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Collective And Class Actions: Interns, Assistant Managers – And Their Lawyers!

July 18, 2014 | | Fair Labor Standards Act,Letter Of The Law,Labor And Employment

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While working through an alphabet of employment issues is not an exact science, the letter C must belong to collective and class actions. Collective and class actions in the employment arena are a longer term trend where a group of people with allegedly common legal issues can come together in a single action. Often these actions involve very small alleged wrongs – ever receive a check for a few bucks in the mail because you, without lifting a finger, were part of a class action against some company with which you have done business? You would not have filed a lawsuit to recover those few bucks, but somebody did and – here is the frequent economic driver – a lawyer who represents that large group of small wrongs can be awarded very substantial fees. Without that incentive for the plaintiffs' lawyer, many of these cases would never happen. Opinions vary on whether having those incentives is good public policy, or at least whether the incentives are what they should be.

Here we have reported in recent months on such actions brought by computer store employees claiming they were being cheated out of work time and often about actions brought by unpaid interns. Unpaid interns seem to be the "hot" class/collection action this year. A collective action under the Fair Labor Standards Act (FLSA) in the Southern District of New York against the iconic New York sports venue Madison Square Garden (MSG) demonstrates another important dynamic of these actions, and also is a good reminder to employers to carefully scrutinize internship and other arrangements for unpaid work.

The key issue in these actions often is for the court to determine whether there are sufficiently interests to maintain such an action. The MSG actually failed because the court denied class certification, finding that the interns were employed in hundreds of different departments and had different job responsibilities. The court also noted the differences in the interns' levels of supervision, amount of training, and benefits received. This determination varies case by case, but may be an employer's first line of defense.

Even if the employer prevails at this stage, however, defending one of these cases can be very expensive. As plaintiffs' lawyers see the significant awards these cases can bring, the actions are brought against medium-sized employers, not just the largest corporations. Pay practices – internships, how hour are recorded, exempt vs. non-exempt status, and employee vs. independent contractor status – are all active areas for class and collective

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actions, and therefore areas where employers should be ensuring they are following sound practices, because this will likely be the leading “C” topic for years to come.