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TOP TEN THINGS

To Know If This Is Your First
Wage and Hour Lawsuit

1

These Lawsuits Seem Like a Nuisance, But They Must Be Handled Carefully.

Many clients' immediate reaction to a wage and hour lawsuit is that it is a nuisance case that can be disposed of quickly for a few thousand bucks. But thousands of companies across the state have learned the hard way that these cases are currently the biggest threat to businesses in California and often cost six or seven figures to deal with. The statistics on these lawsuits tell the story. They are the fastest growing type of lawsuit in California, are rarely covered by insurance, and the overwhelming majority don't settle for under six figures (with a very high percentage in the seven figures). The legal fees often match or exceed the settlement amounts.

2

These Lawsuits Seem Like a Shakedown at First, But Most End up Being Legitimate Lawsuits.

Even though the lawsuit appears to be a shakedown, California law and courts have legitimized these lawsuits and they need to be taken seriously. What often starts as a shakedown ends up exposing serious wage and hour violations with crippling penalties on behalf of many employees. All it takes in California is a lapse on compliance in one area to turn one of these lawsuits into a legitimate six- or seven-figure threat. This reality often isn't exposed or realized with the initial complaint but after months of litigation and after the company's documents and data are fully analyzed. Thus, it is important to be cautiously skeptical about the lawsuit until you have had an experienced lawyer review your policies, practices, and data.



3

The Lawyers Who Brought the Lawsuit Seem Like Shysters, But Are Likely Sophisticated and Well-Funded.

Even though the lawyers who brought the lawsuit appear like con artists or shysters, most are surprisingly sophisticated businesspeople who have a carefully developed system to exploit your inexperience with these lawsuits and lure you into an expensive trap. Many of the lawyers that bring these lawsuits have handled hundreds of them and are multi-millionaires and some of them are the richest attorneys in California as a result of these lawsuits. As much as you may disagree with their business model, California endorses these types of lawyers and lawsuits and courts routinely award the attorneys who bring these lawsuits with high six- and seven-figure attorneys' fee awards. One of the biggest mistake businesses make is underestimating these lawyers and not taking these cases seriously. This often leads to bad outcomes.

4

Your First Instinct May Be to "Fight" the Lawsuit, But That Can Be a Bad Strategy.

Fighting the lawsuit is often your first instinct, but this can play into the hands of the lawyers and drive the attorneys' fees up on both sides, which the vast majority of the time leads to larger settlements. Although fighting might be part of your strategy, it can't be the whole strategy. The dirty little secret that many defense firms won't tell you is that, unlike many other forms of employment lawsuits (like harassment or discrimination), most employers essentially lose wage and hour lawsuits fighting them in court and end up paying large settlements and/or attorneys' fees in the process. You have to carefully select your battles in these cases as most courts will allow these cases to proceed with very little to no evidence.

5

The Lawsuit Seems Frivolous on Its Face, But in California the Odds Are That a Nonfrivolous Claim Will Eventually Be Found.

Although the lawsuit might appear to be frivolous and most of the information in the complaint might seem false or exaggerated, the complaint is just a tool used by lawyers to gain access to your time and payroll records that for most employers (big and small) reveal costly compliance issues. Out of hundreds of thousands of wage and hour lawsuits filed over the last 20 years, only a very small percentage were dismissed outright or found to be frivolous. Even lawsuits that initially appear to be without any basis end up becoming a legitimate threat once the employer's records and compliance track record is exposed. This is because it is practically impossible to comply with California wage and hour law. The lawyers know this and file form complaints that allege the whole kitchen sink, knowing that if they can just find one claim to stick they will have won the war.

6

The Type of Worker the Plaintiff Was (Good, Bad, or Somewhere in Between) Usually Doesn't Matter and Won't Get You Out of a Lawsuit.

It is very likely that you are surprised, hurt, and even angry at being sued by a former employee. Whether the employee was someone you bent over backwards to help, was a model employee and this truly came out of the blue, or was a terrible employee and troublemaker, the employee's motives often have no impact on their ability to bring this lawsuit against you. Experienced Plaintiffs' lawyers (and many defense firms) prey on an employer's natural feelings of betrayal in being hit with one of these lawsuits. This often is a head fake that draws you into fighting a very expensive losing battle. Unlike other employment claims (like harassment or retaliation) where the employee's performance and credibility are more of an issue, wage and hour claims don't work this way. In California, courts almost universally ignore the bad employee defense. Wage and hour liability is often determined based on your policies, records, and data alone and the plaintiff is just a tool used by the lawyers to gain access to your records to find those violations. Beware of defense firms that try to gain your business by promising to "fight for you," claiming they can get the case dismissed or defeat it at trial. The data doesn't lie: very few of these cases ever get dismissed outright or make it to trial without some liability pinned on the employer. Your defense counsel should be skilled in evaluating and resolving cases—not in making bold promises about how to aggressively defend the case to get it dismissed.



7

Although Only the Person Suing Is Raising an Issue, That One Person Can Likely Represent Everyone Else.

Although maybe one or a few people are bringing the lawsuit and the case may seem small, California law is incredibly liberal in allowing only one or a few people to represent all of your nonexempt hourly employees, thereby making this a much bigger problem than it initially seems. A very small percentage of wage and hour actions are resolved on the basis of just one employee who sued. The vast majority require the employer to mount a defense or reach a resolution as to a much larger group. It doesn't matter if you have a very loyal workforce comprised of folks who would never dream of suing you. California is an "opt-out" state, meaning that just one employee can bring a costly class action on behalf of every current and former employee your business has ever employed for a period of up to the past four years, without ever having to get a single employee to agree to participate. The only exception to this is if any employee decides to go out of his/her way to opt out of the lawsuit, which almost never happens. If you've ever received one of those postcards in the mail stating that you're the member of a class action against one of your favorite retailers and you'll get money for doing nothing unless you specifically opt out, then you'll realize how unlikely it is that even one single employee—let alone enough to make a dent in the potential liability caused by a wage and hour class action—will opt out.

8

While It May Seem the Lawsuit Shouldn't Cost Much in Legal Fees to Defend, the Reality Is Almost Always Different.

Although the lawsuit may not seem to have much, if any, merit, California law and the court system is significantly skewed in favor of the employees. Even a truly baseless lawsuit (which is the exception as noted above), can be expensive to deal with. This is because California lawmakers have essentially declared open season on employers and California courts have licensed fishing expeditions into your records and data. Dealing with this kind of threat and dealing with large amounts of historical time records and data for numerous employees is expensive. Most employers grossly underestimate the cost of dealing with one of these lawsuits, which usually ranges from the high five figures to the mid six figures.

9

The Lawsuit is Likely Not Covered by Insurance, But You Should Check for Partial Coverage.

Unless you have been through this before and have spent significant time and money defending a previous wage and hour lawsuit and never want to do that again, chances are you don't have comprehensive insurance coverage for this type of case. This is because such coverage is often prohibitively expensive for most businesses (because the risk is so high for insurers, given how many of these lawsuits are filed on a daily basis throughout California). If you do have any coverage, it's likely very limited coverage that will only cover a very small portion of your legal fees and will require you to use a discount law firm of their choosing, who often lack the skill and experience to successfully navigate an acceptable resolution. If you have been hit with a wage and hour lawsuit, one of the first things you should do is check your insurance coverage. We can help you navigate potential coverage issues with your carrier.

10

General Employment or Insurance Lawyers Often Lack the Experience or Approach to Handle Wage and Hour Lawsuits.

Businesses sued for the first time often make the mistake of hiring a general employment lawyer or a full-service law firm to handle the case (or stick with defense counsel appointed by their insurance carrier). These lawyers and firms often lack the specialized experience in the wage and hour realm to handle these lawsuits. Given the hundreds of lawsuits filed every year in this area, the sophistication of the lawyers bringing these lawsuits, and the significant challenges in court, it is important that the law firm you hire has handled hundreds of these cases and has a proven track record and model for handling wage and hour lawsuits. Without proper experience and expertise, the business can be at further risk. We unfortunately rescue a number of clients in this situation, who chose a firm without the right experience to initially handle the case, ultimately causes the business to spend much more overall than if they had gone with an experienced wage and hour defense firm in the first place.