

Seventh Circuit Decertifies Class due to Individualized Damage Calculations

2 min read

Feb 13, 2013

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The Seventh Circuit Court of Appeals recently issued an opinion upholding a district court's de-certification of a collective and class action under the Fair Labor Standards Act and Illinois state wage laws. While the opinion did not deal with typical Rule 23 or Section 16 issues, such as commonality or a common employer policy, it is a positive case for employers trying to get out from under lengthy, expensive class litigation.

In this case, a group of satellite installers brought suit under federal and state law, alleging that they were required to work off the clock without pay, work through unpaid lunch breaks, and encouraged to under report their hours, and that these practices resulted in the employer's failure to pay them overtime. In all, there were 2,341 members of the class who were alleged to have suffered damages. They were paid on a piece-rate basis; that is, a set amount of money for a specific job regardless of the hours spent on it. The record reflected that the employees' unpaid hours per week varied and depended on the particular job assignment they were given and their efficiency in performing the tasks.

The Court considered this example: one installer may have spent 30 hours on a task, and if that was his only assignment for the week, he was not entitled to overtime; while another may have spent 60 hours on the same task and thus was entitled to 20 hours of overtime. In this type of case, there was no uniform or formulaic proof of damages applicable to the entire class, such as routinely working through a one-hour lunch. The employees thus needed to recommend a reasonable basis for trying the claims so that the district court did not end up trying 2,341 individual wage claims. The employees ultimately failed to provide this reasonable basis. While they suggested using 42 class members' claims as representative of the entire class, they failed to show how 42 claims, which were admittedly not uniform themselves, could be representative of the entire group. The lack of uniformity in the claims, the difficulty in calculating damages for the class members, and the lack of evidence substantiating the amount of extra hours alleged worked per week without compensation, lead to the conclusion that not only was representative evidence inappropriate to calculate class-wide relief, it was further support that class certification was inappropriate. Bifurcation of liability and damages also did not save the class claims because it still did not eliminate the need for separate trials on damages.

Ultimately, the Seventh Circuit Court of Appeals counseled against the tactic of certifying a class that would result in a “shapeless, free-wheeling trial” regardless of whether certification would ultimately force settlement. “The district court must carefully explore the possible ways of overcoming problems in calculating individual damages. Yet there may be no way if for example there are millions of class members each harmed to a different extent (and many not harmed at all).”

This case adds support for the principle that class and collective wage actions must have more than a company-wide policy of wage violations to carry it forward as there must also be class-wide relief that does not necessitate individual trials. Perhaps this opinion means that the courts of the Seventh Circuit may be willing to limit class and collective claims to those that truly can be litigated as a definable group with definable damages.

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