker Co., 121 N.E. 474, 476 (N.Y. 1918))).

***7** Defendant argues that "both of the individuals who regularly supervised Plaintiff and who worked on her shifts confirmed that they never observed Plaintiff actually working any 'off the clock' overtime hours." (Motion at 6.) However, Plaintiff provided sworn deposition testimony that Major Chapman gave her verbal permission to arrive at 6:30 AM for her 7:00 AM shift. (Gilbert Dep. at 19-20.) She also testified that Major Chapman knew that she was working through lunch because he would work through lunch with her. (Id. at 29.) Furthermore, Plaintiff submitted the affidavit of co-worker Luwani James who stated that "[m]anagement was aware of her long hours, because it was well known that she had a practice of working long hours." (James Aff., ¶ 4.) Additionally, Plaintiff submits that Major Chapman and Captain Trujillo must have known that she was working overtime after she became the only crime analyst performing the job of two analysts. (See Response at 9 n.5 and accompanying text.) Specifically, she notes that "[f]or a six (6) month period, Gilbert was carrying the workload of two crime analysts, because Thaddeus Knight had departed from the City. She and Thaddeus worked long hours when they were both working. After his departure, her long hours increased." (Id.) (citing Knight Aff., D.E. 67-15; Mason Aff., D.E. 67-16; James Aff., D.E. 67-17 & -18.) The Court finds that based on this evidence, a reasonable jury could conclude that Defendant had constructive knowledge that Plaintiff was working overtime.

Finally, Defendant's own security access card records indicate that Plaintiff was regularly arriving prior to 7:00 AM and regularly leaving after 4:00 PM, (see D.E. 67-14) but habitually submitted timesheets indicating that she only worked 7:00 AM to 4:00 PM, (see D.E. 67-3). Thus, there is evidence that Defendant had actual knowledge that Plaintiff was working in excess of forty hours per week by virtue of its time-clock system. See, e.g., Reyna v. ConAgra Foods, Inc., Civil Action No. 3:04-cv-39, 2006 WL 3667231, at *5 (M.D. Ga. Dec. 11, 2006) ("Defendants had actual knowledge that Plaintiffs were working overtime via ConAgra's own time clock system showing the exact amount of hours Plaintiffs worked.").

Thus, the Court concludes that Plaintiff has produced sufficient evidence to create a genuine issue of material fact as to whether Defendant either had knowledge of overtime hours being worked or else had the opportunity through reasonable diligence to acquire that knowledge. Reich, 28 F.3d at 1082. Therefore, summary judgment is not appropriate.

V. Conclusion

Accordingly, it is **ORDERED AND ADJUDGED** that Defendant's Motion for Summary Judgment (D.E. 55), filed on June 26, 2014, is **DENIED.**

DONE AND ORDERED in Chambers at Miami, Florida this 8th day of October, 2014.

All Citations

Not Reported in Fed. Supp., 2014 WL 12633678

Footnotes

1 The facts contained in this section are taken from the parties' Statements of Material Facts and the Exhibits attached thereto. See Defendant's Statement of Undisputed Material Facts ("Def. Facts," D.E. 56; "Def. Exs.," D.E. 57-1 through 57-4) and Plaintiff's Amended Statement of Undisputed Material Facts ("Pla. Facts," D.E. 74; "Pla. Exs.," D.E. 67-1 through 67-18). The facts are undisputed unless otherwise noted.

2 Plaintiff claims that she was "relieved from her duties" on October 22, 2010, but that she was not terminated until January 5, 2011. (Pla. Facts ¶ 10.)

3 Plaintiff disputes this characterization of the City's policy. She cites the City of Miami Gardens Employee Manual which provides, in relevant part, that "[e]mployees shall work when requested unless excused by their supervisor or disciplinary action may be taken"; "reporting to work early, staying after scheduled hours or working through lunch period is not permitted unless authorized by the immediate supervisor or department director. Work performed under the employee's own initiative without prior approval may subject employee to disciplinary action"; and "[e]mployees who work in excess of 40 hours in a 7 day cycle shall be paid overtime."

4 Plaintiff submits the remaining claims as additional facts in support of her opposition to the Motion. (See Pla. Facts ¶¶ 19-49.) Pursuant to Local Rule 56.1(a): "Additional facts which the party opposing summary judgment contends are material shall be numbered and placed at the end of the opposing party's statement of material facts; the movant shall use that numbering scheme if those additional facts are addressed in the reply." Defendant did not file Reply to Plaintiff's Amended Statement of Undisputed Material Facts.

5 In Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981), the Eleventh Circuit adopted as binding precedent all decisions handed down by the former Fifth Circuit before October 1, 1981.