

Wage and Hour Suit Filings at All-Time High

Lawsuits alleging violations of the Fair Labor Standards Act (FLSA) were at an all-time high for the year ending on March 31, 2012, according to a recent law firm study. Moreover, the wage and hour suits are up nearly 350 percent from the equivalent period ten years prior.

According to the U.S. Department of Labor's website, the FLSA "establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in Federal, State, and local governments."

A recent analysis by the Seyfarth Shaw law firm entitled "FLSA Cases in Federal Court" (here) shows that in the twelve month period ending March 31, 2012, there were 7,064 FLSA suits filed in federal court, which is the highest annual total for any equivalent twelve month period and is also slightly greater than the 7,006 cases filed during the twelve month period ending March 31, 2011. However, the study also shows that the number of FLSA cases filed has climbed dramatically since the equivalent 2002 period, when only 2,035 FLSA cases were filed. The ten-year increase in the annual number of FLSA filings represents a jump of over 347%. The number of filings has also increased each year for the past five years.

In a July 25, 2012 post on The Blog of the Legal Times (here), Seyfarth Shaw attorney Richard Alfred attributes the growth in FLSA cases in recent years to the slumping economy. He also suggests that employees who lose their jobs are often counseled by their lawyers to pursue FLSA cases rather than wrongful termination cases, on the grounds that FLSA cases are more straightforward and relatively easy to bring on a class basis. Alfred attributes the sharp rise in cases that began in 2003 to a few enterprising lawyers who won large settlements and attorney fee awards, which encourage other plaintiffs' lawyers to pursue similar claims. Alfred adds that he does not see the number of wage and hour suits declining anytime soon.

The kinds of damages awarded in a wage and hour suit are not covered under the typical Employment Practices Liability (EPL) insurance policy, which is appropriate, as an employer ought not to be able withhold compensation owing to its employees and they pass the bill to its insurer. But defense costs are another matter. Several years ago, some EPL insurers began offering defense costs coverage on a sublimited basis. Usually the amount of the sublimit was relatively modest, usually in the range between \$100,000 and \$250,000. More recently however, as many management liability insurers are trying to restructure their management liability insurance portfolios, some carriers have cut back on their willingness to offer the wage and hour defense costs protection. Some carriers have either reduced the amount of the sublimit they are willing to offer or in some cases eliminated the coverage altogether.

As the above information from the Seyfarth Shaw law firm shows, these wage and hour claims are a significant and growing risk. From the perspective of the policyholder, the wage and hour defense cost protection, even with the sublimit, is an important protection afforded by the EPL policy. As the management liability insurance marketplace works its way through the current readjustment process it is undergoing, where the insurers are pushing to try to increase premiums and reduce coverage, the wage and hour defense cost protection will be one policy term to which it will be very important to pay close attention.

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