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SPECIAL DOUBLE UPDATE

PRIVATE AND PUBLIC EMPLOYERS

September 3, 2015

\$100 MILLION CLASS ACTION GRANTING CONDITIONAL CERTIFICATION FOR 1,800 FEMALE WORKERS ALLEGING DISCRIMINATION BASED UPON SEX-BIAS AND UNEQUAL PAY FOR WOMEN

A New York federal judge conditionally certified a group of current and former female employees who filed a \$100 million gender bias suit accusing Forest Laboratories Inc. of discrimination. The Judge granted conditional certification under the Equal Pay Act (EPA) to a class of female sales representatives who were employed by Forest Labs between 2009 and 2014. “In this case plaintiffs present various forms of evidence to demonstrate provisionally that the proposed collective of opt-ins are similarly situated to them and that there is at least a colorable basis for inferring – prior to full merits discovery – that defendants have violated their rights under the EPA,” the judge said.

Plaintiffs accuse Forest Labs of “systematic, company-wide discrimination against women based on their gender, taking maternity leave, becoming pregnant or serving as caregivers.” The proposed class includes about 1,500 current and former sales representatives who worked for Forest Labs after 2008, and approximately 150 to 300 sales representatives who worked for Forest Labs while pregnant. The Equal Pay Act collective group includes female sales representatives who were paid less than men while having similar responsibilities and duties. The judge granted provisional certification because the plaintiffs were able to show that female sales representatives, the entry-level position for Forest Labs marketing personnel, are similarly situated.

Barrett et al. v. Forest Laboratories Inc. et al., U.S. District Court for the Southern District of New York, case number 1:12-cv-05224.

160,000 UBER DRIVERS GRANTED CLASS ACTION STATUS TO PURSUE LAWSUIT ALLEGING THEY HAVE BEEN INCORRECTLY CLASSIFIED AS INDEPENDENT CONTRACTORS

A California federal judge granted class-action status to a group of drivers that filed a lawsuit against Uber over the way they get paid. The ruling increases the number of potential California plaintiffs in the suit that claims Uber drivers are incorrectly classified as independent contractors when they are actually employees. The plaintiffs, several current and former Uber drivers, claim that they have been shortchanged on expenses and tips.

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The judge certified the class of nearly 160,000 drivers who have worked for Uber since 2009, but limited the potential claims of the class to tips only. He excluded their claims for expenses from this class action, but suggested they could bring another case for class certification on the claims for expenses. The judge's decision to certify the class does not represent a binding judgment on the merits of the arguments, but simply on whether the cases brought by the drivers are similar enough to consider as a group.

O'Connor et al. v. Uber Technologies, Inc., U.S. District Court for the Northern District of California, case number C-13-3826 EMC.

Please recall the recent case we included in our June newsletter where the California Labor Commissioner ruled that a San Francisco Uber driver was an employee and not an independent contractor.

In that case the hearing officer ruled that Uber must reimburse the driver for approximately \$4,000 for bridge tolls, mileage and other expenses she incurred while working as an Uber driver last year. The Commissioner held that Uber acted similar to an employer when it supplied her with an iPhone so she could access the Uber smartphone app. Uber also has an application for employment process which includes banking and residence information as well as the prospective driver's social security number. The Commissioner stated, "even though Uber holds itself out as a neutral technological platform designed to connect drivers and passengers, the reality is that Uber is involved in every aspect of the business. Here, because the driver is performing an integral part of the business, this raises a red flag for the court to look more closely at the other elements of the independent contractor test." Uber claims that the drivers are actually running their own small business, but in reality, the driver's work does not involve any managerial skills, cannot affect profit or loss, and aside from their car, the drivers have no investment in the business.

Uber Driver Is Employee, Not Contractor: Calif. Commissioner, Law360 (June 17, 2015), Kurt Orzech.