

March 15, 2012

A Decision to Phone Home About: SDNY Decertifies FLSA Opt-In Class of Call Center Reps

In a Fair Labor Standards Act (FLSA) collective action for unpaid overtime wages by call center representatives against IBM, the United States District Court for the Southern District of New York on March 9, 2012, adopted the Magistrate Judge's Report and Recommendation and granted IBM's motion to decertify the conditionally certified class of 39 opt-in plaintiffs. Defendants in FLSA collective actions should take note of this decision and its emphasis on individualized issues and differences among the experiences and understandings of the opt-ins. Click [here](#) for the opinion.

The case is *Seward v. International Business Machine Corporation*, No. 08 CV 3976. The Plaintiff, on behalf of himself and other similarly situated call center representatives at a facility in Atlanta, Georgia, alleged that he was not compensated for the work he was required to perform before his shift started. Specifically, he claimed that IBM required call center representatives to report to work early to boot up their computers off the clock so that they would be "call ready" at the beginning of their shifts.

The Magistrate Judge found that (1) because of "the many differences in specific job duties, team functions and structures, managerial expectations, and individual experiences and understandings among the plaintiffs," Plaintiff did not show "he shared common factual and employment settings with all of the opt-in plaintiffs due to the existence of a 'sufficiently uniform and pervasive' policy requiring off-the-clock work"; (2) IBM demonstrated that its potential defenses were highly fact-specific and would likely depend on the testimony of individual plaintiffs and managers; and (3) although representative testimony might be appropriate on some issues, "fairness requires that this collective action be decertified given the various individualized issues presented in this case."

Although the Plaintiff had objected to the Report and Recommendation on the basis that the Magistrate Judge should have found that about half of the opt-ins were similar to Plaintiff and therefore should have certified a sub-class of opt-in plaintiffs, IBM successfully argued that this objection was not based on a remedy sought by either party in the proceedings before the Magistrate.



If you have any questions about this Legal Alert, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.

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