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Wal-Mart Fails to Overturn Award of $187.6 Million For Wage and Hour Violations, But Pennsylvania Superior Court Sends $45.6 Million Award of Attorneys' Fees Back to Trial Court Due to Potential

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In the 2007 case of Braun v. Wal-Mart, one of the largest awards in a wage and hour class action in Pennsylvania history was levied against Wal-Mart. The award resulted in $187.6 million in back wages and damages to Pennsylvania employees who worked during what were promised to be paid rest breaks and who were forced to work off the clock. On June 10, 2011, the Pennsylvania Superior Court upheld this verdict against Wal-Mart, but sent the $45.6 million award of attorneys fees back to the trial court in Philadelphia for reconsideration.

In this highly publicized case, two former hourly workers filed suit on behalf of a class of approximately 187,000 current and former retail employees of Wal-Mart and Sam's Club stores throughout Pennsylvania. The workers claimed that they were forced to work during what should have been paid rest breaks, and were not paid for off-the-clock work as specifically set forth in Wal-Mart's employee manual and policies.

The claims arose primarily under Pennsylvania's Wage Payment and Collection Law (WPCL). However, unlike Pennsylvania's Minimum Wage Act, the WPCL does not in and of itself entitle employees to wages. Instead, the WPCL is an enforcement mechanism for employees when an employer allegedly breaches an agreement to pay wages. Notably, the WPCL includes a liquidated damages provision, the shifting of attorneys' fees, as well as potential individual criminal liability for company officers.

In 2006, a jury found Wal-Mart failed to compensate the employees for missed rest breaks and hours worked off-the-clock, as mandated by its own corporate handbook and policies. The jury awarded the class $78.5 million in compensatory damages. In 2007, the trial court awarded an additional $62.2 million in statutory liquidated damages based on the jury's finding that Wal-Mart knowingly saved millions of dollars by failing to fully compensate their employees. The jury also found that Wal-Mart lacked a good-faith basis for violating the WPCL, and, as such, Pennsylvania law required that the employer be assessed liquidated damages.

Wal-Mart argued that paid rest breaks are not wages under the WPCL and that no contractual agreement ever arose to pay for them. The Superior Court rejected both arguments. First, the Court held that payments for rest breaks pursuant to an "agreement" between an employer and employee constitute wages for purposes of the WPCL. In this case, the court found that a contractual agreement to pay such wages existed in Wal-Mart's employee manual, which indicated that employees "are to take full, timely, uninterrupted breaks" and shall "receive compensation for break time at the applicable rate of pay." Ultimately, the Court's reasoning is best summed up as follows: "the WPCL does not permit an employer to escape liability when it receives the benefit of . . . an employee's eight hours of labor when that employee agreed to be paid to work seven-and-a-half hours and to rest for one-half hour."

The Superior Court also upheld the jury's award of liquidated damages. The court held that there was significant evidence to conclude Wal-Mart's failure to pay was not a result of a "good-faith dispute." The Court also noted that as a result of pressure from the corporate office to minimize labor costs, and the availability of substantial bonuses for managers based on store profitability, Wal-Mart's scheduling practices created ongoing "understaffing" of stores, which in turn led to the widespread rest-break violations.

Wal-Mart challenged as excessive the $45.6 million award of attorney's fees. In many wage and hour cases, an attorneys' fees award can match or exceed the actual back wage award to employees; accordingly, these type of cases are extremely attractive to enterprising plaintiffs' attorneys. With respect to the attorney's fees award, the Court found the trial court erred in its application of a contingency "multiplier" that improperly double-counted factors already included in the attorneys' fee calculation, such as the lead plaintiffs' counsel's "premium over their hourly rates" to reflect their contingent risk. As a result of the finding that the trial court misapplied the law, the fee award in the case was reversed and the case was remanded for further proceedings.

The message of the Wal-Mart case to employers is rather simple and straightforward -- review the promises made in your employee handbooks and policies. These statements or promises may be interpreted to be contracts for wages or benefits due, and an employer's failure to abide by the promises made in the handbook may potentially have serious financial repercussions to the organization.

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