

Wage and Hour Lawsuits Pose an Ongoing Threat

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Wage and hour cases continue to flood the courts. During the yearlong period ending March 31, 2014, approximately 8,126 lawsuits were filed seeking relief under the federal Fair Labor Standards Act. In the prior year, the number was 7,764. This upward trend dates back several years and shows no sign of relenting. These figures don't account for the numerous wage and hour cases filed in state courts, under state laws.

No business is immune from the risk of these lawsuits. On May 12, a federal judge in New York preliminarily approved a \$6.9 million settlement between Merrill Lynch & Co. and at least 500 field financial advisers regarding claims that they were misclassified as exempt from overtime pay (*Zeltser v. Merrill Lynch & Co.*, S.D.N.Y. No. 1:13-cv-01531). In 2013, Merrill Lynch & Co. agreed to pay \$12 million to about 12,000 "client associates" as part of the settlement of a wage and hour lawsuit.

On May 19, in another case, the U.S. Labor Department announced that Paul Johnson Drywall Inc. agreed to pay \$600,000 in back wages, damages, and penalties to settle a sub-contractor's alleged misclassification of workers as independent contractors instead of employees. The Labor Department website lists numerous other six- and seven-figure settlements of wage and hour cases.

This data underscores the importance of reviewing classification and pay practices. These reviews may lead to the discovery of unintended mistakes in classification or other pay practices. The review may be especially helpful in litigation to support an argument that the court should not impose liquidated (double) damages because the review established the employer acted in subjective good faith and had reasonable grounds for believing it was in compliance with wage and hour laws.

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