



STATE OF MINNESOTA
IN SUPREME COURT

A08-1993

SARAH ERDMAN,
Individually and on behalf of
others similarly situated,

Plaintiffs/Appellants,

vs.

LIFETIME FITNESS, INC.,

Defendant/Respondent.

APPELLANTS' BRIEF

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TABLE OF CONTENTS

Page

TABLE OF CONTENTS.....i

TABLE OF AUTHORITIESii

I. STATEMENT OF THE ISSUES PRESENTED1

II. STATEMENT OF THE CASE AND FACTS.....2

II. ARGUMENT.....7

I. Appellate Standard of Review.....7

II. The Court of Appeals erred in finding that Plaintiffs were paid
a salary7

A. The MFLSA focuses on payment for a workweek – not payment
on an annual basis.....8

B. Plaintiffs’ pay “for the workweek” was not “guaranteed”9

C. The Court of Appeals’ Ruling Would Lead to Absurd Results....11

III. CONCLUSION12

CERTIFICATION OF BRIEF LENGTH.....14

APPENDIX (Attached Separately)

The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

TABLE OF AUTHORITIES

Cases

<i>Baden-Winterwood v. Life Time Fitness</i> , Case No. 2:06-cv-99, 2007 U.S. Dist. LEXIS 49777, *36-39 (S.D. Ohio July 10, 2007)	4
<i>Baden-Winterwood v. Life Time Fitness</i> , 566 F.3d 618 (6 th Cir. 2009).....	4
<i>Harris v. County of Hennepin</i> , 679 N.W.2d 728 (Minn. 2004).....	8
<i>Hince v. O'Keefe</i> , 632 N.W.2d 577,(Minn. 2001)	11
<i>Milner v. Farmers Insurance Exchange</i> , 748 N.W.2d 608 (Minn. 2008)	7, 8, 10
<i>State v. Indus. Tool & Die Works, Inc.</i> , 220 Minn. 591, 21 N.W.2d 31, 38 (Minn. 1945).....	11

Statutes

M.S.A. §177.23	9
M.S.A. §177.22	11
Minn. Stat. §§ 181.10-.15.....	10
Minn. Stat. §181.101	9
Minn. Stat. §181.79	5

Rules

Minn.R. 5200.0190	2, 9
Minn. R. 5200.0200	2, 9
Minn R. 5200.0210	2
Minn R. 5200.0211	1, 8

STATEMENT OF THE ISSUES PRESENTED

Question No. 1: What does Minnesota’s salary test, Minn R. 5200.0211, which requires employees not paid overtime to be “guaranteed a predetermined wage for each workweek” mean – does each individual paycheck have to be guaranteed, or can an employer reduce one paycheck so long as it increases another paycheck in the same amount later in the year?

Court of Appeals’ Ruling: The Court of Appeals found that the salary test, requiring an employee be “guaranteed a predetermined wage for each workweek”, did not dictate *when* those wages must be paid. As a result, the Court found that Life Time Fitness satisfied the salary test because at the end of the year the employee Plaintiffs ultimately ended up receiving the full yearly base salary promised to them – even though any given twice-monthly paycheck throughout that year could be—and multiple times was—reduced pursuant to language in Life Time’s compensation plans.

Authorities: Minn. Rule 5200.0211, Minn R. 5200.0170, M.S.A. §177.22.

STATEMENT OF THE CASE & FACTS

In March 2007, Plaintiff Sarah Erdman brought a class action¹ seeking unpaid overtime against Life Time Fitness, a fitness club with locations in Minnesota and across the United States.² Plaintiffs-Appellants (“Plaintiffs”) are current and former employees of Defendant employed in various managerial and/or executive capacities (A. 43-46) who worked over 48 hours (often upwards of 50 or more hours) per week and were not paid overtime for such hours. (A. 48, 53, 58, 67, 88, 94,102,111)

Minnesota’s Fair Labor Standards Act (“MFLSA”) requires employees to be paid one and one-half times their regular rate for hours worked over 48 per week, unless they fall under specified exemptions. See M.S.A. §177.25. An employee need not be paid overtime if employed in a “bona fide executive, administrative, or professional capacity.” M.S.A. §177.23. The requirements for these exemptions are found in Minn.R. 5200.0190; 0200; 0210 respectively.³ These rules specify certain duties in which the employees must engage to meet the exemption.

However, to meet the exemptions, the employees must be paid a “salary.” An employee is only paid a “salary” if they are “guaranteed a predetermined wage for each workweek.” Minn.R. 5200.0211. This case was brought because Life Time’s

¹ The District Court certified the class on June 27, 2008.

² See www.lifetimefitness.com.

³ See M.S.A. §177.28 (“The commissioner may adopt rules, including definitions of terms, to carry out the purposes of sections 177.21 to 177.44, to prevent the circumvention or evasion of those sections, and to safeguard the minimum wage and overtime rates established by sections 177.24 and 177.25.”)

employees' compensation did not meet the salary test, and thus Life Time unlawfully failed to pay Plaintiffs overtime.

Plaintiffs were paid under compensation plans Life Time classifies as corporate bonus pay plans. (A. 33-34) Under these plans, Plaintiffs were each paid a pre-determined amount of compensation, which was identified by Life Time as base salary, on a semi-monthly basis. In addition to this base salary, each Plaintiff was eligible to receive monthly bonus payments based on year-to-date performance of the particular business units the Plaintiff managed. (A. 71-85; 115-176)

These bonuses were paid out monthly based on the employees' cumulative yearly performance. (A. 33-34; 115-176) In other words, the bonus paid each month was equal to the year-to-date bonus earned, minus payments made in previous months. Thus, Defendant calculated each Plaintiff's performance numbers each and every month. (A. 71-85; 115-176)

However, when the amount of bonus payments previously paid exceeded the amount an employee had earned on a yearly basis, a "bonus overpayment" would result. (A. 118-176) Life Time would not just deduct this amount against future bonus payments and did not just internalize the loss. *Id.* Life Time purposefully, using the provision in Plaintiffs' compensation plan, took the money from Plaintiffs' *base salary*. This was a written rule in each worker's compensation plan: "LTF reserves the right to reclaim the amount of the previous payments by reducing future semi-monthly guarantee payments" (2004 plans); "Life Time Fitness reserves the right to reclaim the amount of the overpayment by reducing future semi-monthly base salary payments" (2005 plans); and

“Life Time Fitness Inc. reserves the right to reclaim the amount of overpayment by reducing ... future semi-monthly base salary payments.” (January 1—March 3, 2006 plans).⁴ *Id.*

These deductions occurred multiple times to multiple members of the Plaintiff class. (A. 36-37)

Very simply, no Plaintiff’s pay, at any point in the class period, was guaranteed. Life Time Fitness constantly monitored and reevaluated the workers’ compensation and performance numbers every month. (A. 71-85) It constantly watched the numbers to see if employees were becoming “in the hole” since that triggered a deduction from base pay. *Id.* The defense representative testified that each time an overpayment occurred, “it was a definite” that the employee would be subject to a deduction from their supposedly ‘guaranteed’ base pay. (A. 65-66)

Every worker’s pay was conditional on meeting the performance goals set forth in the compensation plans.⁵ (A. 115-176) Some workers happened to meet theirs; others

⁴ Life Time eliminated these provisions on March 3, 2006, shortly after the undersigned filed an overtime case against Life Time on behalf of a class of plaintiffs under the federal FLSA. See *Baden-Winterwood v. Life Time Fitness*, Southern District of Ohio Case No. 2:06-cv-99. The federal FLSA also has a salary rule which employers must meet if they want to avoid paying overtime.

⁵ The defense disagrees that the deductions here were related to Plaintiffs’ performance/productivity. However, this argument has been consistently rejected by the courts. See District Court Order (A. 8)(“The pay of every employee covered by the Plan was conditional on meeting the performance goals set in the plan.”); *Baden-Winterwood v. Life Time Fitness*, Case No. 2:06-cv-99, 2007 U.S. Dist. LEXIS 49777, *36-39 (S.D. Ohio July 10, 2007), (holding under federal law Plaintiffs’ pay deductions were due to the “quality or quantity” of their work, and in fact finding Life Time’s argument to the contrary “disingenuous.”); *affirmed in relevant part by Baden-Winterwood v. Life Time Fitness*, 566 F.3d 618, 633 (6th Cir. 2009)(“we find Life Time Fitness's argument that its

did not. Life Time Fitness argued its antidote for a worker to prevent these pay cuts was, incredibly, for the employee to “put in lots of overtime”—overtime the employees were not being paid for. (A. 195)

Life Time did not deny Plaintiffs’ pay was not guaranteed. Instead, it argued (at both the trial and appellate level) that Minnesota’s Payment of Wages Act (“PWA”)(specifically Minn. Stat. §181.79), dealing with impermissible deductions from an employee’s pay, prohibited liability against them. Life Time argued it did not lose the overtime exemption asserting Plaintiffs’ exclusive remedy was under the PWA which allows employees to recover twice the amount of improper deductions to their pay.

In ruling on cross-motions for summary judgment, the District Court found that the PWA was not relevant here. (A. 8) The District Court further correctly found that since Plaintiffs’ pay was “always at risk for reduction”, Plaintiffs were not salaried-exempt employees under Minnesota law:⁶

[E]ach variation of the Plan explicitly provided for the possibility that an employee’s future semi-monthly base salary payment could be reduced. Since an employee’s base pay was always at risk for reduction, the employee could not have been assured a predetermined wage for each workweek.

The pay of every employee covered by the Plan was conditional on meeting the performance goals set in the plan. In order to meet those goals, Plaintiffs were encouraged to put in overtime, for which they were not

corporate bonus compensation plans are not based on individual performance to be dubious, at best.”).

⁶ The District Court denied Life Time’s motion for summary judgment, granted Plaintiffs’ motion for summary judgment with respect to liability, and reserved for trial the issues of damages (calculation of overtime), attorneys fees, costs, and willfulness. (A. 1)

compensated. Life Time violated the MFLSA by classifying Plaintiffs as exempt, when they were entitled to payment for overtime.

(A. 8)

On Life Time's motion, the district court then certified the summary judgment order as presenting questions that are important and doubtful. The Court of Appeals agreed the issues raised were important and doubtful and heard the appeal, considering the following issues: (1) does the PWA apply to Life Time's conduct in this case; (2) if so, are the class members limited to a remedy under the PWA, or can they recover under the MFLSA; and (3) if recovery is available under the MFLSA, what is the scope of the remedy. (A. 13)

The Court of Appeals found that the PWA applied to Life Time's conduct, but that the class members were not limited to a remedy under the PWA. (A. 17-19) The Court of Appeals never reached question three however, because the Court – on the basis of a legal issue not raised by Life Time on appeal nor briefed by the parties – found that Life Time complied with the salary test and therefore reversed the decision of the District Court. (A. 19-21)

The Court of Appeals found that the salary test, requiring an employee be “guaranteed a predetermined wage for each workweek”, did not dictate *when* those wages must be paid. (A-19) As a result, the Court found that Life Time Fitness satisfied the salary test because at the end of the year the employee Plaintiffs ultimately ended up receiving the full yearly base salary promised to them – even though any given twice-

monthly paycheck throughout that year could be—and multiple times was—reduced pursuant to language in Life Time’s compensation plans. (A. 12, 19-21)

Plaintiffs believe this decision was error and petitioned this Court for review. On November 17, 2009, this Court granted Plaintiffs’ petition.⁷

ARGUMENT

I. Appellate Standard of Review

This case presents a question of first impression regarding the interpretation of the MFLSA’s salary rule. As this Court previously explained in *Milner v. Farmers Insurance Exchange*, 748 N.W.2d 608, 613 (Minn. 2008) “We review questions of statutory interpretation de novo.”

II. The Court of Appeals erred in finding that Plaintiffs were paid a salary.

Under the Court of Appeals’ opinion, so long as a worker receives a stated annual wage by the end of the year, an employer has “guaranteed a predetermined wage for each workweek” and can avoid paying overtime.

But Minnesota law does not look at whether an employee receives the salary promised him at the end of the year. The plain language of the salary test makes clear the focus is on the workweek. Other provisions of the MFLSA likewise reflect that determining overtime compliance is measured by the workweek. No language in the MFLSA, or any other employment statute, supports the Court of Appeals’ reading for

⁷ In opposing Plaintiffs’ Petition, Life Time asked this Court to review the Court of Appeals’ ruling with respect to the PWA issue, in the event this Court decided to grant Plaintiffs’ petition. This Court’s November 17, 2009 Order only granted Plaintiff’s request.

looking at payment on an annual basis. For these reasons, and the fact that the Court of Appeals' opinion would lead to absurd results, especially given the remedial nature of the MFLSA, the Court of Appeals' decision should be reversed. Appellants respectfully request this Court find that to comply with the salary rule, each paycheck containing the "predetermined wage for each workweek" must be guaranteed.

A. The MFLSA focuses on payment for a workweek – not payment on an annual basis.

As this Court has stated with regard to statutory interpretation, "We begin our analysis by looking at the language of the statute." *Milner* 748 N.W.2d at 614.

Minnesota's salary rule is found at Minn R. 5200.0211 and provides:

Predetermined weekly wage. A salary is not an hourly rate. An employee is paid a salary if the employee, through agreement with an employer, is guaranteed a predetermined wage for each workweek.

The Commissioner did not require that employees be guaranteed a "yearly" predetermined amount – it required that employees be guaranteed a predetermined amount "for each workweek." Choosing the words "for each workweek" demonstrates the intention to look to a worker's ongoing paychecks – rather than simply what they ended up receiving at year's end. As such, the focus must be on the workweek. *See Harris v. County of Hennepin*, 679 N.W.2d 728, 731 (Minn. 2004)(citations omitted) ("Courts must give effect to the plain meaning of statutory text when it is clear and unambiguous.").

Indeed, this result is not only dictated by the plain language of the salary rule, but by other provisions of the MFLSA as well. *See Harris*, 679 N.W.2d at 731 (citations

omitted)(“Statutes should be read as a whole with other statutes that address the same subject.”).

Minn R. 5200.0170 provides

WORKWEEK.

Subpart 1. Definition. **The period of time used for determining compliance with the minimum wage rate, overtime compensation, and designation as a part-time employee is the workweek**, which is defined as a fixed and regularly recurring period of 168 hours, seven consecutive 24-hour periods. This is true whether the employee is paid on an hourly, piecework, commission, or any other basis. Once the workweek is established, it remains fixed, although it may be changed if the change is intended as permanent rather than as an evasion of the overtime provisions. If no workweek is designated, it shall follow the calendar week.

Likewise, the tests for determining whether a worker is employed in an executive or administrative capacity (and thus not entitled to overtime, see M.S.A. §§177.23), indicate that an employee must receive at least a certain amount “**per week** in salary.” Minn.R. 5200.0190; 5200.0200 (emphasis added). That salary is then defined as a predetermined amount “for the workweek” is instructive. Nowhere is annual payment contemplated. In fact, there is no language anywhere in the MFLSA which would support the notion that paying an employee a stated annual amount – if none of the interim payments for the workweek were guaranteed – would satisfy the MFLSA’s salary test.

B. Plaintiffs’ pay “for the workweek” was not “guaranteed.”

As provided for under the PWA, employees need only be paid every 31 days. Minn. Stat. §181.101.⁸ Thus a salaried employee must receive his pay “for the workweek” at least every 31 days. Life Time complied with this by paying Plaintiffs twice monthly.

However, the fact remains that none of Plaintiff’s paychecks – which encompassed the “predetermined wage for each workweek” – were “guaranteed.” Life Time’s compensation plans clearly provided for Life Time to make cuts to Plaintiffs’ “salary” – the “predetermined wage” which was supposed to be “guaranteed” pay. As the trial court correctly found:

Life Time argues that only a small number of employees actually faced reduction of their base salary payments, and that each of these Plaintiffs received 100% of his or her base salary on a yearly basis.⁹ However, each variation of the Plan explicitly provided for the possibility that an employee’s future semi-monthly base salary payment could be reduced. Since an employee’s base pay was always at risk for reduction, the employee could not have been assured a predetermined wage for each workweek. (emphasis added).

Pay that is “always at risk” and “conditional” cannot be guaranteed.

⁸ It is proper to look at the PWA for how often an employee must be paid, as this question is not answered by the MFLSA. As this Court has previously noted

While the MFLSA addresses minimum wage and hour standards, the PWA addresses how often wages must be paid and establishes penalties for wages that are paid late. *See* Minn. Stat. §§ 181.10-.15. ***[T]ogether, these acts provide a comprehensive statutory scheme for wages and payment in Minnesota and should be interpreted in light of each other. *Milner* at 748 N.W. 2d at 617.

⁹ Life Time asserted no legal basis for this position. Life Time also did not raise this as an issue on appeal, even though it drafted the questions for the Court of Appeals to consider.

That Plaintiffs were paid bonuses earlier in the year doesn't change this. Shorting an employee on one paycheck and making it up on another is inconsistent with the plain language of the rule which requires the employee be "guaranteed a predetermined wage for each workweek." Moreover, such an interpretation of the salary rule would lead to absurd results.

C. The Court of Appeals' Ruling Would Lead to Absurd Results

Under the Court of Appeals' opinion, employers can cut worker's paychecks at will, and so long as they get the money back to the employee at some point later on, the employer can avoid paying overtime.

And if that's the case, why pay overtime to anyone? Simply classify a worker as "salary", wait months to pay them and retroactively designate the money as applying to "each workweek." While this would violate the PWA's requirement that an employee be paid every 31 days, under the Court of Appeals opinion, this payment would be proper "salary" and the employer would legally be able to avoid paying overtime.

This result is absurd, and since this Court should "construe the statute to avoid absurd or unjust consequences," Hince v. O'Keefe, 632 N.W.2d 577, 582 (Minn. 2001), the Court of Appeals' ruling should be rejected.

Moreover, the MFLSA is a remedial statute, see generally M.S.A. §177.22, and "Remedial statutes must be liberally construed for the purpose of accomplishing their objects." State v. Indus. Tool & Die Works, Inc., 220 Minn. 591, 604, 21 N.W.2d 31, 38 (Minn. 1945). Two purposes of the MFLSA are

(1) to establish minimum wage and overtime compensation standards that maintain workers' health, efficiency, and general well-being; (2) to safeguard existing minimum wage and overtime compensation standards that maintain workers' health, efficiency, and general well-being against the unfair competition of wage and hour standards that do not[.]

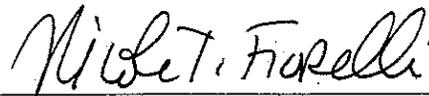
These objectives, quite simply, are not accomplished by the Court of Appeals' decision. Under the Court of Appeals' decision, persons who are supposed to "managers" and "executives" and receive a "guaranteed" salary, cannot even rely on a steady paycheck. For instance, Ms. Erdman, the named plaintiff in this case, suddenly found herself short \$500, not on one paycheck, but two. (A. 49) Difficult to manage a family budget, pay bills, etc. on a check that is suddenly \$500 short. Thus allowing employers to play fast and loose with how they designate their pay and when they pay it – while at the same time allowing them to escape the overtime requirements – is entirely inconsistent with maintaining workers' "health, efficiency, and general well-being" against unfair wage and hour standards.

Accordingly, Appellants request this Court find that to comply with the salary rule, each paycheck containing the "predetermined wage for each workweek" must be guaranteed.

CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully request this Court reverse the decision of the Court of Appeals and find that Plaintiffs were not paid a "salary" and thus entitled to overtime under the MFLSA.

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DATED: January 11, 2010

STATE OF MINNESOTA
IN SUPREME COURT

A08-1993

SARAH ERDMAN,
Individually and on behalf of
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**CERTIFICATION OF BRIEF
LENGTH**

Plaintiffs/Appellants,

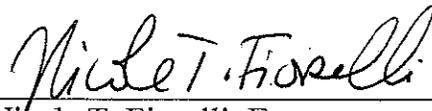
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LIFETIME FITNESS. INC.,

Defendant/ Respondent.

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subs.1 and 3, for a brief produced with a monospaced font, being Times New Roman in 13-point. The length of this brief is 3,136 words. This brief was prepared using the word count feature of the Microsoft® Office Word 2007 word-processing software.

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