

# LABOR AND EMPLOYMENT LAW UPDATE



## ANOTHER YEAR OF BIG OVERTIME PAY SUITS AND SETTLEMENTS!

On December 16, 2009, two collective actions seeking to represent 5,000 current and former first-level managers were filed against AT&T, Inc. The plaintiffs claim the telephone operator improperly classified them as exempt from the overtime pay requirements of the Fair Labor Standards Act (“FLSA”) and the California Labor Code. They seek **\$1 BILLION** in overtime pay and liquidated damages.

The two AT&T actions cap off another year of large overtime suits and settlements under the FLSA and state law. No let up is expected in 2010. Overtime lawsuits are still very appealing to the plaintiffs bar because (1) they can be filed by one or more individuals as collective or class actions thereby adding hundreds or thousands of potential claimants; (2) the relief which can be awarded includes not only unpaid wages but also liquidated damages and attorney’s fees; (3) the costs of defense can be daunting; and (4) the high stakes and defense costs for employers prompt many to choose astronomical settlements even in the face of claims with questionable merit.

Three types of claims make up the big overtime pay suits and settlements in 2009: (1) overtime work “off-the-clock”; (2) misclassification of employees as exempt from the overtime requirements; and (3) misclassification of workers as independent contractors not subject to the overtime pay requirements of the FLSA and state law.

## BIG SUITS

**NORTHWESTERN MUTUAL:** On June 25, 2009, a class action was filed on behalf of current and former sales and financial representatives of Northwestern Mutual. The plaintiffs claim they are employees protected by the overtime pay requirements of the FLSA and the California Labor Code, and not independent contractors as claimed by Northwestern Mutual. They seek as much as **\$200 MILLION** in unpaid wages and liquidated damages.

**UPS:** A class action filed in a California federal court on August 19, 2009 alleges that UPS has improperly classified and paid account managers as exempt employees under the FLSA. The plaintiffs seek to recover as much as **\$100 MILLION** in unpaid overtime compensation and liquidated damages.

**CENTEX HOMES:** On April 28, 2009, a Texas federal judge certified a collective action of current and former Field Managers of Centex Homes. The action was filed by a single plaintiff but the certification allows for the addition of as many as **3,500 POTENTIAL PLAINTIFFS**. The plaintiff alleges that Field Managers have been unlawfully denied overtime pay based upon their misclassification as exempt employees under the FLSA.

**WELLS FARGO:** On October 26, 2009, a California federal court certified a collective action of current and former IT employees of Wells Fargo. The certification facilitates the addition of as many as **3,000 POTENTIAL PLAINTIFFS**. The plaintiffs allege that these IT employees are due overtime pay because they were improperly classified by Wells Fargo as exempt employees under the FLSA.

## BIG SETTLEMENTS

**WAL-MART:** On December 4, 2009 a **\$40 MILLION** settlement was reached in a state court class action brought against Wal-Mart by 87,000 current and former workers at its Massachusetts stores. The workers alleged they had performed work “off-the-clock” for which they had not received overtime pay in violation of Massachusetts overtime laws.

**WACHOVIA:** On May 11, 2009, a preliminary settlement of **\$39 MILLION** was approved in multidistrict overtime pay litigation between Wachovia and more than 10,000 stockbrokers. The stock brokers, who were referred to in the litigation as financial advisors or financial advisor trainees, alleged they had been misclassified as exempt employees under the FLSA

**LOWES:** On September 22, 2009, a Los Angeles Superior Court judge approved a **\$29.5 MILLION** settlement of a class action alleging violations of California's overtime pay law. The class action alleged that Lowes had improperly required employees to work "off the clock." The class action was originally filed by only two individuals, but was eventually certified to include a class of thousands of current and former employees.

**CINTAS:** On August 20, 2009, uniform provider Cintas reached a **\$22.75 MILLION** settlement with a class of hundreds of delivery drivers. The drivers sought overtime compensation on the basis of the allegation that Cintas had improperly classified them as exempt under the FLSA.

**PG&E:** On July 30, 2009, a San Francisco Superior Court Judge approved a **\$17.25 MILLION** settlement of a class action brought against Pacific Gas & Electric. The settlement includes back pay and attorney's fees for approximately 700 current and former employees who alleged that they were unlawfully denied overtime pay based upon their misclassification as exempt under California law.

**UPS:** On December 10, 2009, a California federal judge approved a **\$12.8 MILLION** settlement in a class action involving about 660 potential class members. At issue in the class action was the classification by UPS of delivery drivers as independent contractors rather than employees entitled to overtime pay under the FLSA and the California Labor Code.

**CASEY'S GENERAL STORES:** On May 12, 2009, Casey General Stores agreed to pay **\$11.7 MILLION** to settle two class actions representing approximately 7,800 current and former assistant managers and 76,000 current and former non-management employees. The class actions alleged that Casey employees were asked to work "off the clock" without overtime pay.

## POSTSCRIPT

To be clear, although big suits and settlements make the headlines, collective actions are still commonly filed against small employers.

## QUESTIONS

Questions regarding labor and employment issues can be directed to Robert G. Chadwick, Jr. at Campbell & Chadwick, P.C.

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