

U.S. Supreme Court Approves Trial By Formula in Wage and Hour Class and Collective Actions Making It Easier For Workers To Prove Monetary Damages

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This week, the U.S. Supreme Court issued a ruling in the case of *Tyson Foods, Inc. v. Bouaphakeo* that will have major implications for wage and hour class and collective actions. The Court's ruling removes the requirement that each worker prove with specificity his or her damages resulting from time actually worked but not paid and approved a "trial by formula" method where damages for a representative sample of workers can be extrapolated across an entire group of plaintiffs-even in the face of different circumstances. The 6-2 ruling came somewhat as a surprise, in light of two recent Supreme Court cases involving Wal-Mart and Comcast Corporation establishing employer-friendly class certification standards.

The plaintiffs in the case decided this week worked at Tyson Foods' pork processing plant in Storm Lake, Iowa. They worked in the plant's kill, cut, and retrim departments, where hogs are slaughtered, trimmed, and prepared for shipment. As part of their jobs, the workers wore personal protective equipment, which varied depending on the tasks a worker performed each day. Tyson paid these employees for time spent at their workstations. Tyson did not record the actual time each employee spent donning and doffing personal protective equipment. Rather, Tyson added between four and eight minutes to some employees' time to compensate them for time spent donning and doffing. But other employees were not paid beyond the time they spent at their workstations. The workers sued Tyson under the Fair Labor Standards Act and state law for unpaid overtime, claiming that the unaccounted for time they spent donning and doffing brought their working hours over 40 hours per week.

To prove their case, the workers' expert conducted 744 videotaped observations of a sample of workers analyzing how long various donning and doffing activities took, and then averaged the times. These estimates-18 minutes per day for processing and 21.25 minutes for the kill department-were then added to each employee's timesheet to determine which class members worked more than 40 hours a week, and in turn, the total value of monetary recovery for the group. Tyson argued that the varying amounts of time it took employees to don and doff different protective gear made reliance on the expert's sample improper and that such a "trial by formula" would lead to recovery for uninjured workers who had not worked over 40 hours in a week. The jury disagreed and awarded the class \$2.9 million in unpaid wages, which was subsequently doubled to \$5.8 million for liquidated damages.

Rejecting Tyson's argument, the Supreme Court reasoned that in "many cases, a representative sample is the only practicable means to collect and present relevant data" establishing a defendant's liability" and evidence is not improper because the case is brought on behalf of a class of workers. If the employer has not kept accurate records of all hours worked, employees should not be punished because they cannot prove the exact amount of

uncompensated time. Rather, the Court held "an employee has carried out his burden if he proves that he has in fact performed work for which he was improperly compensated and if he produces sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference." Tyson could then come forward with evidence of the precise amount of work performed or demonstrate that the sample was unrepresentative or inaccurate, which Tyson did not do.

While the facts of the case and the Supreme Court's ruling are somewhat technical, the case illustrates once again the importance of employers' maintaining accurate records of all hours worked by their employees.

The attorneys in Barley Snyder's Employment Law Group have significant experience defending wage and hour lawsuits, including class and collective actions. We also assist employers in complying with federal and state wage and hour laws. Please feel free to contact a member of our Employment Law Group if you have wage and hour law compliance questions.

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