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Federal Court Finds Employee Handbook Provision May Constitute An Agreement

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The U.S. District Court for the Northern District of Illinois recently held that an employee handbook provision may constitute an enforceable agreement under the Illinois Wage Payment and Collection Act (IWPCA), even if it does not create an enforceable contract between the employer and employee.

In *Wharton v. Comcast Corp.*, N.D. Ill., No. 12-cv-1157 (Dec. 6, 2012), the plaintiffs alleged that the defendant violated the IWPCA by failing to pay them for pre-shift work, post-shift work, and work during meal breaks, in addition to certain overtime wages. The IWPCA provides that employers are required to pay every employee "at least semi-monthly...all wages earned during the semi-monthly period." "Wages" are defined as "any compensation owed an employee by an employer pursuant to an employment *contract or agreement* between the 2 parties..."

Despite a disclaimer included in the defendant's handbook precluding the creation of an employment contract, the court found that its provisions covering wages and overtime compensation were sufficient to create an agreement, such that a violation of the handbook's provisions would constitute a violation of the IWPCA. The court analyzed the distinction between "contract" and "agreement," noting that the Restatement (Second) of Contracts defines agreement as "a manifestation of mutual assent on the part of two or more persons." Under Illinois law, an agreement requires only "mutual assent to terms," which the court found between the parties.

Employers are encouraged to review their policies and handbooks in light of Judge Holderman's decision.