

- ADMIRALTY & MARITIME
- ANTITRUST & TRADE REGULATION
- AVIATION
- APPELLATE LITIGATION
- BANKING, RESTRUCTURING & CREDITORS-DEBTORS RIGHTS
- BUSINESS & COMMERCIAL LITIGATION
- COMMERCIAL LENDING & FINANCE
- CONSTRUCTION
- CORPORATE & SECURITIES
- EMPLOYEE BENEFITS, ERISA, & EXECUTIVE COMPENSATION
- ENERGY
- ENVIRONMENTAL & TOXIC TORTS
- ERISA, LIFE, HEALTH & DISABILITY INSURANCE
- LITIGATION
- GAMING
- GOVERNMENT RELATIONS
- HEALTH CARE LITIGATION, TRANSACTIONS & REGULATION
- INTELLECTUAL PROPERTY & E-COMMERCE
- INTERNATIONAL
- LABOR RELATIONS & EMPLOYMENT
- MEDICAL PROFESSIONAL & HOSPITAL LIABILITY
- MERGERS & ACQUISITIONS
- PRODUCTS LIABILITY
- PROFESSIONAL LIABILITY
- PROJECT DEVELOPMENT & FINANCE
- PUBLIC FINANCE
- REAL ESTATE: LAND USE, DEVELOPMENT & FINANCE
- TAX (INTERNATIONAL, FEDERAL AND STATE)
- TELECOMMUNICATIONS & UTILITIES
- TRUSTS, ESATES & PERSONAL PLANNING
- VENTURE CAPITAL & EMERGING COMPANIES

THE NEWEST OLD LEGAL THREAT TO EMPLOYERS

The Fair Labor Standards Act of 1938 (“FLSA”), better known as the federal wage and hour law, is one of the oldest federal employment statutes. The FLSA has not changed much over the years and is made up of a substantial number of highly technical rules that govern how employees are paid. For many employers, the FLSA is a sleeping dog that doesn’t get much attention. Better to let the sleeping dog lie, as the old expression goes.

Recently, however, this sleeping dog has been awakened by savvy employee attorneys and they’ve discovered a gold mine in the FLSA’s many technical rules. How? What happened?

Two elements have contributed to the resurgence of activity under the FLSA. The first is an increase in productivity by the American workforce; more overtime hours are being logged by more employees than ever before. The second element is one of the oldest and most common of all employer mistakes: the misclassification of nonexempt jobs as exempt from overtime. Many employers labor (pardon the pun) under the misconception that if they pay an employee a salary, the employee doesn’t get overtime. It’s not that simple.

What makes wage and hour claims so attractive to employee attorneys is the fact that most wage and hour violations involve a policy or practice that applies to a whole class of workers at a company. The bigger the company, the bigger the pot of gold at the end of the FLSA rainbow.

Some recent examples:

- Swift and Co. paid nearly \$3 million in settlement for failing to pay workers for time spent donning, doffing, and cleaning protective safety gear.
- Albertson’s settled a class action involving 150,000 employees and former employees for an estimated \$37 million for “off-the-clock” work for which the employees were not compensated.
- Employees of Oklahoma Gas and Electric Co., who were required to be on call to continually monitor automated alarms, won their suit for overtime pay.

- ADMIRALTY & MARITIME
- ANTITRUST & TRADE REGULATION
- AVIATION
- APPELLATE LITIGATION
- BANKING, RESTRUCTURING & CREDITORS-DEBTORS RIGHTS
- BUSINESS & COMMERCIAL LITIGATION
- COMMERCIAL LENDING & FINANCE
- CONSTRUCTION
- CORPORATE & SECURITIES
- EMPLOYEE BENEFITS, ERISA, & EXECUTIVE COMPENSATION
- ENERGY
- ENVIRONMENTAL & TOXIC TORTS
- ERISA, LIFE, HEALTH & DISABILITY INSURANCE
- LITIGATION
- GAMING
- GOVERNMENT RELATIONS
- HEALTH CARE LITIGATION, TRANSACTIONS & REGULATION
- INTELLECTUAL PROPERTY & E-COMMERCE
- INTERNATIONAL
- LABOR RELATIONS & EMPLOYMENT
- MEDICAL PROFESSIONAL & HOSPITAL LIABILITY
- MERGERS & ACQUISITIONS
- PRODUCTS LIABILITY
- PROFESSIONAL LIABILITY
- PROJECT DEVELOPMENT & FINANCE
- PUBLIC FINANCE
- REAL ESTATE: LAND USE, DEVELOPMENT & FINANCE
- TAX (INTERNATIONAL, FEDERAL AND STATE)
- TELECOMMUNICATIONS & UTILITIES
- TRUSTS, ESATES & PERSONAL PLANNING
- VENTURE CAPITAL & EMERGING COMPANIES

- Over 100 managers of a hamburger chain in California, who say they worked 50 to 70 hours per week, filed suit for overtime pay, claiming they were misclassified as exempt.

Many employers are now conducting annual wage and hour audits to avoid or reduce the risk of these kinds of claims. Focus areas in your audit should include:

- The correct classification of supervisors, managers, administrators, computer workers, technicians, professionals, and independent contractors as exempt or nonexempt.
- Effective systems for recording the actual hours worked by nonexempt employees, including overtime.
- Permissible pay deductions.
- Special pay plans and bonus programs.
- Compliance with record-keeping requirements.

- Clyde H. Jacob

NEWS FLASH: U.S. SUPREME COURT REVERSES NLRB POSITION ON SUPERVISOR STATUS

In a 5-4 decision on May 29, the Supreme Court found, contrary to the National Labor Relations Board, that charge nurses are supervisors and, therefore, cannot vote in a union representation election or be included in a bargaining unit represented by a union, unless their employer consents.

This ruling may portend the reversal of similar rulings the Board has made involving other industries. For instance, concerning the maritime industry, the Board ruled that a gaming boat captain was not a supervisor, and in the utility/power industry, the Board found that dispatchers were not supervisors. We will continue to monitor these cases and notify our readers of further developments in future issues of Jones Walker's *Labor and Employment E*Zine*.

- ADMIRALTY & MARITIME
- ANTITRUST & TRADE REGULATION
- AVIATION
- APPELLATE LITIGATION
- BANKING, RESTRUCTURING & CREDITORS-DEBTORS RIGHTS
- BUSINESS & COMMERCIAL LITIGATION
- COMMERCIAL LENDING & FINANCE
- CONSTRUCTION
- CORPORATE & SECURITIES
- EMPLOYEE BENEFITS, ERISA, & EXECUTIVE COMPENSATION
- ENERGY
- ENVIRONMENTAL & TOXIC TORTS
- ERISA, LIFE, HEALTH & DISABILITY INSURANCE
- LITIGATION
- GAMING
- GOVERNMENT RELATIONS
- HEALTH CARE LITIGATION, TRANSACTIONS & REGULATION
- INTELLECTUAL PROPERTY & E-COMMERCE
- INTERNATIONAL
- LABOR RELATIONS & EMPLOYMENT
- MEDICAL PROFESSIONAL & HOSPITAL LIABILITY
- MERGERS & ACQUISITIONS
- PRODUCTS LIABILITY
- PROFESSIONAL LIABILITY
- PROJECT DEVELOPMENT & FINANCE
- PUBLIC FINANCE
- REAL ESTATE: LAND USE, DEVELOPMENT & FINANCE
- TAX (INTERNATIONAL, FEDERAL AND STATE)
- TELECOMMUNICATIONS & UTILITIES
- TRUSTS, ESATES & PERSONAL PLANNING
- VENTURE CAPITAL & EMERGING COMPANIES

IRS AND DOL OFFER HELP TO HR PROFESSIONALS

The IRS is revamping its website to be more user friendly and adding information that employee benefits professionals should find useful. The most promising feature is a new IRS *Employee Plans* newsletter that the IRS will publish on a regular basis. Information about the newsletter can be found at www.irs.gov/ep. The IRS will send future editions of the newsletter automatically to subscribers who sign up for a free subscription on the website. The Spring 2001 newsletter includes articles and comments by high-level IRS *Employee Plans* officials and provides a list of recent IRS guidance.

The Department of Labor, realizing that many employers are struggling with the recently revised Form 5500 Annual Report, has issued a trouble-shooting guide to assist with completing the form and related schedules. The guide can be found at www.dol.gov/dol/pwba/public/pubs/trouleg.htm. The trouble-shooting guide provides information not found in the Form 5500 instructions. In addition, as was noted in a previous issue of Jones Walker's *Labor and Employment E*Zine*, the Department of Labor has established a toll-free hotline for questions regarding Form 5500 and the related schedules: **1-866-463-3278**. Check it out.

Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact::

H. Mark Adams
Jones Walker
201 St. Charles Ave., 47th Fl.
New Orleans, LA 70170-5100
ph. 504.582.8258
fax 504.582.8015
email: madams@joneswalker.com

Sidney F. Lewis, V
Jones Walker
201 St. Charles Ave., 47th Fl.
New Orleans, LA 70170-5100
ph. 504.582.8352
fax 504.589.8352
email: slewis@joneswalker.com

Thomas P. Hubert
Jones Walker
201 St. Charles Ave., 47th Fl.
New Orleans, LA 70170-5100
ph. 504.582.8384
fax 504.582.8015
email: thubert@joneswalker.com

Labor, Employment & Employee Benefits Practice Groups

H. MARK ADAMS
JENNIFER L. ANDERSON
ALTON E. BAYARD
JOHN C. BLACKMAN
HOWARD T. BOYD, III
TIMOTHY P. BRECHTEL
LAURIE M. CHESS
SUSAN K. CHAMBERS
MICHELE WHITESELL CROSBY
HELINA F. DAYRIES
MADELEINE FISCHER
REBECCA GOTTSEGEN
VIRGINIA WEICHERT GUNDLACH

PAULINE F. HARDIN
CORNELIUS R. HEUSEL
THOMAS P. HUBERT
CLYDE H. JACOB
MARY ELLEN JORDAN
ALAN F. KANSAS
SIDNEY F. LEWIS V
CHARLOTTE MARQUEZ
EDWARD F. MARTIN
STEPHANIE C. MOORE
MARGARET F. MURPHY
RUDOLPH R. RAMELLI
ANTONIO D. ROBINSON
ROBERT B. WORLEY, JR

ADMIRALTY & MARITIME
ANTITRUST & TRADE REGULATION
AVIATION
APPELLATE LITIGATION
BANKING, RESTRUCTURING & CREDITORS-DEBTORS RIGHTS
BUSINESS & COMMERCIAL LITIGATION
COMMERCIAL LENDING & FINANCE
CONSTRUCTION
CORPORATE & SECURITIES
EMPLOYEE BENEFITS, ERISA, & EXECUTIVE COMPENSATION
ENERGY
ENVIRONMENTAL & TOXIC TORTS
ERISA, LIFE, HEALTH & DISABILITY INSURANCE
LITIGATION
GAMING
GOVERNMENT RELATIONS
HEALTH CARE LITIGATION, TRANSACTIONS & REGULATION
INTELLECTUAL PROPERTY & E-COMMERCE
INTERNATIONAL
LABOR RELATIONS & EMPLOYMENT
MEDICAL PROFESSIONAL & HOSPITAL LIABILITY
MERGERS & ACQUISITIONS
PRODUCTS LIABILITY
PROFESSIONAL LIABILITY
PROJECT DEVELOPMENT & FINANCE
PUBLIC FINANCE
REAL ESTATE: LAND USE, DEVELOPMENT & FINANCE
TAX (INTERNATIONAL, FEDERAL AND STATE)
TELECOMMUNICATIONS & UTILITIES
TRUSTS, ESATES & PERSONAL PLANNING
VENTURE CAPITAL & EMERGING COMPANIES