

CLASS ACTION WAGE CLAIMS CONTINUE TO RISE

By: Joan M. Eagle

Four more eye-popping settlements of class action overtime and wage claims have recently hit the news. Employers who think this couldn't happen to them should think again.

On February 9, 2006, UBS agreed to pay \$89 million to current and former employees in New York, New Jersey, Connecticut and California to settle allegations that it failed to provide overtime and improperly charged financial advisers and trainees for expenses. The workers had alleged that UBS incorrectly classified them as exempt from overtime, although they were essentially salespersons hired to sell securities and did not qualify for the administrative exemption under federal or state wage laws. In addition, UBS had charged the workers for secretarial and other services, denied them commissions and charged them for trading errors.

On March 3, 2006, Morgan Stanley agreed to pay \$42.5 million to approximately 5,000 California-based financial advisors to settle similar allegations. The UBS and Morgan Stanley lawsuits were patterned after a successful suit against Merrill Lynch, which was settled in August of 2005 for \$37 million.

On February 15, 2006, a national funeral home and cemetery company agreed to pay \$4.45 million to settle allegations under federal and New York law that it failed to pay overtime to a group of 600 current and former funeral directors, embalmers, drivers and other employees. In this case the defendants were accused of paying employees a flat or "menu" rate for particular services they performed outside of normal working hours without regard to the amount of time the employees actually spent on the tasks.

Finally, on February 7, 2006, IHOP agreed to pay \$363,000 in back wages to 328 waiters and waitresses at 10 San Francisco-area restaurants to settle allegations that it failed to accurately record work hours, in violation of minimum wage and overtime requirements.

In order to avoid class action wage and hour suits, employers must periodically review their practices to ensure that, among other things: (1) employees categorized as exempt are truly exempt under the Department of Labor's new FairPay regulations; (2) accurate time records are being kept; (3) all time worked for non-exempt employees is being recorded; (4) employees are not working through meal breaks without being compensated for the time worked; and (5) the employee's "regular rate" of pay for purposes of computing overtime includes periodic bonuses, gain-share and other payments established by company policy or practice.

For further information concerning these cases and wage and hour regulations under the Fair Labor Standards Act and State law, please contact Joan M. Eagle at (312) 845-5439 or jeagle@schwartzcooper.com or any other member of Schwartz Cooper's Employment Practice Group.