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Apple Class Certification Will Affect All Tech Companies

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An unrelenting wave of wage and hour suits continues to roll through the high-tech industry.

On July 21, 2014, in Felczer v. Apple Inc., Judge Ronald S. Prager of the Superior Court of California granted certification to a class of approximately 21,000 current and former Apple retail and corporate employees on claims alleging Apple failed to provide timely meal and rest breaks as required by California law. The California Labor Code, with a few exceptions, requires employers to provide nonexempt employees with 30-minute unpaid and duty-free meal breaks for every five hours worked. Additionally, employers must authorize and permit all nonexempt employees to take paid rest periods for a duration of 10 minutes for every four hours worked. The penalty for failing to provide statutory meal and rest periods is a one-hour meal period premium for each employee for each missed meal or rest period, at his or her regular hourly rate of pay.

The court also certified a class on plaintiffs' claims that Apple failed to properly pay them their final paychecks and seek the unpaid wages and waiting time penalties because meal and rest period premiums were not included in their final paychecks. The California Labor Code requires an employee whose employment is terminated to be paid his or her final paycheck upon termination of employment. Employees who provide 72-hours' notice that they are quitting must be given their final paycheck on either their last day worked or within 72 hours of having given notice if they stop working before the 72-hour notice period has run. Plaintiffs allege Apple failed to pay them premium or timely payments pursuant to California Labor Code §201 and §202 and thus are liable for waiting time penalties under §203. Waiting time penalties are available in California when an employer willfully fails to pay any wages owed to an employee who is fired or quits. Waiting time penalties are calculated at the employee's daily rate of pay per day of pay violation, for up to 30 days.

Additionally, the court granted class certification on the plaintiffs' claim that Apple failed to provide them with accurate itemized employee wage statements. Section 226(a) requires employers to provide their employees with accurate itemized wage statements that include: (1) gross wages earned; (2) total hours worked by the employee (unless the employee is a salaried exempt employee); (3) number of piece-rate units earned and the applicable piece rate, if applicable; (4) deductions; (5) net wages earned; (6) inclusive dates of the pay period; (7) employee's name and employee identification number; (8) name and

address of the legal entity that is the employer; and (9) applicable hourly rates in effect during the pay period worked and the corresponding number of hours worked.

The claim in this action is not that Apple did not provide a wage stub or all of the required information on the wage stub, but that because Apple did not comply with meal and rest period laws and that the information on the wage stub was incorrect. As such, plaintiffs allege that because Apple knowingly and intentionally failed to comply with §226, plaintiffs are entitled to receive the greater of all actual damages of $50 for the first pay period in which the violation occurred and $100 per employee for each violation in a subsequent pay period, not exceeding the total penalty of $4,000, for one year along with the costs of reasonable attorney's fees pursuant to § 226(e).

Plaintiffs also allege a violation of §2698 and the Private Attorneys Generals Act. PAGA permits an employee to pursue civil penalties on behalf of the California's Labor and Workforce Development Agency. For the first violation of a provision of the Labor Code, a penalty of up to $100 per employee can be issued; for each subsequent violation, $200. And, generally speaking, each pay period for which there is a Labor Code violation is considered a violation, such that employers that pay employees biweekly can be sued for 26 violations per year per employee. Ultimately, 75 percent of any PAGA recovery must be provided to the LWDA, with the employees themselves retaining the remaining 25 percent.

In their complaint, plaintiffs seek nominal damages, compensatory damages, restitution of all monies due from defendant's alleged unlawful business practices, declaratory relief, injunctive relief and interest accrued to date. While the plaintiffs have not yet stated how much money they are seeking in the aggregate, the possible exposure could be significant.

Why are Technology Companies Being Targeted?

Apple is not the first technology company to be targeted by plaintiffs' attorneys in California, and it likely will not be the last. Plaintiff attorneys are going after technology companies because they view them as deep pockets and because they believe they may be able to procure higher awards or settlement fees in such cases due to the fact that such companies tend to employ large numbers of people at high hourly rates. Since the premium for a missed meal or rest period is an hour's worth of pay, there is a greater potential recovery for plaintiffs and their attorneys in the technology industry than in cases brought against smaller companies with fewer employees and/or lower hourly rates. Additionally, whether true or not, some plaintiff lawyers believe that due to the nature of technology work, it is harder for the employer to show that an employee's meal period was not interrupted.

Where the certification of the class in the case against Apple may have its greatest impact is that it will embolden other lawyers to sue technology companies and try to use this case as a blueprint. Accordingly and unfortunately, other technology companies can now expect to see lawsuits with similar claims, theories, discovery, experts and trial plans. And they can expect to see plaintiffs' counsel in those cases insisting that classes should be certified for the same reasons that they were certified in the claims against Apple.

Tech employers should work with counsel now to take steps to protect themselves against such claims. It is vital that California employers comply with applicable state law on meal and rest periods, final paychecks and wage statements. To the extent a technology employer determines it needs to revise its policies and practices to comply with California law, it must be exceedingly careful in doing so in order to avoid inviting the very class action it is seeking to avoid — and to avoid creating evidence that could be used against them in that litigation.

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