



CONTRACTORS:

Protect Your Company from Costly Class-Action Wage-and-Hour Lawsuits

by Roger M. Mason, Esq., and Kurt E. Wilson, Esq.

Wage-and-hour lawsuits against California contractors are rising at an alarming rate. Plaintiffs' attorneys are aggressively prosecuting employers, filing lawsuits claiming one or more violations of California wage-and-hour laws, including:

1. Failure to provide employees with required rest breaks or meal periods
2. Forcing employees to work "off the clock"
3. Failing to reimburse employees for work-related expenses
4. Failing to provide check stubs that include all information required by the Labor Code
5. Incorrectly classifying employees as exempt or as independent contractors

These lawsuits are particularly painful (meaning expensive) because they are often brought as a representative or class action, whereby one or more current or former employees represent a class of all similarly situated employees. Using the representative or class-action procedure, plaintiffs' lawyers are extracting large settlements by suing contractors who have a compensation policy or practice that violates the law and/or by falsely claiming such a policy or practice where there are few or inadequate time sheets and policy documents. Plaintiffs' claims are not limited to alleged unpaid wages but include statutory penalties, attorneys' fees and interest that can amount to several times the alleged unpaid wages. The plaintiff can sue on behalf of all employees going back four years. The more current and former employees who are impacted by the alleged violation, the greater the contractor's exposure. The cost to defend these lawsuits, including attorneys' fees, lost employee time, lost management time and, ultimately, settlement, can be devastating and sometimes a death knell for a company.

The need for contractors to take immediate steps before a lawsuit arises and to put in place policies, procedures and documents designed to prevent these costly lawsuits cannot be over-emphasized. For example:

1. A daily time sheet, filled out and signed by each employee, confirming

and documenting hours worked, meal period(s) and rest breaks

2. An Acknowledgment of Time Sheet Policy, signed by each employee
3. An Acknowledgment of Rest and Meal Periods Policy, signed by each employee
4. A properly drafted employee manual, acknowledgment of receipt signed by each employee
5. Training for foremen and superintendents on employee rights respecting meal periods, rest breaks and off-the-clock work

An easy-to-correct, but often-overlooked, basis for a class action is noncompliant check stubs. California Labor Code Section 226 requires that check stubs show:

1. Gross wages earned
2. Total hours worked by the employee (if all hours worked are shown on the check stub, a separate "total" need not be added)
3. The number of piece rate units earned
4. All deductions
5. Net wages earned
6. The inclusive dates of the pay period



7. The name of the employee and the last four digits of his or her Social Security number or an employee identification number
8. The name and address of the legal entity that is the employer (a mailing address should suffice)
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate

Far too many employers fail to include the address of the legal entity that is the employer or simply list the pay period end date without showing the beginning pay period date. Simply reviewing your check stub to ensure that it accurately reflects the legal name of your business, including an address, and the beginning and ending dates of the pay period could save you from hundreds of thousands of dollars of penalties. Section 226(e) renders it virtually impossible for an employer not to be held liable if its check stubs are noncompliant and entitles each employee to penalties of up to \$4,000. In addition, the Private Attorney General Act (PAGA) arguably provides for another \$200 per pay period per

employee for up to one year. These damages and penalties alone can force you to engage in painful settlement negotiations despite having complied with the substantive requirements of the Labor Code.

Even in situations where you comply with the law, provide the required breaks and forbid off-the-clock work, disgruntled and dishonest employees can falsely claim that they work off the clock and do not get proper meal and rest breaks. Proving that the employees are lying using the litigation process is expensive and disruptive to your business. Properly documented policies can be an effective deterrent to this kind of claim.

When confronted with a wage-and-hour lawsuit, one of the first things to do is to craft and implement policies to prevent further exposure. However, it is always better to do this proactively — without being required to do it while defending a wage-and-hour lawsuit.

A wage-and-hour lawsuit is a disease on your business. Treatment is expensive and painful, and if left untreated, it could be fa-

tal. But this kind of business disease is largely preventable by crafting and implementing the appropriate policies and documentation. Every employee is a potential wage-and-hour lawsuit. Employees in the construction industry are becoming more and more aware of employee compensation rights and more and more willing to consult with a class-action wage-and-hour attorney to look for ways to cash in with a wage-and-hour lawsuit. With the proper documentation and policies in place, contractors can better defend and maybe even prevent these lawsuits.

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