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Stemming the Wage and Hour Lawsuit Trend

All Employers Are Potential Targets

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Florida leads the nation with more than 2,400 wage and hour lawsuits filed in the Middle and Southern United States district courts in 2007. That number is only expected to climb as wage and hour collective (class) action suits become increasingly common. Yet, despite the increase in legal action, countless employers across the state continue to fail to take proactive steps to prevent and defend themselves in these suits. For Florida business owners, supervisors and human resource managers, the key to preventing and limiting a company's liability is implementing – and abiding – by relatively simple employment practices.

Hourly employees who do not receive overtime pay

Minimizing a company's liability begins with adopting and complying with a policy and a practice of paying non-exempt (hourly) employees time and one-half for all hours worked in a 40-hour workweek as required by the Fair Labor Standards Act (FLSA). Employers cannot force employees to work off-the-clock, during lunch, at home or advise them to otherwise misrepresent their working time. Turning a blind eye to employees working during such times or claiming ignorance increases the potential of liability.

The trickiest part of complying with the FLSA may be making a determination of what constitutes "work". As simple as the term may sound, the courts have found that in certain situations, "donning and doffing" (i.e. putting on and taking off specialized clothing and uniforms) and driving to the jobsite may constitute work. Employers must carefully examine beginning and ending activities.

Employees improperly classified as salaried

Some employees attach a special status to being "salaried". Employers tempted to oblige such an employee may give the employee a special job title or job status and fail to pay the employee for overtime. Employers can rightfully pay a salary to exempt employees (i.e. those not entitled to overtime) based on their primary duties only, not their job title or special status. Recently, in *Rodriguez v. Farm Stores Grocery, Inc.*, a jury found that 28 Farm Stores managers were hourly employees subject to overtime and were not salaried employees, leaving the employer to pay back-pay for hours worked.

Typically, administrative, executive and professional employees who meet regulatory definitions can be classified as exempt. Employers are required by law to provide overtime pay to virtually anyone else, regardless of whether they are salaried.

Are you a target employer?

The majority of wage and hour lawsuits are brought against employers by individuals or groups working low-wage jobs in the service industry. In 2004, the Department of Labor targeted hotels, restaurants, day care centers, health care and agricultural related industries. For lawyers, however, no industry is immune.

In one recent case, *Braun v. Wal-Mart*, hourly workers claiming they were not paid for off-the-clock work or for work during breaks brought a class action suit against Wal-Mart in Pennsylvania. In October 2007, roughly a year after a jury awarded the employees more than \$78 million; a court awarded them an additional \$187.6 million. It was the largest civil judgment in 2007 for any class action suit in state court. The Wal-Mart case illustrates the fact that no company, large or small, is immune to the legal fallout that can result from its failure to abide by wage-and-hour laws. The only way for an employer to ensure his or her company stays on the right side of the law is to implement and enforce payment guidelines in accordance with state and federal standards.

As employees become increasingly aware of their rights, many more will likely take steps to ensure they receive due compensation. Therefore, the increasing trend of wage and hour lawsuits is likely to continue unless employers gain a better understanding of the law and implement legal pay practices.

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