

PUTNEY, TWOMBLY, HALL & HIRSON LLP

ESTABLISHED 1866

COUNSELORS AT LAW

521 FIFTH AVENUE

NEW YORK, NEW YORK 10175

(212) 682-0020

TELEFAX: (212) 682-9380

PUTNEYLAW.COM

DANIEL F. MURPHY, JR.
MICHAEL T. McGRATH
THOMAS A. MARTIN
WILLIAM M. POLLAK
JAMES E. McGRATH, III
CHRISTOPHER M. HOULIHAN
THOMAS M. LAMBERTI
STEPHEN J. MACRI
HARVEY I. SCHNEIDER
MARY ELLEN DONNELLY
JOSEPH B. CARTAFALSA
GEOFFREY H. WARD
ANDREA HYDE
E. PARKER NEAVE
MARK A. HERNANDEZ
JAMES M. STRAUSS
PHILIP H. KALBAN
SEAN H. CLOSE
LANSING R. PALMER
JEROME P. COLEMAN
BARBARA M. MAISTO

120 WOOD AVENUE SOUTH
SUITE 600
ISELIN, NEW JERSEY 08830
(732) 632-2505
TELEFAX: (732) 632-2506

1205 FRANKLIN AVENUE
GARDEN CITY, NY 11530
(516) 746-0070
TELEFAX: (516) 746-0599

2500 NORTH MILITARY TRAIL
SUITE 200
BOCA RATON, FLORIDA 33431
(800) 935-8480
TELEFAX: (561) 613-4100

COUNSEL
CHARLES J. GROPPE
ALEXANDER NEAVE
DUSTAN T. SMITH

SPECIAL COUNSEL
JUDITH M. BANDLER

January 19, 2010

CLIENT ALERT

Wage and Hour Suits Continue to Rise

Federal lawsuits alleging violations under the Fair Labor Standards Act (“FLSA”), which once numbered fewer than 2,000 per year a decade ago, reached figures as high as 5,199 and 6,165 in 2008 and 2009, respectively. The increase in wage and hour lawsuits will likely persist in 2010.

The FLSA requires that all employers pay an overtime premium to employees who work more than forty hours in a week, unless they fall within one of the statute’s defined exemptions, such as employees who work in an executive, administrative or professional capacity.

Reasons for the Increase

With the high unemployment rate and current economic climate, employees who previously might not have pursued litigation are initiating actions for FLSA violations in hopes of recovering back wages and liquidated damages from employers. Concurrently, increasingly savvy plaintiffs’ attorneys, apparently attracted by the FLSA’s provision for attorneys’ fees, have started to amass class action suits, especially against large employers, for workplace policies regarding overtime and misclassification of employees as exempt. Moreover, heightened media attention surrounding large settlements in wage and hour lawsuits has fueled the increase in such claims.

Failure to strictly comply with the rigorous requirements of the somewhat antiquated FLSA also contributes to the uptick in wage and hour suits. In particular, jobs that have been traditionally viewed by many employers as exempt from the FLSA overtime requirements – particularly in the financial, mortgage and other service industries – have recently been held by several courts to require the payment of overtime. When retroactive overtime is tallied for a large number of employees, the overtime payments may be significant. Recent settlements and awards include a \$37 million

settlement by Merrill Lynch in an overtime suit by brokers, a \$65 million settlement by IBM in an overtime suit by technical service professionals and information technology specialists, and a \$38 million settlement by Washington Mutual Bank in an overtime suit by loan consultants. (See our client alert dated December 18, 2009, available at http://www.putneylaw.com/cu_121809.html).

Steps for Compliance

Employers should prepare to face litigation and take steps to mitigate liability for potential wage and hour actions, including a comprehensive review of their wage and hour practices and records. A comprehensive review would include ensuring that all exempt and non-exempt employees are properly classified and paid; that appropriate policies are in place for compensation due to variations in the work period, including interruptions in meal periods or incidental time spent providing report at shift change; that managers are trained on FLSA-compliant practices; and that a robust complaint mechanism allows employees to report alleged violations of those policies without retaliation. We are available to assist you in these matters.

* * *

If you should have any questions regarding the recent trend in wage and hour litigation, in conducting a wage and hour compliance review, or any other related issues, please contact us.

PUTNEY, TWOMBLY, HALL & HIRSON LLP