

Walmart's Plan to Use Employees to Deliver Online Orders Raises Legal Issues

In a new effort to compete with Amazon's delivery system, Walmart says it plans to have store employees on their way home from work deliver online orders to customers. While it may make business sense, it also raises a host of legal questions, says **Justin Markel**, a Houston labor and employment lawyer with **Roberts Markel Weinberg Butler Hailey PC**.

Markel's comments on the matter were posted on the website of **Androvett Legal Media & Marketing**:

First is determining how much to pay the employees for this extra work. The deliveries will be considered non-exempt under the Fair Labor Standards Act, so the employees will be entitled to overtime if this extra drive time puts them over 40 hours in a workweek. But how can Walmart be sure as to how long the deliveries actually take? If employees are required to electronically check in when deliveries are made, that may create an incentive to take the scenic route to the customer's home. If, on the other hand, Walmart requires them to have GPS trackers, state law privacy concerns might arise. What about the extra gas and maintenance costs? Walmart should consider paying employees extra to ensure that these out-of-pocket expenses don't cause them to fall below minimum wage.

Then there are public safety issues. Walmart should look into the employees' driving histories before asking them to make deliveries. According to news reports, Walmart will conduct background checks. That should be a comprehensive review. Criminal histories that might have been less relevant for certain non-interpersonal store jobs might be more relevant

if an employee is sent to customers' homes.

Even with safe drivers on the road, accidents will be all but inevitable. If an employee is in an accident on the way to a customer's house, the employee will likely be considered acting in the scope of employment. That will likely lead to vicarious liability on Walmart's part. To protect against risk of claims from injured victims, it would be advisable for Walmart to discuss its non-owned auto insurance coverages with its insurance brokers.

As Walmart tests this program, it will have to carefully navigate many legal issues. Time will tell whether the cost savings and efficiencies will outweigh the legal risks.

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