



Retail Detail

It's Time For An Effective Approach On Managing Overtime

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Retail Managers' Confusion and Habits = Plaintiff Lawyers' Delight

What do many retail wage & hour claims have in common?

Manager missteps in such areas as:

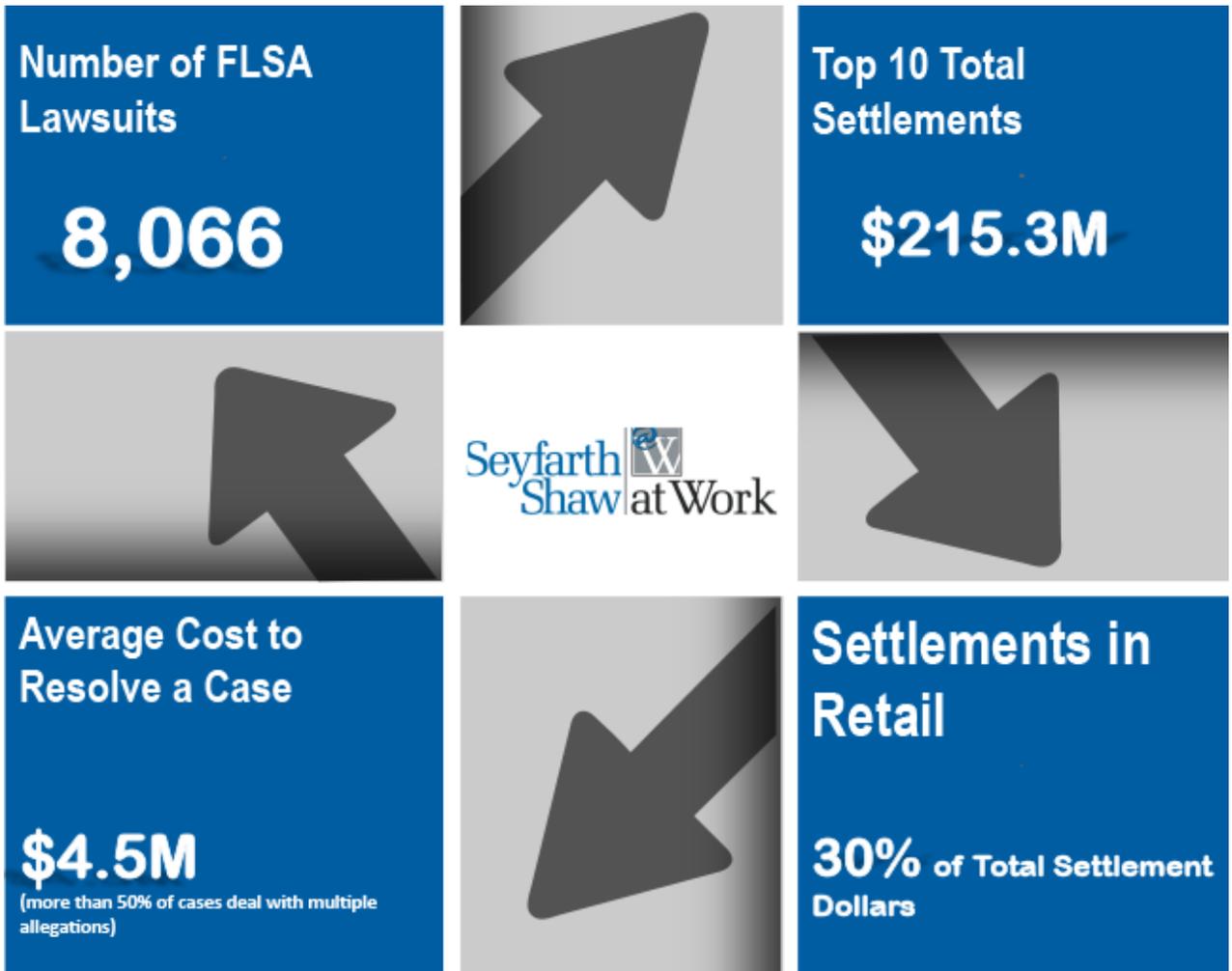
- Encouraging or requiring employees to work off the clock
- Allowing employees to work off the clock/turning a "blind eye"
- Mismanaging donning and doffing time
- Failing to provide meal and rest breaks
- Holding lunchtime meetings
- Calling employees at home (as well as during FMLA and other leave periods)
- Inconsistently setting or announcing lunches or breaks
- Failing to reimburse for business expenses incurred outside of work
- Failing to help employees correctly record OT
- Detaining employees for security checks after they have clocked out or are on break

What are the Results:

At dozens of other national retailers, the results have been multi-million dollar judgments or settlements, not counting attorney fees and business disruption costs.

As a representative illustration, consider *Stackhouse vs. Dick's Sporting Goods*, 8:10-10-cv-00421 (D. Neb) (costing \$15 million to settle), where workers alleged that improper training and management practices caused them to experience missed breaks, interrupted breaks, and post-shift detentions. In addition, managers, instead of properly recording overtime, allegedly had employees take time off during the following week or receive so-called "retro pay" during the next week, at straight time rates.

Wage and Hour Class Actions by the Numbers¹



¹ Statistics from NERA Economic Consulting (Trends in Wage and Hour Settlements, 2013 Update) and Seyfarth Shaw LLP's 2015 Class Action Litigation Report.

Personal Liability

And corporate liability is only the beginning. Top executives and owners have also been found personally liable for wage & hour violations and for overtime damages owed. See, e.g., *Torres v. Gristede's Operating Corp.*, 1:04-cv-03316 (S.D.N.Y.) (\$3.5 million).

The Existing SOP in Retail is No Longer Effective

Over the last five years, the "industry compliance standard" has generally been a talking heads presentation with a few hypos or an e-learning wage & hour program. Based on recent class action litigation, this "industry compliance standard" is no longer enough. Instead, a high-impact and proven approach to imprint skills is needed. Effective and memorable training is now emerging as essentially a de facto requirement to defend against wage and hour lawsuits and class actions, and to build a defense against DOL and other agency charges.

The SSAW Solution

As it has done with EEOC and DOJ consent-decree approved discrimination, investigations and harassment training, Seyfarth Shaw at Work now offers the only retail-specific, interactive, fully customized, and comprehensively dynamic wage & hour course designed with your managers and supervisors in mind.

Managing to Keep Time in Retail

“SSAW training methods are noteworthy for their high levels of engagement and consistent interactivity. They represent the polar opposite of dry PowerPoint lectures or talking heads seminars.” - US Federal Agency Monitor

Seyfarth Shaw at Work’s targeted and practical *Managing To Keep Time in Retail* training uses innovative tools and techniques to enable participants to respond to a range of specific overtime, meal/break, and other compensation and related management issues and trends. At its core, the training focuses on understanding the importance of following compensation and time-recording policies and procedures, and how to consistently and effectively communicate relevant expectations to employees. Your policies, practices, and most challenging situations—as well as the potholes that have ensnared other retailers—are fully addressed in the course

Key facets include how and when managers can require, or agree to, overtime and the different expectations a manager and supervisor can have for non-exempt employees versus exempt employees. Participants also can receive the latest guidance on how and why disciplinary issues are handled differently between employees based on such classifications. From both a federal and state-specific perspective, we cover the impacts of working through lunch and breaks, penalties for short/missed and late meals and denied breaks, as well as requirements regarding clocking out and in before and after lunch.

The training comes with simple scripts covering everything from responding to requests for specific schedules to how to inform cashiers and others of break times. Managers also can learn how to handle sensitive situations, such as responding to “off the clock” work, missed punches, and requests for corrections, as well as when an employee’s time is under or over-recorded.

Customized examples can include:

- Off-the-clock work
- Use of mobile devices
- Employees punching in for each other
- Donning & Doffing
- Managers calling employees after hours
- Working from home
- Working through breaks
- Employees not punching in to save the company money
- Employees volunteering to work through breaks
- Why good intentions don’t count
- Food + Work: What does it mean?
- Timing of lunch
- If employee skips break ... what we must do as managers

Managing to Keep Time in Retail powerfully teaches retail managers and supervisors about their critical roles and responsibilities (including legal responsibilities) in the context of wage and hour issues, and helps them to better understand the impact of their own actions, or inaction, regardless of intentions. Managers and supervisors simply cannot turn a blind eye to punch-card, time-reader/time-record anomalies, errors, or violations, and they must lead by creating avenues for better communication and understanding. Simultaneously, participants quickly understand what issues must be escalated and to whom, as well as how to consult with you—Human Resources, their strategic partner—in the case of potential misconduct related to rest/meal breaks, attendance, compensation, or other wage and hour issues.

The course is fully customized at no cost. It will imprint the critical skills that enable your managers to take a moment in time to make the right call and support your expectations with their words and actions.

In California

The California version of the course also can specifically address: (1) the post-Brinker landscape and what it means in terms of penalties for short/missed/late meal and rest periods; (2) California's requirements regarding documentation of lunches and how this relates to automatic meal period deductions (for both first and subsequent meal periods); (3) when more than one meal period and rest period must be provided, including associated notice to employees regarding California requirements; and (4) when and if written meal period waivers can/should be used, including waivers for second meal periods. Managers also can learn how to handle sensitive situations such as responding to "off the clock" work, missed punches and requests for corrections, as well as the effects to the organization when an employee's time is under or over-recorded.

For all topics, participants receive and practice sample tools and clear messages that help ensure confidence in management, greater accountability, and a consistent "standard" on time.

The overtime challenge is not going away. The solution requires a high-impact, proactive training program. We look forward to partnering with you to arm your managers so they can confront the wage & hour challenges of today and build powerful best practices that last.

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