

Luby's Gets Served by its Own Policies in Overtime Tip Sharing Lawsuit

HR folks spend hours writing and re-writing policies. There's good reason for that—your policies are the first place a plaintiff's lawyer will look to launch an overtime lawsuit.

Luby's tip pooling policies recently cost the company a collective action against its waiters. In overtime land, that's like a class action where a group of your employees and ex-employees gang up on you in a single lawsuit. It gives your employees a lot more leverage than filing a bunch of individual lawsuits. Bad policies are often ground zero for a nasty collective action.

Although Luby's tried to convince the federal judge that the big collective action should be shaved down to individual lawsuits, the judge didn't buy it. Employees can get together in a collective action if they are "similarly situated." According to the judge, the waiters were all "similarly situated" because the tip pooling policy under fire had applied the same to all of them.

One bad policy can cause an expensive problem. For example, a job description might fuel a lawsuit alleging that a group of employees has been misclassified as salaried exempt if the job description shows the position has non-exempt duties. Exempt status can also be jeopardized by a pay docking policy.

[*Plewinski v. Luby's, Inc.*](#)



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