

**Employer Ordered to Pay Wages for Time Lost
Attending Workers' Compensation Medical Appointment**

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In a Decision rendered on March 27, 2008, the Eighth Circuit United States Court of Appeals awarded 3.8 hours of wages to an hourly employee under the federal Fair Labor Standards Act for time missed from work to attend a doctors appointment in regards to a work-related injury. Howser vs. ABB, Inc.

The Court noted that under the Department of Labor Regulation, (Chapter 29, Sec. 206(a) of the United Code) provides that "time 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 constitute hours worked." The employer's Workers' Compensation Third Party Administrator had scheduled the appointment. The Court ruled that the employer includes "any person acting directly or indirectly in the interest of an employer in relation to an employee." The Court referred to a Department of Labor opinion letter that explained that "if the employer or the employer's agent (insurance carrier) arranged for the employee to see a doctor during the employee's normal working hours, the time spent traveling to and from and visiting the doctor's office would be compensable hours of work."

The Court noted that when the appointment was originally scheduled, the employee elected to take unpaid leave to attend the appointment. The Court noted that Fair Labor Standards Act rights are statutory and cannot be waived under most circumstances and could not be waived except fewer than two circumstances neither of which applied in this case.

It should be noted that the Court ordered the employer to pay wages for the lost time. Although the Court did not specifically address the issue, it appears that based on their reasoning regular wages would have to be paid by the employer if the time lost was during the employee's normal working hours on the day the employee was scheduled to work. It should be noted that in ordering the payment of wages for the lost time, the Court did not address the employer's liability to pay workers' compensation benefits for this same lost time since the Court was only exercising their jurisdiction to interpret and apply the FSLA.

In August, 2005, the Missouri Legislature amended the Missouri Workers' Compensation Act and added the following language in Section 140(14):

"The employer may allow or require employee to use any of the employee's accumulated paid leave, personal leave, or medical or sick leave to attend medical treatment, physical rehabilitation, or medical evaluations during work time. The intent of this subsection is to specifically supercede and abrogate any case law that contradicts the expressed language of this Section."

Although the Howser decision did not address the employer's workers' compensation liability in any respect, it appears that the ruling in effect abrogates Section 287.140(14) since where a state statute and a federal statute conflict the principle of federal preemption invalidates the state statute where the state law would, as here, impede the achievement of the federal objective addressed by the federal law.