

Salespeople Sue for Overtime Pay

By Anique Gonzalez

Reflecting a recent surge in class-action overtime litigation, another wave of lawsuits is being filed across the country by pharmaceutical representatives. Drug salespeople have filed suit against prominent drug companies seeking compensation for overtime they believe they should have received but were never paid.

Thus far, more than 12 suits have been filed against pharmaceutical companies, including AstraZeneca, Pfizer, Inc., Johnson & Johnson, Amgen, Inc., Eli Lilly & Company, GlaxoSmithKline, PLC, Bayer Corporation, and Hoffman-LaRoche, Inc.

These lawsuits represent the latest development in the battle between employees and employers over overtime compensation. For instance, in the past several months, International Business Machine Corporation (IBM) agreed during settlement negotiations to pay \$65 million for alleged hour-and-wage abuses against technology workers after it was threatened with a 15-state class-action lawsuit.

Similarly, software company Siebel Systems, Inc., settled an overtime dispute with software engineers who alleged that they were misclassified by the company and subsequently denied overtime pay; it agreed to pay \$27.5 million.

Behemoth retailer Wal-Mart Stores, Inc., has also been affected by the recent lawsuit trend. In October, Wal-Mart was ordered to pay \$78.47 million in damages after a Pennsylvania jury found that employees were forced to work "off the clock" or during their breaks.

And in September 2006, a California federal judge certified a class-action suit brought against FedEx Kinko's that alleged that as many as 450 managers were inaccurately classified as executive employees, making them ineligible for overtime pay.

Many labor and employment attorneys believe that the rise in overtime class-action lawsuits is a direct result of the recent modification of federal wage-and-hour laws that redefined the criteria determining which employees qualify for overtime. These lawyers believe that the updating of the laws resulted in employees becoming more aware of their overtime rights. As a result, employees are now more likely to seek counsel if they believe they are being treated unfairly.

Although the laws had not been updated for nearly 55 years, the revisions made the laws even more complicated and confusing than they were before. The update included

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modifications that attempted to demonstrate more clearly which workers are and are not eligible for overtime. Yet they made the classifications even murkier. Consequently, employees and employers alike do not completely understand how to apply these new rules, which paves the way for a higher likelihood of litigation.

With regard to the pharmaceutical class-action suits, it is alleged that the drug companies are classifying their pharmaceutical representatives as salespeople, which results in a denial of overtime pay even though the individuals in question often work between 50 and 60 hours per week.

The plaintiffs contend that, in actuality, they do not sell anything but simply serve as publicists for their companies' brands, striving to inform doctors about the products as well as ensure that doctors keep their companies in mind when prescribing medicine. So, the logic goes, if they do not sell anything, they should not be considered salespeople and, therefore, should qualify for overtime compensation.

Others argue that pharmaceutical representatives are, in fact, salespeople and do not qualify for overtime because they receive bonuses for their work. Their bonuses directly correspond to the numbers of prescriptions written by the doctors with whom they are in contact.

Pfizer's spokesman, Bryant Haskins, said, "We believe our sales representatives are properly classified as exempt from overtime pay and are well compensated for their responsibilities. We don't believe that the lawsuits have any merit." Pfizer is currently involved in two federal lawsuits concerning overtime compensation in California and New York.

Laura King, spokeswoman for AstraZeneca, echoed Haskins' view and stated, "AstraZeneca adheres to the laws and regulations of all the states where it conducts business, and we value the talents and contributions of all our employees. With regard to this case, AstraZeneca intends to defend our position vigorously."

On the Net

IBM

www.ibm.com

Wal-Mart

www.walmart.com

Pfizer

www.pfizer.com