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X-Rays Shipped Out Of State Help Employee Keep Issue Of FLSA Coverage Alive

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We have been working through the alphabet with employment law topics and the dreaded X week has arrived, but fortunately there is a 2014 FLSA case involving X-rays that demonstrates the difficulty for an employer of defeating FLSA coverage. In *Gashlin v. International Clinic Research*, the U.S. District Court for the Middle District of Florida denied the employer's motion for summary judgment asserting that Wendy Gashlin was not covered by the Fair Labor Standards Act.

Ms. Gashlin, a clinical research employee, claimed she worked more than 40 hours per week, but was told she could only put 40 hours per week on her time card. The employer argued she had not established that she was engaged in interstate commerce, a requirement for FLSA coverage. This situation comes up relatively rarely because in 2014 most companies, even small ones, *are* engaged in interstate commerce even if their business is relatively local in nature. In this case, the company argued that Ms. Gashlin did not use the instrumentalities of interstate commerce on a "regular and recurrent basis" and was not "engaged in the production of goods for commerce," two ways in which interstate commerce can be established. Ms. Gashlin, however, submitted that she took X-rays and blood samples to be shipped out of state several times for work, had occasionally traveled out of state for work, and communicated regularly with out-of-state entities such as foreign pharmaceutical companies. The company disputed some of these facts.

As a result, the court denied each side's summary judgment motion and found that the issue of whether Ms. Gashlin was involved in interstate commerce must be decided by a jury. Small employers should consult with counsel before proceeding on the assumption that they are not involved in interstate commerce.

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