

WESTON HURD CLIENT ADVISORY
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Payroll Payola For Employees:



Is Your Business At Risk for Wage and Hour Lawsuits?

Prepared by Paul M. Shipp

In the United States, the number of wage and hour lawsuits filed in federal courts has increased every year since 2011, according to the Washington-based Federal Judicial Center, an education and research agency for federal courts.

During the yearlong period ending March 31, 2014, approximately 8,126 lawsuits were filed seeking relief under the federal Fair Labor Standards Act ("FLSA"). The prior year, the number was 7,764. This upward trend since 2011 shows no signs of slowing down. These figures do not even include wage and hour cases filed in state courts under state laws.

A sampling of some recent case settlements and awards reveals that all types of businesses are at risk for these lawsuits:

- On May 12, a New York federal judge gave preliminary approval to a \$6.9 million settlement between Merrill Lynch & Co. and at least 500 field financial advisors regarding claims that they were misclassified as exempt from overtime pay. In 2013, Merrill Lynch & Co. agreed to pay \$12 million to approximately 12,000 "client associates" as part of a settlement for a wage and hour lawsuit.
- On May 19, the U.S. Department of Labor announced that Paul Johnson Drywall Inc. agreed to pay \$600,000 in back wages, damages, and penalties to settle a sub-contractor's alleged misclassification of workers as independent contractors instead of employees.

- On July 6, an Amarillo, Texas strip club owner and 21 employees reached a legal settlement of more than \$300,000 in a federal wage and hour lawsuit. The defendants also were ordered to pay \$120,051 in attorneys' fees and costs. The suit claimed the clubs did not pay overtime or minimum wage to a class of employees, including disc jockeys, security personnel, bartenders, waiters and greeters, violating the Fair Labor Standards Act.
- On May 1, 2012, Texas Roadhouse Inc. agreed to pay a \$5 million settlement in a putative class action that accused the restaurant chain of violating Massachusetts law by requiring waiters to share tips with nonwaiter employees and paying less than the state's minimum wage.

These cases demonstrate the importance of reviewing your business's job classification and pay practices. These reviews may lead to the discovery of unintended mistakes in classifying your employees as exempt for overtime provisions of the FLSA or in classifying them as non-employees (independent contractors). The review may also be helpful in future litigation to support an argument that a court should not impose liquidated (double) damages because the review established that the employer acted in good faith and had reasonable grounds for believing it was in compliance with wage and hour laws.

Contact the employment and labor law attorneys at Weston Hurd LLP to discuss wage and hour issues and your business's classification and pay practices. We can perform a review of these practices which may help reduce your business's risk of landing in court or to lessen the impact of any discovered violations.



Paul M. Shipp is an Associate with Weston Hurd LLP. He focuses his practice on civil and criminal litigation including appeals with an emphasis on white collar criminal defense and business civil litigation involving construction, employment and labor law, personal injury, creditors' rights, and internal and external investigations. Paul can be reached at 216.687.3298 or pshipp@westonhurd.com.

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