



# THE ZAPPIA LAW FIRM, A PROFESSIONAL CORPORATION

— Labor & Employment Law —  
Defending Employer's Rights

## Labor and Employment Law Update

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### \$188 Million Awarded To Class Of 187,000 Wal-Mart Employees For Wage-And-Hour Violations

A Pennsylvania Supreme Court decision upheld a nearly \$188 million judgment against Wal-Mart for failure to provide mandatory meal and rest periods. Wal-Mart claimed that it was denied due process rights after it was subjected to a trial in which the class used incomplete data (a subset of employees) from a handful of its Pennsylvania stores to extrapolate damages for all of the 187,000 employees in the state. The justices, however, found that the evidence supported the judgment, and opened the door for so-called "trials by formula," which had previously been barred by the U.S. Supreme Court in another Wal-Mart case, *Wal-Mart v. Dukes*. The distinction made by the PA Supreme Court is that in *Dukes*, the subset of employees was improperly being used to find liability; while in this case, the subset of employees was being used to calculate the total amount of damages *after* liability had been found.

*Pa. Gives Class Actions Warm Welcome In Wal-Mart Ruling*, Law360 (December 16, 2014) Matt Fair.

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## DISCRIMINATION

### **\$185 Million Jury Award In Single Plaintiff Gender Discrimination Case**

A California federal jury awarded \$185 million in punitive damages to a former AutoZone manager, Rosario Juarez, who alleged she was fired after complaining that she was demoted after giving birth. Juarez stated that she was promoted to the position of store manager in October 2004, but only after she complained about the disparity between men and women managers. She alleged that after she informed the company of her pregnancy in November 2005, her district manager urged her to step down, saying she would not be able to handle the responsibilities of running the store and being a mother at the same time. She complained about the discrimination again, but her complaint was ignored, and she was demoted in February 2006. The complaint alleged that AutoZone then devised a scheme to justify firing her through its loss prevention program. A customer service representative allegedly misplaced an envelope with cash from the register, and Juarez was blamed and subsequently terminated for the loss in November 2008.

*Juarez v. AutoZone Stores Inc. et al, U.S. District Court for the Southern District of California Case Number 3:08-cv-00417.*

<https://casetext.com/case/juarez-v-autozone-stores-2>

## HARASSMENT

### **Groping And Requests For Sexual Favors Alleged In Class Action Against Ford Motor Company Employees**

Female workers at the Ford Motor Co.'s Chicago plant have filed a class action against the company, accusing it of ignoring repeated complaints of gender harassment and

discrimination. The complaint alleges catcalling, groping, requests for sexual favors, and being denied favorable job opportunities for failing to perform sexual favors for their supervisors on company property. The complaint further alleges male employees host widely advertised sex parties at the plant for which they hire strippers and prostitutes, and later play recordings of the party throughout the plant. The complaint alleges the company has knowledge of these activities and chooses to ignore it, and that part of this knowledge comes from past litigation against the company which settled privately for \$17.5 million in 1999, included a promise to train and monitor the male employees, as well as a \$9 million victims fund. The complaint states that as soon as the monitor left after the years, the harassment and discrimination picked up right where it left off.

*Groping, Sex Common at Ford Plant, Female Workers Say, Law360 (November 4, 2014)*  
Jessica Corso

## WAGE/HOUR

### **\$3 Million Awarded To Smart & Final Employees For Wage-And-Hour Violations**

A class of 16,352 employees settled with Smart & Final for over \$3 million for multiple FLSA and Labor Code violations. The complaint alleges the company forced employees to work-off-the-clock, failed to properly pay overtime wages, and failed to provide state-mandated rest and meal breaks. Smart & Final denies all of the claims, but concluded that "protracted and expensive" litigation would likely disrupt regular business operations.

*Smart & Final's \$3M Deal OK'd In Class Wage Suit, Law360 (November 18, 2014)*  
Daniel Siegal.

### **\$1.54 Million Awarded To Employees Who Were Forced To Work Off The Clock**

A class of 15,000 employees settled with the Vallarta grocery chain for over \$1.5 million for multiple FLSA and Labor Code violations, including: forcing them to work off the clock, shorting them on wages worked, and failing to provide state-mandated rest and meal breaks.

*Calif. Grocery Chain Pays \$1.5M Over Class Wage Claims*, Law360 (November 10, 2014) Daniel Siegal.

### **Kraft Food Pays \$1.5 Million To Settle Wage-And-Hour Class Action**

A class of 1,700 part time merchandisers settled with Kraft Food Global Inc. for violations of state wage laws. The class alleged that the company failed to pay the employees proper overtime compensation even though they worked long hours. The class further alleged they did not receive the meal or rest periods to which they were entitled or the extra compensation of one-hour's wage per day to make up for any lost meal and rest periods.

*Kraft To Pay \$1.5 To End Calif. Workers' OT Action*, Law360 (November 14, 2014) Brandon Lowrey.

### **Legal Assistant/Paralegal Brings Class Action Against Her Former Law Firm Employer For Wage-And-Hour Violations**

A legal assistant and paralegal sued her former law firm employer, Business Affairs Inc., alleging violations of California Labor Code laws and the Fair Labor Standards Act. She has proposed a class action against the company alleging it failed to give her and others their mandated 10-minute rest period or 30-minute meal periods, and that the

company misclassified her as exempt from overtime time pay although she often worked in excess of eight hours per day. Although she was promoted to vice president and given an executive job title, her job duties remained the same, as she still reviewed, researched, summarized and inserted data into contracts and documents. She alleges that since she did not manage any member of the firm and had no part in business operations, she was not an exempt employee and should have been paid overtime.

*Legal Assistant Hits LA Law Firm With Wage-And-Hour Suit*, Law360 (November 6, 2014) Vin Gurrieri.

### **\$10.9 Million Awarded to Exotic Dancers**

A class of exotic dancers will receive nearly \$11 million in their class action lawsuit, because their employer incorrectly classified them as independent contractors. The misclassification resulted in the employer's failure to pay minimum wages to the dancers, in violation of the Fair Labor Standards Act and New York Labor Law. The judge also ruled that the "performance fees" paid to the dancers by customers do not qualify as an "offset" and would not have freed the employer of its obligation to pay minimum wage.

*\$10.9M Awarded To NY Exotic Dancers In Wage Suit*, Law360



### **Decertification Of Proposed Class Action Affirms Brinker Decision**

Under Brinker, an employer must relieve its employees of all duties for the purpose of meal breaks, after which employees may use the meal period for whatever purpose. The employer does not need to ensure that no work is done. The class was decertified because its expert incorrectly assumed Walgreens had to ensure employees took breaks, which was unsound in light of Brinker.

*In re Walgreen Co. Overtime Cases*, (2014)

\_\_\_ Cal.App.4th \_\_\_.

<http://cases.justia.com/california/court-of-appeal/2014-b230191.pdf?ts=1415908848>

### **LABOR / UNION**

#### **Evidence That Unions Are Losing Their Political Clout**

Republican Scott Walker's re-election as the governor of Wisconsin is being seen by some as an indication that organized labor is not as politically strong as it used to be in the United States. During the governor's race, unions such as the AFL-CIO--affiliated United Food and Commercial Workers, as well as the Service Employees International Union and others, spent hundreds of thousands of dollars opposing Walker's re-election bid. Because of his support for the controversial state law that limited the collective bargaining rights of many public employees in the state, Walker has been a lightning rod as a prime opponent for organized labor, and the unions had devoted a significant amount of their political campaign efforts to oppose (albeit unsuccessfully) his re-election bid.

*Union Influence Takes Blow As Walker Holds Seat In Wis., Law360 (November 5, 2014) Scott Flaherty*

### **Bankruptcy Judge Allows San Bernardino To Reject The Union Contract With Firefighters**

In allowing the City of San Bernardino to reject the union contract with firefighters, the bankruptcy judge overseeing the City's restructure stated that the rejection of the contract will provide a significant boost to the city's financial rehabilitation with only a modest impact on workers. She further opined that the equities of the union members must yield to the resuscitation of the city and its financial affairs, and pointed to the fact that over the past few years, the firefighters union has been the only union that has not agreed to wage and benefit cuts.

*San Bernardino OK'd To Spurn Firefighters Union Contract*, Law360 (November 5, 2014) Stewart Bishop

### **IN THE CATEGORY OF BANKRUPT US CITIES**

#### **Detroit's Chapter 9 Restructure Finally Approved**

After 16 months, Detroit's restructure plan to get out of bankruptcy, that eliminates \$7 billion in debt, has finally been approved. The plan, which was supported by virtually all of Detroit's financial stakeholders, pays pensioners more than bondholders, frees up \$1.7 billion for essential services. The city overcame challenges from both pensioners and bondholders, who eventually got behind the plan in exchange for less drastic cuts to their accrued benefits. At the heart of the plan is the so-called Grand Bargain, which raised \$816 million in private pledges and state aid to prevent deeper benefit cuts and keep the City's rare art collection from being sold off. The judge believed the collection – valued at between \$1 and 4 billion – will be beneficial to attracting business and revitalizing communities.

*Detroit Wins Confirmation of \$7B Debt-Cutting Plan*, Law360 (November 7, 2014) Andrew Scurria

### **San Bernardino Given May 30 Deadline To File Its Restructure Plan**

One short day after disclosing that it would not attempt to restructure its obligations to CalPERS or reduce pension benefits as part of a prior settlement, the bankruptcy judge overseeing the city's restructure, gave the city a May 30 deadline to file its plan for chapter 9 restructure. CalPERS was once the city's foremost opponent to any restructure plan, while it challenged the city's eligibility for bankruptcy for failure to negotiate with creditors. However, the city has agreed not to impair any unfunded liabilities or reject its contract with CalPERS, which it could have done.

Accordingly, CalPERS will be one less creditor objecting to the city's restructure plan, which must now be filed with the court no later than May 30, 2015.

*San Bernardino Faces May 30 Deadline For Ch. 9 Exit Plan*, Law360 (November 18, 2014) Andrew Scurria

## **IN THE TRENCHES**

### **Citigroup Agrees To Pay \$4.7 Million To Lending Specialists Incorrectly Classified As Exempt From Overtime**

Citigroup has settled a class action filed on behalf of 840 lending specialist employees who accused the company of misclassifying them as exempt from overtime.

*Citi Agrees To Pay \$4.7M In Lending Specialist Wage Action*, Law360 (November 3, 2014) Scott Flaherty

### **North County Times Pays \$3.2 Million To Settle FLSA Wage/Hour Lawsuit**

The North County Times settled a wage/hour class action with plaintiffs for \$3.2 million with newspaper carriers. The class alleged that the defendant misclassified them as independent contractors, which allowed defendant to improperly pay them. The class asserted claims for failure to pay minimum wage, failure to provide meal periods and rest breaks, failure to reimburse business expenses, unlawful withholding of wages, failure to provide itemized wage statements, failure to keep accurate payroll records, and waiting time penalties.

*Yvonne Dalton, et al. v. Lee Publications Inc., LA Daily Journal, Verdicts and Settlements (November 14, 2014) U.S. District Court Southern District, Case Number 3:08-cv-01072-GPC-NLS.*

### **City of Long Beach Pays \$1.75 Million To Settle Sexual Harassment Lawsuit**

Three male plaintiffs settled their sexual harassment lawsuit with the City of Long Beach for \$1.75 million. The plaintiffs alleged that from 2008 to 2010, their 29-year-old male supervisor sexually harassed them. They plaintiffs were 17 and 18 at the time. Plaintiffs claimed they each suffered from emotional distress, depression, anxiety and relationship issues as teenagers and adults. The City denied liability and alleged that the supervisor was to blame for the harm. The supervisor had inadvertently left a voice message which captured him verbally harassing one of the plaintiffs. It was reported to the police and the supervisor was arrested and charged. He plead no contest and was sentenced to 8 years in prison.

*John Doe A, et al. v. City of Long Beach, et al., LA Daily Journal, Verdicts and Settlements (November 14, 2014) Los Angeles Superior Court.*

### **\$1.2 Million Award For Disability Discrimination**

Plaintiff filed a lawsuit against Costco for disability discrimination, retaliation, and wrongful termination. Plaintiff, who suffered from disabilities associated with ailments of his shoulder, knee and back, alleges that he was terminated because he took too many medical leaves. Costco alleged he was terminated for grabbing his female supervisor in a forceful, aggressive manner, after she gave him a directive. After rejecting his wrongful termination claim, the jury awarded him \$1.18 million for his disability discrimination claim. The court dismissed the retaliation claim.

*Jose A. Rivera v. Costco Wholesale Corp.*, LA Daily Journal, Verdicts and Settlements (November 14, 2014) Riverside Superior Court, Case Number RIC 1218368.

### **Children's Hospital Central California Pays \$1 Million Verdict For Defamation / Invasion Of Privacy**

Plaintiff, a security guard at Children's Hospital, was involved in a car accident while on duty. He was sent to the emergency room where he was examined, given a painkiller and released, with no reports of intoxication or impairment. The next day while recuperating at home, plaintiff was ordered to the hospital to submit to a drug test. When the hospital found hydrocodone in his system, it terminated him based upon its Drug Free Workplace Policy. Plaintiff, who had had a clean record for 18 years with no history of drug abuse or work-related accidents, claimed that the drug must have been given to him by the hospital. Plaintiff also claimed that the drug test was administered in violation of the hospital's policy, which required a "reasonable suspicion" that drugs or alcohol played a role in the accident to require an employee to

submit to a drug test. The unanimous jury verdict awarded Plaintiff over \$1 million for invasion of privacy and defamation.

*Mckinley Nou v. Children's Hospital Central California*, LA Daily Journal, Verdicts and Settlements (November 21, 2014) Fresno Superior Court, Case Number: 12-CECG-02169.

### **Deutsche Bank Liable for \$1.3 Million For Failure To Pay Bonus**

Claimant asserted claims for failure to pay performance bonus and other Labor Code violations. He sought \$100,000 for his unpaid salary, \$2.2 million in unpaid earned bonus, and \$257,000 in severance compensation. Deutsche Bank denied any funds were owed. The FINRA panel found Deutsche Bank liable to Vitale for \$1.3 million in compensatory damages plus interest and legal fees, but denied his claim for severance pay.

*Alex David Vitale v. Deutsche Bank Securities Inc.*, LA Daily Journal, Verdicts and Settlements (November 21, 2014) Financial Industry Regulatory Authority, Case Number: 13-00509.

As always, please do not hesitate to contact any of our attorneys if you have any questions or comments.

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