ZLF

THE ZAPPIA LAW FIRM, A PROFESSIONAL CORPORATION

— *Labor & Employment Law* —
Defending Employer's Rights

Labor and Employment Law Update

Volume 7
Issue 9

September 2015

In This Issue

$18.3 Million Wage-and-Hour Class Action Settlement To Be Paid By Halliburton Co.

Oilfield services giant Halliburton Co. has agreed to pay $18.3 million to more than 1,000 workers around the country to settle a class action alleging violations of misclassifying employees as exempt from federal overtime pay requirements. Halliburton incorrectly classified workers in 28 positions as overtime-exempt, violating the Fair Labor Standards Act by not properly paying those workers when they worked over 40 hours in a week. The Department of Labor investigated Halliburton as part of a still active compliance push in the oil and gas industry. The $18,293,557 payout to 1,016 workers is one of the biggest wage recoveries for the Department of Labor. The workers who didn't get proper overtime pay were salaried field service representatives, pipe recovery specialists, drilling tech advisers, perforating specialists and reliability tech specialists. A spokesperson for Halliburton stated that the company had come across the misclassification while performing a self-audit. The company identified certain jobs that were misclassified as exempt, and re-classified the positions as non-exempt and therefore eligible for overtime wages under the FLSA.

The Zappia Law Firm
A Professional Corporation
Los Angeles | Orange County | Silicon Valley
Telephone: (213) 814-5550 - Facsimile: (213) 814-5560
www.zappialawfirm.com

SEXUAL HARASSMENT

$17.4 Million Damages Verdict For The Sexual Harassment Of Five Female Farm Workers

After a two-day damages trial, a unanimous jury returned a verdict awarding five female migrant agricultural workers $2.4 million in compensatory damages and $15 million in punitive damages. The Equal Employment Opportunity Commission filed the lawsuit against Moreno Farms alleging harassment and abuse of the workers, including a series of offensive comments and repeated threats that they would be fired if they refused the men's sexual advances. Three supervisors were accused of harassing the female workers, including repeatedly groping them, and in some instances, raping them. The complaint alleged that one of the supervisors told one of the plaintiffs who rejected his repeated propositions for sex, "I know you need this job, you need to do what I say or you will die of hunger." The complaint also alleged that at least two of the plaintiffs were raped by supervisors inside mobile home trailers near the warehouse facility where they worked. Ultimately, as alleged by the complaint, all five of these workers were fired for resisting the men's advances. After the damages verdict was delivered, the EEOC exclaimed, "The jury's verdict should serve as a clear message to the agricultural industry that the law will not tolerate subjecting farm workers to sexual harassment and that there are severe consequences when a sex-based hostile environment is permitted to exist."

Jury Awards Farm Workers $17.4M In Sex Harassment Case, Law360 (September 10, 2015) by Matthew Bultman.

EEOC Initiates Litigation Against Labor Ready For Retaliation And Wrongful Termination

The U.S. Equal Employment Opportunity Commission filed a lawsuit against the staffing firm Labor Ready, claiming that the firm ignored complaints from, and later fired, two women who complained about racial and sexual harassment on the construction project they were assigned to. The EEOC claims that Labor Ready not only condoned the harassment, but failed to take corrective action when they learned of it. One of the women was grabbed and groped by an employee, and another employee commented on the sexual orientation of the two women, who were in a relationship with one another. The complaint also alleges that the same employee who made the anti-gay comment also made racially charged comments to one of the women who was biracial. Finally, the complaint alleges that when the women asked that music containing racial epithets be turned down, it was instead turned up. The women complained at the local branch of the company, provided written statements, and called the corporate hotline twice. The women were terminated in retaliation for their complaints about harassment and the company's failure to take corrective action.

Labor Ready Ignored, Then Fired, Harassed Women: EEOC, Law360 (September 24, 2015) by Ben James.

ZLF

RETALIATION

Officer Awarded $755,000 For Multiple Instances Of Retaliation By His Supervisors and the Chief of Police

A jury awarded a University of Oregon police officer $755,000 for retaliation he received from his supervisors for questioning an alleged attempt to cook crime statistics and for filing his lawsuit. The jury found that the officer's chief, a lieutenant and a sergeant retaliated against him after he complained about an order to ignore non-felonies while compiling statistics. The jury also found that he was retaliated against after he filed his lawsuit for wrongful termination. The evidence showed that the chief of police put together Brady List materials against the officer, after the lawsuit commenced. The chief's submission to the Brady List, which is designed to show that an officer is too dishonest to testify in court, was the chief's further attempt to block the officer's attempt to return to his job and prevent him from being able to get or maintain any law enforcement job.

University of Ore. Officer Awarded $755K in Retaliation Suit, Law360 (September 28, 2015) by Aaron Vehling.

WAGE AND HOUR

When Evaluating A Class For Certification, The Initial Inquiry Must Only Determine Whether A Common Question Exists For Resolution, And Not Whether Or Not The Class Can Prevail On The Merits.

When determining issues of commonality for purposes of certifying a class, the court must only look for a "common contention" among the members of the class which is capable of class-wide resolution. The court shall not address the question of whether or not the class members could actually prevail on the merits, during the initial inquiry of whether common questions exist. Plaintiff filed a purported class action on behalf of a class of service technicians, alleging that their employer failed to compensate them for time spent commuting to and from their homes in the employer's service vehicles. Here, the court rejected class certification because the class offered no evidence demonstrating that the employer had a uniform policy requiring technicians to commute in the service vehicles. In reversing the rejection of certification, the Ninth Circuit found: (1) a question of fact remained as to whether the employer requires the technicians to use the vehicles or not; and (2) Plaintiff need only show a "common contention" and not that the class will prevail on the merits.

Alcantar v. Hobart Service (September 3, 2015, Ninth Cir.) ____ F3d. ____.

WAGE AND HOUR / FBOR

Time Firefighters Spend Collecting And Transporting "Turnout" Gear To Temporary Duty Stations Is Not Compensable Because The Activity Is Not "Intrinsic To Firefighting Activity."

Firefighters and emergency medical personnel sued Menlo Park Fire Protection District alleging violations of the Fair Labor Standards Act (FLSA) for failure to pay overtime for time spent taking their "turnout" gear - a work related activity - to temporary duty stations. The district court found, and the Ninth Circuit affirmed, that the disputed activities are not compensable as overtime, because the firefighters are entitled to take the turnout gear home with them, which would obviate the need to go back to the station to retrieve their gear before going to a "temporary" station.

The FLSA, as amended by the Portal to Portal Act of 1947 excludes from compensable work - and overtime calculations - commuting time and activities that are "preliminary" and "postliminary" to the "principal activities" that the employee is "employed to perform." These activities are only compensable if they are integral and indispensable to the productive work that the
employee is employed to perform, that is, it is an intrinsic element of those activities and one with which the employee cannot dispense if he is to perform his principal activities. Here, gathering and transporting turnout gear to a temporary station is considered preliminary, and therefore not compensable, because it is not "intrinsic" to the firefighting activity that firefighters were employed to perform, that is, fire suppression.

Balestrieri v. Menlo Park Fire Protection District (September 4, 2015, Ninth Cir.) ___ F3d. ___.

LABOR LAW

Order Compelling Arbitration Is Proper Where It Is Arbitrator Who Must Decide Whether The Collective Bargaining Agreement Is Still In Effect.

Where the parties included both an "evergreen clause" and "grievance and arbitration provision" in their collective bargaining agreement (CBA), they may be compelled to arbitration based on the original CBA even though the parties disagreed about the meaning/interpretation of the termination clause in the CBA, and whether an arbitrator should decide the question. Here, the court held and the Ninth Circuit affirmed, that acts of repudiation and termination must be submitted to arbitration when the CBA contains a customary arbitration clause. Here, because the parties had an arbitration clause in the original/ ratified CBA, the dispute was arbitrable, and it was up to an arbitrator, and not the court, to construe the agreement's termination provision and decide whether the contract had been terminated. The order compelling arbitration was affirmed.

IATSA v. InSync Show Productions (September 4, 2015, Ninth Cir.) ___ F3d. ___.

IN THE TRENCHES

$4.75 Million Wage-and-Hour Class Action Settlement To Be Paid By Cedar Fair Management Inc.

Plaintiff brought a class action on behalf of himself and all other similarly situated employees against their employer Cedar Fair Management Inc. The class of 31,455 current and former non-exempt employees alleged violations of the California Labor Code, including making the employees wait in line to be checked out after clocking out for the day. The class also claimed that the company provided wage statements missing required information, and failed to timely pay plaintiff and other class members their final wages upon termination. The parties agreed to settle the class action for $4.75 million.

Ortegon-Ramirez v. Cedar Fair Management Inc., LA Daily Journal, Verdicts and Settlements (September 5, 2015) Santa Clara Superior Court, Case Number: 1-13-CV-254098.

$3.9 Million Wage-and-Hour Class Action Settlement To Be Paid By Wells Fargo

Wells Fargo is settling a wage-and-hour class action consisting of class members who are current and former financial advisers. The class alleged violation of labor laws and the FLSA for making improper wage deductions,

for misclassifying them as exempt, and for failing to pay them overtime and minimum wages. The class of approximately 1,150 members worked as financial advisers in a private client group for Wells Fargo or its predecessor Wachovia Securities from May 2009 to the present. The class further alleged that despite regularly working more than 40 hours a week, the company failed to pay them for all the hours worked, did not pay them an overtime rate for the hours that surpassed 40, and failed to pay all "gap time" owed to them under state law.

Wells Fargo Pays $3.9M To End Financial Adviser FLSA Row, Law360 (September 22, 2015) by Kevin Penton.

$2 Million Wage-and-Hour Class Action Settlement To Be Paid By California Payday Loan Co.

PLS Financial Solutions of California Inc. (aka California Payday Loan) settled a wage-and-hour class action for $2 million. The class alleged that their employer shorted their wages by not providing required breaks while still deducting meal time from their time cards. The class further alleged violations of the California Labor Code including, unpaid meal and rest premiums, failure to pay all regular and overtime wages, unpaid and/or untimely vacation wages, waiting time penalties, and failure to provide and maintain accurate paystubs. Class members who worked for the company between January 2010 and April 2015 as hourly workers or nonexempt employees will share in the settlement based on their qualifying work weeks, and on alleged unpaid wages with interest and penalties.

Calif. Payday Loan Co. Gets OK for $2M Wage Deal, Law360 (September 22, 2015) by Bonnie Eslinger.

$1.4 Million Wage-and-Hour Class Action Settlement To Be Paid By Crossmark Inc.

Plaintiff brought a class action on behalf of herself and other similarly situated non-exempt or hourly employees against her employer Crossmark Inc. The class alleged violations of the California Labor Code, including requiring workers to perform numerous daily tasks off-the-clock, but did not pay them for such work, which was a failure to pay minimum wage and a failure to pay agreed upon wages. The class also contended that Crossmark did not provide employees accurate and complete wage statements specifying the total number of hours worked. Finally, the class alleged that Crossmark deprived workers of meal and rest periods without compensation, failed to pay overtime wages, failed to reimburse for incidental expenses and failed to pay wages at termination. Crossmark agreed to pay $1.4 million to settle the class action.

Smith v. Crossmark Inc., LA Daily Journal, Verdicts and Settlements (September 18, 2015) U.S. District Court for the Central District of California, Case Number: 3:14:cv-04461-WHO.

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

THE ZAPPIA LAW FIRM,
A Professional Corporation
Los Angeles, Orange County, Silicon Valley
Phone: (213) 814-5550
Facsimile: (213) 814-5560
www.zappialawfirm.com

Prior Client Updates

Attorney Profiles

Firm accomplishments/experience

General Information

We provide group and private training to meet your needs:

Workplace Training

- FLSA / Wage-Hour Advice & Litigation
- Employment Litigation of Harassment, Discrimination, Retaliation and Related Claims
- California's Mandatory Harassment Training
- Preventing Discrimination and Retaliation
- Investigating Discrimination, Harassment and Retaliation
- FMLA / CFRA / Pregnancy Leave
- Disability Discrimination Amendments
- Pregnancy Disability Law Amendments
- Employee Discipline
- Workplace Investigations
- Union Avoidance and Labor Relations

Presentations

We are also available to present on various topics, including:

- The Limitations of AB 646 Post Impasse Procedures
- Labor Negotiations
- Pension Reform
- Police Officer Bill of Rights (POBR)
- Fire Fighter Bill of Rights (FOBR)

Give us a call to discuss rates for your next training:
213-814-5550