

## Wage and Hour Litigation

### Practices and Industries

---

#### PRIMARY CONTACTS

**Laura E. O'Donnell**

+1 210.978.7421

**Tamara I. Devitt**

+1 949.202.3060

---

Wage and hour disputes can result in significant, multi-million dollar judgments against even the most sophisticated companies. Allegations involving improper wage practices can turn into collective and class action lawsuits encompassing former and existing employees who never made any prior complaints, but are aggressively pursued by plaintiffs' attorneys. Wage and hour plaintiffs often seek back wages for three years, a double recovery for liquidated damages and attorneys' fees. Some courts have held that senior management and company executives can be held personally liable for any wage-hour violations.

Haynes and Boone's Wage and Hour Litigation Practice Group routinely defends collective and class action lawsuits, as well as Department of Labor audits involving wage-hour matters. We recognize the significant risks facing employers in this area of the law. As a result, we have assembled an experienced and dedicated group of lawyers to defend clients in all aspects of wage-hour proceedings.

The depth of our experience enables us to offer comprehensive services, ranging from conducting internal company audits to ensure compliance, defending government investigations, to defending wage-hour lawsuits from the initial conditional class certification stage, discovery, summary judgment, and through trial.

#### Collective Action/Class Action Certification

One of the key milestones in any collective or class action wage-hour lawsuit is the conditional certification stage. If a case can be disposed of or limited in scope before certification, a company is likely to avoid, or at least reduce, the possibility of copycat lawsuits across the country by plaintiffs' attorneys who regularly monitor newly filed wage-hour cases. Moreover, defeating or limiting the scope of conditional certification of the class provides clients with the opportunity to explore a favorable settlement.

#### Our Experience

Companies facing wage-hour litigation should partner with a law firm that has the depth and experience to provide a strident defense in this highly specialized area. In turn, we understand our

client's objective to achieve the most efficient and best practical solution for its business. Our ability to recognize and work closely with the business needs of our clients has enabled our team to achieve an established record of excellent and cost-effective results. Our experience includes cases involving:

- Overtime calculation, establishment of regular rate of pay, and flexible work week
- Professional exemptions
- Retail sales commissions and the outside sales exemption
- Bonuses and commissions
- Independent contractor versus employee status
- Motor carrier exemption
- Tipped employees, including tip pools and the tip credit
- Meal periods and rest breaks
- "Off-the-clock"
- "Donning and doffing"
- On-call and travel time

Our recent representative experience includes:

- *National Retailer and Distributor*: Allegations of misclassification, failure to pay overtime, improper calculation of bonuses, and retaliation.
- *Manufacturer and Supplier of Telecommunications Equipment*: Independent contractor vs. employee status.
- *National Energy Producer and Distributor*: Allegations of misclassification, failure to pay overtime, and improper recordkeeping.
- *Clothing Supplier and Delivery Service Company*: Application of Motor Carrier exemption to secure dismissal.
- *National Restaurant Chain*: Allegations of misclassification, off-the-clock work, failure to pay overtime, and improper tip arrangement.
- *National Oil and Gas Company*: Allegations of misclassifications and failure to pay overtime.
- *Mortgage Lender*: Allegations of misclassification and failure to pay overtime.
- *Building Materials Supplier*: Law suit by Secretary of Labor and defense based on application of Motor Carrier exemption.
- *Concrete Construction Service Company*: Defense based on Motor Carrier Act.
- *National Freight Company*: Defense and dismissal based on Motor Carrier exemption.
- *Manufacturer of Airplane Parts and Distribution*: Allegations of misclassification, failure to pay overtime, and improper recordkeeping.
- *Regional Distribution Service Company*: Allegations of misclassification and failure to pay overtime.
- *Financial Holding Company with Portfolio Entities*: Allegations of misclassification, failure to pay overtime and off-the-clock work.
- *Large Regional Hospital District*: Allegations of improper administration of meal and break time.
- *Entertainment Retailer and Distributor*: Allegations of misclassification and failure to pay overtime.
- *Software Development Company*: Allegations of misclassification, independent contractor vs. employee status, and failure to pay overtime.
- *Restaurant Management Company*: Allegations of improper tip credit and failure to pay overtime.

- *Major Metropolitan Hospital*: Allegations of required off-the-clock work.
- *Engineering Services Company*: Independent contractor vs. employee status, and failure to pay overtime.
- *Telecommunications Company*: Dispute with installers over independent contractor status.
- *Waste Disposal Company*: Allegations of motor carrier exemption, off-the-clock work, misclassification, and failure to pay overtime.
- *Business Management Services Company*: Independent contractor vs. employee dispute, allegations of misclassification, and failure to pay overtime.
- *Manufacturer of Equipment*: Allegations of off-the-clock work, travel pay, and failure to pay overtime.
- *Regional Hospital*: Allegations of misclassification and failure to pay overtime.
- *Personal Services Provider*: Independent contractor vs. employee status.
- *Regional Hospital*: Allegations of failure to pay overtime and on-call time.
- Defense of dozens of Department of Labor and state agency investigations involving alleged wage-hour violations in the transportation, manufacturing, healthcare, financial, construction, restaurant and service industries.