

American Conference Institute's

Corporate Counsel Forum on

WAGE & HOUR COMPLIANCE

March 26-27, 2007 • MGM Grand • Las Vegas, Nevada

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The Gap
Georgia-Pacific Corporation
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Turner Broadcasting System
UnitedHealth Group
UnumProvident Corporation
Verizon Wireless
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Shield your company from class and collective actions
by gaining insight from wage & hour experts

- Upgrade your practices to comply with new and evolving state wage & hour requirements
- Benchmark your classification procedures and analysis
- Ensure your compensation structure adequately accounts for non-exempt employees
- Identify and rectify any potential red flags in preparation for an agency audit
- Mine information from plaintiffs' attorneys on their upcoming wage & hour targets —industries and practices
- Clarify lingering confusion regarding exempt-status employee compensation and overtime

EXCLUSIVE WORKSHOPS – WEDNESDAY, MARCH 28th:

- A** Combating Allegations of Wage & Hour Misconduct:
Practical Strategies for Minimizing Liability
- B** Conducting a Self-Assessment of Your Wage & Hour Practices

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The number of wage and hour class actions has surpassed all other types of class actions filed in state and federal court.

Is your company protected?

Confusion around calculation of pay, timekeeping, and exempt versus non-exempt employees under the FLSA has led to some of the biggest verdicts and settlements against employers in recent years. Wells Fargo, Starbucks, Sears, Cingular and Wal-Mart are just a few of the companies that have faced staggering liabilities of up to nearly \$80 million relating to wage & hour claims.

As more high-dollar verdicts come down, plaintiffs' counsel will become more and more vigilant as they look for potential violations. With the variation among—and constant changes in—state laws, and the lack of clarity in portions of the FLSA, wage & hour law is rife with opportunities for oversights. To prevent your company from becoming the next target, you need to stay informed on the latest regulatory developments, classification standards and proactive policies.

American Conference Institute's Corporate Counsel Forum on Wage and Hour Compliance will offer you the most accurate and comprehensive information available in this specialized area. You will leave this seminar equipped to:

- Identify and rectify inadvertent mistakes you may be making on overtime compensation, off-the-clock work, classification and documentation
- Integrate new state and federal law into your current practices
- Implement special precautions for California and other high-risk areas or workers
- Prepare—based on “insider” information—for upcoming targets of the plaintiffs' bar
- Assess your practices compared to industry colleagues

Learn how to make your company's wage and hour policies ironclad. Keep your company out of the headlines and prepare yourself with the know-how before allegations arise. This is the most thorough wage and hour compliance conference of the year. Reserve your space early by calling 1-888-224-2480, registering online at www.americanconference.com/whcompliance, or faxing in your registration form to 1-877-927-1563.

This is a one-of-a-kind opportunity to discuss this challenging area – and because we understand the sensitivity of the issues, we are offering the opportunity for you to submit questions anonymously prior to the event. Please email Sarah Rattle: s.rattle@americanconference.com.

WHO SHOULD ATTEND

- Corporate Counsel
- Labor and Employment attorneys
- Human Resources and Compliance Executives

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“This is an extremely valuable, high level conference – expert speakers, expert attendees. The materials are excellent and very useful.” – *Felicia R. Reid*, Partner, Curiable Dellaverson

WAGE & HOUR CLAIMS & CLASS ACTIONS • OCTOBER 25-26, 2006

DAY ONE • Monday, March 26, 2007

Federal and State Wage & Hour Laws: The Legal Landscape

8:00 Continental Breakfast and Registration

8:45 Opening Remarks by Conference Chairs

Tammy D. McCutchen

Partner

Dickstein Shapiro LLP

(Washington DC)

Former Administrator of the Wage and Hour Division of the U.S. Department of Labor

Paul Siegel

Partner

Jackson Lewis

(New York)

9:00 Determination and Implication of Exemptions Post-2004 FLSA Amendment

Mary B. Thomas

Director, Employment Law

UnitedHealth Group Incorporated

(Minnetonka, Minnesota)

Eric S. Dreiband

Partner

Akin Gump Strauss Hauer & Feld LLP

(Washington, DC)

Paul Siegel

Partner

Jackson Lewis

(New York)

Tyler M. Paetkau

Partner

Winston & Strawn LLP

(San Francisco)

- Executives
 - What constitutes two or more employees? How has Radio Shack altered this meaning?
 - What does it mean to “customarily and regularly direct the work?”
- Administrative employees
 - What constitutes “directly related to the management policies?”
 - How does one “regularly exercise discretion and judgment in their work?”
 - What courts and the DOL have said about “special assignments”
- Determining status of “professionals”
- Outside sales employees

- How often is “customarily and regularly” relating to performing work away from the employer’s place of business?
- Application of the exemption to:
 - Internet sales
 - Time share sales
 - Sales out of a model home
- Quirky, but crucial, exemptions
 - Section 7(i)
 - Motor Carrier Act
- The FLSA Salary Basis Test
 - The new safe harbor rule
 - Common violations

11:00 Coffee Break

11:15 Measuring and Monitoring FLSA Hours Worked

Louis R. Franzese

Staff Vice President, Labor Relations and Employment Practices

The Hertz Corporation

(Park Ridge, NJ)

Robert P. Davis

Partner

Mayer, Brown, Rowe & Maw LLP

(Washington, DC)

- First principal activity under IBP, Inc. v. Alvarez
- Defining work and whether compensation is due for
 - Performing work from home using Blackberry, email, or cell phone
 - Travel time
 - Training time
 - On-call and waiting time
 - Volunteer activities
 - Unauthorized hours worked
 - Employer-mandated counseling – has Shie v. City of Aurora changed the legal landscape?

12:45 Networking Lunch for Speakers and Delegates

2:00 Calculating Overtime for Non-Exempt Employees and the FLSA Regular Rate

J. Vann Vogel

Associate General Counsel

Verizon Wireless

(Basking Ridge, NJ)

Stanley Weiner (Stan)

Partner

Jones Day

(Dallas/Cleveland*)

*Not admitted in Ohio

WAGE & HOUR COMPLIANCE

Many employers mistakenly believe that employees' overtime pay rate is one and a half times their regular rate of pay. However, determining overtime can depend upon safety bonuses, profit sharing payments, or annual bonuses. This panel will give you the facts about the regular rate of pay in addition to accurately accounting for:

- Commissions
- Bonuses and gifts
- Payments for non-work hours
- Reimbursements for business expenses
- Profit sharing, employee benefit, and stock options/purchase plans
- Voluntary extra compensation

3:00 Coffee Break

3:15 Trends in State Wage and Hour Litigation: How Companies and Their Counsel are Responding

Matt Pesnell

Senior Counsel, Labor and Employment
Georgia-Pacific Corporation
(Atlanta)

Leslie L. Abbott

Partner, Employment Department
Paul Hastings
(Los Angeles)

Philip M. Berkowitz

Partner
Nixon Peabody LLP
(New York)

Wage and hour class and collective actions have far overtaken discrimination class actions as posing the most significant area of liability for employers in the United States. Virtually every sector of industry, from the financial services business on the East Coast, to the big-box retailers in Middle America, to the computer and software industries centered in Silicon Valley, are targets. A crazy-quilt of obligations under federal and state laws – often inconsistent – adds to the potential for liability, and the challenge for businesses.

The panel will provide an overview of trends in these cases, and will consider, in particular:

- Differences among state wage and hour laws
- Class action trends
 - Exempt status claims: an industry breakdown
 - Off-the-clock claims
 - Allegations of illegal pay practices
 - Deprivation of meal and rest periods
- Bridging the gap between state and federal law
 - Common issues and solutions for nationwide employers
 - Special state issues
 - Rates of pay
 - Hours worked
 - Timekeeping
 - Penalties

- Recognizing your strengths to combat the lawsuit if it hits
 - The in-house perspective
 - Handling unique California issues
 - Strategies for defending the multi-state suit

4:30 FLSA Flexibilities: Minimizing the Cost of Overtime

Robert V. Schnitz

Vice President and Associate General Counsel
Hyatt Hotels Corporation
(Chicago)

Noah A. Finkel

Partner
Seyfarth Shaw, LLP
(Chicago)

- Fluctuating schedules
- Offering compensatory time
- Flexible workweek calculation method for salaried non-exempts
- The highly compensated test
- Managing conversion from exempt to nonexempt status, and vice versa

5:30 Conference Adjourns for the Day

DAY TWO • Tuesday, March 27, 2007

Best Practices for Wage and Hour Compliance

8:00 Continental Breakfast

8:45 Chairs' Recap and Remarks

9:00 What Plaintiffs' Counsel Look for: Industries and Wage and Hour Practices in Their Sights

Michael Donovan

Founding Member
Donovan Searles, LLC
(Philadelphia)

Adam T. Klein

Partner
Outten & Golden LLP
(New York)

Judith Spanier

Partner
Abbey Spanier Rodd Arams & Paradis
(New York)

Mark Thierman

Attorney
Thierman Law Firm
(Reno, NV)

“Great speaker panels; unparalleled anywhere from both sides of the aisle.”

WAGE & HOUR CLAIMS & CLASS ACTIONS • OCTOBER 25-26, 2006

Rodney Bridgers

Attorney

Franklin D. Azar & Associates

(Aurora, CO)

Moderator:

John E. Lattin IV

Partner

Fisher & Phillips LLP

(Irvine, CA)

Gain insight from some of the top plaintiffs' bar attorneys on what kinds of wage and hour issues create viable collective or class actions. Discover which industries are vulnerable to class or collective actions, and which fields are under scrutiny. This session will give you an insider's look at whether your company is at risk for employee complaints.

10:30 **Coffee Break** ☐

10:45 **Achieving and Maintaining an Effective Compliance Program**

Tammy D. McCutchen

Partner

Dickstein Shapiro LLP

(Washington, DC)

Paul Siegel

Partner

Jackson Lewis

(New York)

Karl N. Snow

Principal

Bates White

(Washington, DC)

Moderator:

Gregg A. Gilman


Partner, Litigation; Co-Chair, Employment Practices

Davis & Gilbert

(New York)

- Adapting sound company policies
 - Crafting employees' job descriptions
 - Matching the job description to the actual duties: discussing the employee's job responsibilities with the manager
 - Critical questions to ask when talking to employees about their job duties and responsibilities
- Implementing a complaint mechanism
- Processes and tools to minimize vulnerability to misclassification claims
- Self auditing
 - Reviewing employees' positions for accurate classification
 - How often to review policies and adherence
 - Strategies for ensuring an accurate review process

- Handling violations identified during the self-audit
 - When are you required to notify employees?
 - Whether to pay back wages for wage violations
 - How quickly must you adapt changes to company practices?
 - What to do if employees are misclassified: making it right without exposing yourself to legal action

12:00 **Networking Lunch for Speakers and Delegates** 

1:15 **Working with and Responding to Enforcement Agencies During an Audit**

Paul DeCamp

Administrator

Wage and Hour Division

U.S. Department of Labor

(Washington, DC)

Robert Jones

Acting Labor Commissioner

California Division of Labor Standards Enforcement

(San Francisco)

David Fortney, Esq.

Of Counsel

Fortney & Scott, LLC

(Washington, DC)

- Current and upcoming agenda for wage & hour audits
- What to expect during an agency audit
- Documentation that will aid in establishing compliance
- How much experience do investigators have in the industry they are investigating? How the amount of experience impacts the likelihood of finding a violation
- Working with the agency to “cure” inadvertent violation(s) with minimum ramifications
 - Addressing violation prospectively or retroactively?
 - Time frames to remedy violation
- Fines and penalties
 - Ranges for specific conduct
 - When and how much room for negotiation
 - Does payment constitute admission of wrongful conduct?
 - Steps to minimize likelihood of audit findings being used as evidence in a class action
- Injunctions – grounds for objecting
- Post-audit processes

2:45 **First Steps When a Claim is Alleged to Minimize Potential Liability**

Glenn P. Felton

Senior Vice President and Deputy General Counsel

UnumProvident Corporation

(Chattanooga, TN)

WAGE & HOUR COMPLIANCE

Maureen Hernandez Sutton

Senior Counsel – Labor and Employment
Cingular Wireless
(Atlanta)

Benefit from the experience of two corporate counsel who have experienced wage and hour allegations. Learn how both survived the public scrutiny and dealt with issues ranging from off the clock claims to unlawful chargebacks under commission plans. In both instances, UnumProvident Corporation and Cingular Wireless successfully dealt with class claims, as well as steered their company clear of poor public perception. Take advantage of this opportunity to get insight on the lessons they learned and how you can avoid the situations they encountered.

- Limiting opt-in plaintiffs
- Identifying the credible claims
- Collecting records

3:45 **Coffee Break** ☐

4:00 **Best Practices for Promoting Compliant Classification, Breaks, and Pay Practices**

Paul Adams

Associate General Counsel
The Gap, Inc.
(San Francisco)

Larry Hosey

Associate General Counsel – Employment Practices
Division, Wage and Hour
Wal-Mart Stores, Inc.
(Bentonville, AR)

Paul T. Stagliano

Chief Labor & Employment Counsel
BellSouth Corporation
(Atlanta)

Regine Zuber

Vice President and Associate General Counsel
Turner Broadcasting System
(Atlanta)

Moderator:

Lisa A. Schreter

Shareholder
Littler Mendelson
(Atlanta)

Understand the interrelation of accurate classification of job positions, precise record keeping, and effective communication with management. During this important session, you will get an intensive, practical look at everything you need to know from start to finish in creating and maintaining a work environment that deters possible wage and/or hour claims. Learn from firsthand accounts of how these leading counsel have overcome typical wage and hour challenges.

5:30 **Conference Concludes**

INTERACTIVE WORKSHOPS

Wednesday, March 28, 2007

9:00 a.m. to 12:30 p.m.

A Combating Allegations of Wage & Hour Misconduct: Practical Strategies for Minimizing Liability

Michael J. Loeb

Neutral
JAMS
(San Francisco)

Michael J. Ossip

Partner
Morgan, Lewis & Bockius LLP
(Philadelphia)

Lisa A. Schreter

Shareholder
Littler Mendelson
(Atlanta)

With wage and hour litigation at an all time high, corporate counsel must be prepared to review, investigate, analyze and defend against claims. This workshop will guide you through the process from start to finish to ensure you have the tools to defend your company or resolve the claims quickly if so warranted.

- Collecting the facts: is this a meritorious claim?
 - Identifying the weaknesses of the plaintiffs' substantive claim
- Mediating your way to success
- Special circumstances
 - Working with unionized employees
 - Are class action waivers in an arbitration agreement valid?
- Preparing for the cost of litigating collective or class actions
 - Do employment practices liability insurance (EPLI) policies cover the cost of litigating a wage and hour case?
 - Recognizing the time to settle
- Strategies for an individual claim
 - Recognizing the motivation
 - Is this thing going to grow? Spotting a possible class/collective action
- What are the procedural differences between collective and class actions?
 - "Opt In" Actions
- Reacting to different types of substantive claims
 - Responding to off the clock allegations
 - Reacting to allegations of misclassification

“Speakers and co-chairs extremely competent and professional – great groups.”

— *Timothy Cohelan, Cohelan & Khoury*

WAGE & HOUR CLAIMS & CLASS ACTIONS • OCTOBER 25-26, 2006

- Handling allegations of misclassification under the administrative exemption: what is “independent discretion?”
- Countering a state wage and hour deduction allegation
- What is available in my procedural arsenal to avoid litigation?
 - The “similarly situated” standard
 - Discovery request for names of potential employees
 - Limiting discovery request to FLSA
- Defenses
 - Good faith defenses
- California-specific
 - Must plaintiffs exhaust administrative remedies under the Private Attorneys General Act before bringing a civil action against an employer?
- Maintaining an exemption classification: do you have a safe harbor?
- Preparing for the worst case scenario: paying damages
 - Consequences of withholding overtime “willfully”

- Ensuring managers “buy-in” to wage and hour compliance
 - How to make them understand the significance of the risks of non compliance
 - Tools to enable managers to choose compliance over productivity
- Cutting edge technologies to ensure accurate measurement of hours worked
 - RFID: legality, advantages, disadvantages, and suitability by industry
 - Telephone time-entry solutions
 - Developing a state-by-state solution versus a uniform solution
- Reporting requirements for managers
 - How to ensure no ‘off the clock’ work
- Documentation: what records to keep, where, and for how long
- Creating a work environment in which employees can bring grievances
- Defining hard-to-classify positions
 - Weighing production against administrative responsibilities
 - Status of employees without decision making abilities
- Recognizing which computer employees are classified as non-exempt

1:30 p.m. to 5:00 p.m.

B Conducting a Self-Assessment of Your Wage & Hour Practices

Tammy D. McCutchen

Partner

Dickstein Shapiro LLP
(Washington, DC)

Larry Hosey

Associate General Counsel – Employment Practices
Division, Wage and Hour
Wal-Mart Stores, Inc.
(Bentonville, Arkansas)

- Ensuring managers “buy-in” to wage and hour compliance
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 - Developing a state-by-state solution versus a uniform solution

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