

# PUBLICATION

---

## Eleventh Circuit Rejects Equitable Defenses to FLSA Claim Where Employer Aware of Underreported Hours

January 26, 2015

**The United States Court of Appeals for the Eleventh Circuit recently held that an employer that has knowledge that an employee underreported his hours cannot assert equitable defenses based on the employee's own conduct as a total bar to the employee's claim under the Fair Labor Standards Act ("FLSA"). In *Bailey v. TitleMax of Georgia, Inc.*, No. 14-11747, 2015 WL 178346 (11th Cir. Jan. 15, 2015), the Eleventh Circuit reversed the summary judgment previously granted in TitleMax's favor.**

Santonias Bailey was an employee of TitleMax who was not paid for overtime hours he worked. Bailey's time records were not accurate and reflected an artificially low number of hours worked. Bailey's supervisor advised him that TitleMax does not allow overtime pay, so Bailey often underreported his own hours by working off the clock. Additionally, Bailey's supervisor occasionally edited Bailey's time records to further reduce the number of hours reported.

After resigning from TitleMax, Bailey filed suit claiming TitleMax violated the FLSA by failing to pay overtime as the statute requires. Under the FLSA, employers must pay their employees at least one and one-half times their regular wages for every hour worked in excess of forty per week. To prevail on an unpaid overtime claim, an employee must show: (1) the employee worked unpaid overtime, and (2) the employer knew or should have known of the overtime work. Knowledge may be imputed to an employer when supervisors or managers encourage artificially low reporting.

TitleMax emphasized that Bailey violated company policies that require employees to accurately report their hours worked and regularly verify their time. Further, by not reporting any of the alleged issues concerning his overtime or time records, Bailey violated a company policy requiring employees to notify a supervisor or manager when they encounter work problems. Based on these policy violations, TitleMax raised the equitable defenses of "unclean hands" and *in pari delicto*. Broadly speaking, these defenses may relieve a defendant from liability where the plaintiff bears equal responsibility for his own damages. The district court accepted TitleMax's argument and granted summary judgment in favor of TitleMax.

On appeal, the Eleventh Circuit reversed, concluding that barring FLSA actions for wage and overtime violations where the employer is aware that an employee is underreporting hours would undermine the Act's deterrent purpose. The Eleventh Circuit stressed the FLSA's goal of counteracting the inequality of bargaining power between employees and employers. Here, Bailey's supervisor encouraged and participated in the underreporting, so TitleMax knew or had reason to know that Bailey was underreporting. Allowing TitleMax or similar employers to escape liability based on the equitable defenses would allow employers to wield their superior bargaining power to pressure or even compel their employees to underreport their work hours, thus neutering the FLSA's purposeful reallocation of that power.

This opinion serves as a good reminder that employers' FLSA liability will turn on what the employer knew or should have known, rather than their employees' intent in tracking time.