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Wage and Hour Litigation-The Rocky Road Ahead

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Wal-Mart has agreed to pay over \$33 million in back wages, plus interest, to employees who worked for the company from February 1, 2002 to Jan. 19, 2007 to resolve issues concerning violations of the Fair Labor Standards Act (FLSA). "Wal-Mart Workers to Receive More Than \$33 Million in Back Wages," www.dol.gov (Jan. 25, 2007).

The agreement covers 86,680 workers. Wal-Mart brought this matter to the attention of the Department of Labor after an internal audit raised questions about the methods used to compute over-time wages for non-exempt employees.

Commentary and Checklist

If the Wal-Mart settlement is any indication, one has to believe that the wage and hour litigation wave has yet to crest. If anything, the settlement empowers those seeking wage and hour targets.

Only a few weeks back Wal-Mart won a significant victory on the wage and hour front. The victory demonstrated to employers that wage and hour cases could be won in court. Although we may never know, it appears that [Wal-Mart's victory](#) did little to bolster the retail giant's belief that it could win on the overtime issues overall.

The settlement appears to be the product of a sound business decision. Undoubtedly, Wal-Mart believes its true exposure exceeds \$33 million.

More and more plaintiffs are pursuing wage and hour cases against large employers. Wage and hour violations are easier to prove than discrimination or retaliation claims. The issue is simple to understand (did employees receive overtime, did employees receive their break, e.g.), and accounting records provide excellent evidence and rarely mislead investigators.

Employers must take time to audit their wage and hour practices as soon as possible. Employers, consider specifically:

- ✓ Are your exempt employees properly classified? Too many employers classify employees as exempt when they are really non-exempt.
- ✓ Are your non-exempt employees receiving their overtime? All overtime, no matter how short, must be accounted for and compensated.
- ✓ Are your non-exempt employees receiving proper credit for all their time spent

working on your behalf? Employers that hedge employee time, especially when an employee is on an employer's premise, take a great risk.

- ✓ Are your non-exempt employees receiving their breaks and other compensated time as required by federal and state laws? Laws differ, but many state laws require mandatory paid breaks during the day.
- ✓ Are your employees receiving all the wages due to them? Class actions are emerging where employers unlawfully deducted money from employee checks.
- ✓ Have you had an employment attorney review your wage and hour practices? If not, now is the time.

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