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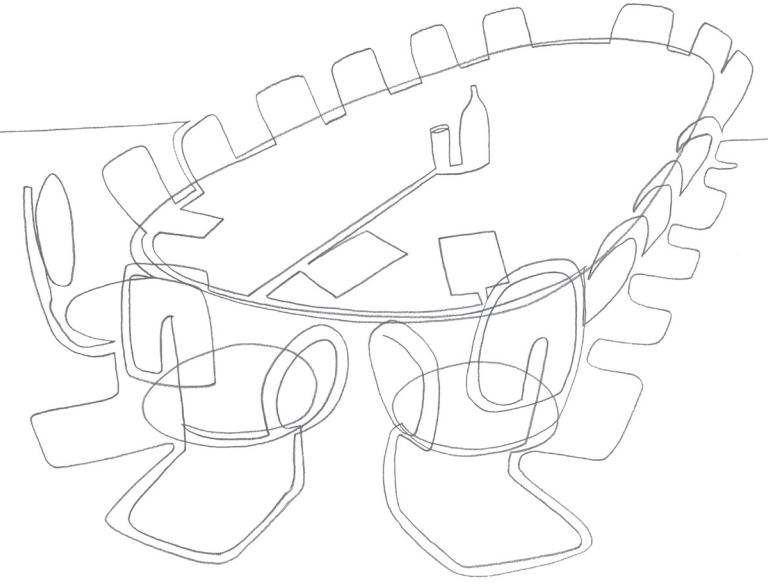
by Carrie Brodzinski



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Massive class action lawsuits against Wal-Mart have propelled alleged violations of wage and hour laws into the headlines. But companies of all sizes are contending with a rising tide of such claims. For smaller employers, the bottom line impact may be far greater than for Wal-Mart.

Wage and hour laws mandate that certain employees should be paid at hourly rates and be eligible for overtime payments. These employees are commonly referred to as "nonexempt" employees because they are not exempt from overtime laws.

A common misconception among employers is that if you simply pay someone a salary they are automatically classified as exempt employees. In reality, the determination of whether an employee is exempt or nonexempt turns on the functions they perform in their job, not the way in which the employer has elected to pay them.

Consider this example: A fast food restaurant employee who has been paid on an hourly basis is promoted to assistant manager. As a result, the employee is now considered to be exempt and is paid a salary rather than hourly. He performs all of the same job functions – the only difference being that he has been given a key and can open or close the restaurant as necessary.

There is a big difference in the amount of money he takes home, however. He works the same hours as before the promotion, but he does not get paid overtime. In essence, he is doing the same job for less pay.

Many cases have been brought on behalf of such employees claiming that their new jobs have been improperly classified as exempt and that they are entitled to receive overtime pay. These "reclassification" claims are often brought as class actions and can be very costly, both in terms of defense and resulting liability.

Wage and hour cases can be brought on a variety of theories either by single plaintiffs or as class action suits. In many cases, a wage and hour violation may result in a modest sum owing to a single plaintiff, but if the same violation occurs in calculating wages for hundreds or thousands of employees, the aggregate award can be significant.

In situations where the potential payback for an individual claimant would be dwarfed by the costs of litigation, it may make sense for claimants to band together to pursue a class action. This is why wage and hour laws are fertile ground for class action litigation. One of the most common allegations in wage and hour cases is that there has been a miscalculation in the amount of wages owed. This may be due to a variety of reasons:

- The wrong rate was applied to hours worked overtime
- Meal and rest periods were not granted, were too infrequent, or were too short
- Tips were improperly credited in determining wages.

These issues may appear simple but can pose complex problems in practice, especially given that employers must comply with both state and federal wage and hour laws – and, in some areas, local municipal rules as well. Factor in the complexities of doing business across state lines and it is easy to see how mistakes can arise.

Even more complex are the problems posed by so-called "off-the-clock" work. The proposition that employees are entitled to be paid wages for hours worked may appear clear-cut, but consider the example of workers who are required to wear uniforms while on the job. If these workers arrive at their workplace, don their uniforms, then clock in to work, clock out again and take off their uniforms before returning home, a wage and hour violation may have occurred. If the uniform is required to be worn as part of the job, the employees' work day may be deemed to start when they begin putting the uniform on, and end when they have finished taking it off.

A similar issue is presented by requiring employees to attend meetings or training sessions. If the meeting or training is considered to be mandatory, then the time employees spend at the meeting is considered to be compensable.

Similarly, if an employee arrives at the job early and begins the work day by logging onto the computer or performing other job-related tasks in anticipation of the work day, that time is also compensable, and failure to include that time in the calculation of wages may lead to a wage and hour suit.

Another gray area is travel time. The time employees spend traveling to and from their place of employment is generally not considered to be included in hours worked and therefore is not compensable.

But consider the following example: Employees of a landscaping company are picked up by the job foreman at their homes before the start of their shifts. The landscaping company may end up giving these employees more than a free ride. If the foreman makes use of the travel time by briefing the employees on their assignments for the day, a court may decide that the workday started when they got into the company vehicle and began participating in this "meeting," entitling them to payment for the time spent traveling.

Wage and hour rules abound with such subtle but material distinctions. The first challenge for employers is, wherever possible, to identify them up front and avoid the traps that can land the unwary with expensive lawsuits and unwelcome publicity. Online risk management advice from a trusted source can be particularly helpful in this context. The second necessity is broad, robust insurance coverage for the traps that still prove elusive.

Carrie Brodzinski (carrie.brodzinski@beazley.com) is product manager for employment practices insurance at Beazley. This article was first published in the May 2007 issue of National Underwriter.

Carrie Brodzinski
Product Manager
Farmington, CT
carrie.brodzinski@beazley.com

beazley