Wage and Hour Lawsuits Top Employer Litigation Concerns

Wage and hour lawsuits are by far the most common type of employment litigation. The number of these lawsuits far outpaces any other form of employment litigation and verdicts and settlements are steadily increasing. What are employers doing to address this situation and to limit their liability?

By Patty Kujawa

Richard Wilcox was a technician for Alternative Entertainment Inc., a satellite equipment company based in Madison, Wisconsin. In October 2009, Wilcox led a class-action lawsuit with about 2,000 Michigan and Wisconsin employees, claiming the company paid employees on a per-job rate, without additional pay for overtime, and didn't properly deduct wages for alleged faulty work.

Wilcox's employer argued otherwise, but to avoid the expense of going to court and other factors, Alternative Entertainment settled with the plaintiffs this month for a little more than $2 million.

"We hope that this settlement, along with the other cases against employers in the cable and satellite TV industry, will cause employers to review their pay policies to make sure they are in compliance with federal and state laws," says William Parsons, a shareholder from Madison-based law firm Hawks Quindel which represented the plaintiffs.

Wage and hour lawsuits like this one are skyrocketing, and settlements are consistently high, says Gerald Maatman Jr., co-chair of law firm Seyfarth Shaw's class-action defense group.

In 2010, 6,761 wage and hour lawsuits were filed, which was a 10 percent increase from 2009 and a 67 percent increase from 2005 when there were 4,039 lawsuits, according to the Administrative Office of the United States Courts. Meanwhile, the top 10 wage and hour settlements totaled $336.5 million in 2010, down slightly from the total of $363 million in 2009, according to the Chicago-based law firm's latest *Workplace Class Action Litigation Report*.

"This is the tort of the day," Maatman says, adding that wage and hour lawsuits should be an employer's top concern. "Every year the number of cases goes up. Who knows when we are going to get to the top of the bell curve."

The Fair Labor Standards Act of 1938 sets certain standards in today's workplace, such as minimum wage and overtime pay, and is intended to protect workers from unfair employer practices. Even with the 2004 amendment to the law, employer attorneys say it is still easy for employers to be out of compliance.

"It is Depression-era legislation that was enacted to address industry workforce problems that don't exist today," says Sean Scullen, a partner at Quarles & Brady in Milwaukee. "It hasn't kept pace with the modernization of the workplace, and employers are not in compliance as a result."

The number of wage and hour class-action lawsuits is increasing because of several factors, lawyers agree. First, unlike technical lawsuits involving pension law, experts aren't always necessary, and lawsuits can be brought by one client with a single allegation, Maatman says. Secondly, after years of limited federal resources to enforce the federal law, the Obama administration

Feature Contents

Similar Documents

TOOL: Blogs on Wage-and-Hour Issues

The New Order at the Labor Department

Give 'Em a Break ... or Get Sued

The Wage and Hour Class-Action Epidemic

The Forgotten Overtime Exemption

Related Topics

Compensation Design and Communication

Miscellaneous Legal Issues

Basic Skills Training

SHARE

E-mail this document

Printer-friendly version

Write to the Editor

Reprint Information

has stepped up its actions. Third, many unemployed workers have found it easier to report violations after they've been let go from the company where the problem occurred.

"Once they've lost their job they lose that inhibition," Parsons says.

Many employers are conducting audits to make sure wage and hour policies are firmly in place, says Mark Batten, partner and co-chair of Proskauer Rose's class- and collective-action practice group in Boston. Companies typically wouldn't want to talk about their practices because of the ease in filing wage and hour lawsuits, employer lawyers agree.

"Rampant litigation is forcing employers to wake up. Employers are changing policies and are paying more attention, doing more audits than they used to," Batten says. "Audits are unavoidable. It's the only way [employers] really know they're doing the right thing."

Employers need to look at and document many factors, including how they count hours worked and calculate overtime, classify employees and their work environment, and other recordkeeping policies to minimize their exposure to wage and hour claims.

Lawyers say that employers who have reporting mechanisms in place for employees to state problems are less likely to face any trouble in court.

"Almost every [employee] handbook has a reporting mechanism for sexual harassment," Scullen says. "It's not hard to create a similar mechanism for raising concerns" about wage and hour issues.

Courts are beginning to offer guidance for employers. Last year, a federal judge in the Western District of New York dismissed a case against Black & Decker, where the employee claimed his supervisor told him not to record his overtime hours. The court said the company had written policies and training information instructing employees to accurately record all time worked. The case was dismissed.

"This is the type of case that gives hope to employers," Maatman says. "It lays out a road map for what employers can do in terms of complaint procedures."

Workforce Management Online, **March 2011** -- *Register Now!*

Patty Kujawa is a freelance writer based in Milwaukee. To comment, e-mail editors@workforce.com.

Features Archive

E-mail this document | Printer-friendly version | Write to the Editor | Reprint Information

Comments

Guidelines: Comments that include profanity or personal attacks or other inappropriate comments or material will be removed from the site. We will take steps to block users who violate any of our posting standards, terms of use or privacy policies or any other policies governing this site. You are fully responsible for the content you post.

You must be logged in to leave a comment. Login | Register

Submit