



EMPLOYMENT AND LABOR PRACTICE GROUP

**EMPLOYER ALERT:  
EMPLOYERS SEE SIGNIFICANT INCREASE IN  
WAGE AND HOUR LAWSUITS**

Employers nationwide are facing a significant increase in lawsuits alleging violations of wage and hour laws, and the detailed and complex regulations implementing them. Whether the increase is due to the highly publicized nature of the changes that were made to the overtime laws in 2004, or the general tendency toward litigation in the U.S., the courts are seeing unprecedented levels of claims filed by current and former employees. In addition, the law provides for employees to join together in “collective actions.” These types of actions have become an increasingly popular way of turning a lawsuit over hundreds of dollars into a lawsuit over hundreds of thousands or even millions of dollars. Not only can these lawsuits be quite risky with potential awards for back pay, attorney’s fees, and even double damages, the litigation itself can be costly to win and is almost always extremely disruptive. Clearly, recent media publicity will cause employees and employee attorneys to scrutinize wage and hour compliance by employers.

Unlike discrimination cases, an employer’s intent to evade or violate the law is not a factor in wage and hour cases. In fact, employers are often unaware that certain of their practices are in violation of wage and hour regulations, and have no intent to violate the law. Liability can be established simply by showing the employer was not in compliance with applicable statutes or

regulations. For example, employers may be unaware of what is considered “compensable” time when bonuses (i.e. meal and break times, on-call time) must be included in an employee’s regular rate when determining overtime. Frequently, employers will assume that, because they are paying an employee on a salary basis or because the employee’s job description contains certain language, the employee is necessarily exempt, even when the duties the employee actually performs on day-to-day basis are those of a non-exempt employee. Lower-level supervisors may expose an employer to liability by engaging in practices that violate the overtime laws, such as requiring or permitting employees to do “off-the-clock” work or work through unpaid lunch periods. For employers with employees in multiple states, the issues can be further complicated by variations in laws and regulations from state to state.

In light of the more recent and highly publicized changes to the overtime regulations and recent media attention to collective litigation of wage and hour claims, employers are well-advised to take a proactive approach to addressing and avoiding problems. Employers should, for example, review their wage and hour policies and practices, not only as written, but as implemented at all levels. Job descriptions should be updated to reflect what employees are actually doing as their job responsibilities evolve,

and classifications of workers as exempt, non-exempt or as having independent contractor status should be reviewed. Employees who have any role at any level in implementing wage and hour practices should receive appropriate information and training.

Attorneys in the Employment and Labor Practice Group at Armstrong Teasdale have significant

experience in all aspects of wage and hour law issues, including handling class action lawsuits, assisting employers with DOL audits, performing or assisting with internal audits and review of job classifications and wage and hour practices. For further information please contact Bob Kaiser, Joan Cohen, Vance Miller, John Vering or the Armstrong Teasdale attorney with whom you normally consult.

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