



tidal wave of wage/hour class action lawsuits puts employers at risk

MSK Client Alert

July 2001

In the last year, class action lawsuits alleging violations of wage and hour laws have been flooding the courts. Farmers Insurance was just assessed with a 90 million dollar verdict, because it was treating its claims adjusters as exempt from overtime requirements -- a conclusion which the court found to be erroneous. Similar cases are being filed on a daily basis all over California and, to a lesser extent, the entire country.

These wage/hour class action cases can create enormous exposure because the suits can involve large groups of employees, with claims going back several years, and with the potential for recovery of damages, penalties and attorneys' fees. Non-compliance is not unusual because the law is often counterintuitive. Also, the law in California (and some other states) goes beyond federal requirements, and creates many pitfalls for employers who might believe they are in full compliance. Some of the most common pitfalls include:

- Treating employees as exempt from overtime laws when their duties do not meet the requirements of the federal and state exemptions. The analysis of whether a particular employee's duties meet these requirements is somewhat subjective, and it is easy for a court to second-guess the employer's judgment. Many of the biggest wage hour claims turn on this issue.
- Failing to meet the "salaried basis" requirement for exempt employees. For example, if an exempt employee is not given full pay for time spent on jury duty less than a full week (or possibly even a full month), the exempt status of that employee and all other exempt employees may be forfeited.
- Failing to comply with the very detailed statutory requirements for the method and manner in which wages must be paid, including record-keeping requirements. Failure to meet these requirements can result in statutory penalties being assessed.

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To make matters worse, recent decisions of the California Supreme Court have opened the door to these types of claims to be brought by an individual acting as a "private attorney general," who can sue on behalf of large groups of employees without meeting the requirements imposed in class action cases. Our firm is handling several of these cases right now, including two high-profile cases brought against entire industries where the claimed damages are many times greater than in the 90 million dollar suit against Farmers.

Our experience is that many employers are vulnerable in this area. If you would like one of our labor and employment lawyers to brief you on some of the ways your company might avoid or minimize risk in this area, please call any of us, and we will arrange it promptly.

Bill Cole

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Labor & Employment Chair