

PUBLICATION

First Circuit Proves Importance of the Oxford Comma

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Think twice the next time you decide to forego the Oxford comma. For the non-grammar nerds in the room, the Oxford comma, otherwise known as the serial comma, is the comma used just before the coordinating conjunction ("and" or "or") when three or more terms are listed. It is viewed by many as optional. Enter the First Circuit's recent ruling regarding Maine's overtime law.

Oakhurst Dairy delivery drivers brought suit against their employer for overtime pay violations. Oakhurst Dairy argued that the drivers did not qualify for overtime pay under Maine's law because they distribute dairy products. The relevant provision of the law states that employees who perform the following activities are not eligible for overtime pay:

The canning, processing, preserving, freezing, drying, marketing, storing, packing for shipment or distribution of: (1) Agricultural produce; (2) Meat and fish products; and (3) Perishable foods.

The drivers argued that "packing for shipment or distribution" constituted one activity, and since they did not pack anything as part of their jobs, they were not excluded from the overtime law. In a win for grammar sticklers everywhere, the drivers maintained that "distribution" was not meant to be its own exempted activity. If it was, it would have been listed as a gerund ("-ing" word), like all the other activities, and/or set off with an Oxford comma.

The First Circuit found the law to be ambiguous. Does the law exempt only workers who pack food for shipment or distribution, or does it exempt all workers who either pack food for shipment *or* distribute the food? The Oxford comma would have clearly made packing and distributing two separate activities, both of which would be exempt. The drivers' interpretation of the statute was not fully satisfying either, however, because no conjunction was used before "packing," which would have made it clear that packing was the last activity in the list. Because the plain language was ambiguous, the court looked to evidence of legislative intent. Finding nothing conclusive, the court ultimately used the default of liberally construing the overtime statute and ruled that the drivers were not exempt from the law, overruling the lower court's grant of partial summary judgment to Oakhurst Dairy.