



PREVENTING AND DEFENDING WAGE & HOUR CLAIMS & CLASS ACTIONS

Learn Best Practice Compliance Strategies and Employment Policies from a multi-state In-House Counsel Panel:

Rachel E. Courtney
E*Trade Financial Corporation
(Palo Alto, CA)

Susan J. Sandidge
Brinker International, Inc.
(Dallas, TX)

Steven L. Sitley
Sears Holdings Corporation
(Hoffman Estates, IL)

Mary Thomas
UnitedHealth Group
(Minnetonka, MN)

David Otsuka
Wells Fargo & Company
(San Francisco, CA)

Richard Parr
SBC West
(San Francisco, CA)

October 26 & 27, 2005

Sheraton Fisherman's Wharf Hotel, San Francisco

- Protecting your client from the latest wave of off-the-clock class actions
- Determining exempt v. non-exempt status
- Preventing external audits through implementation of "best practice" wage and hour record keeping
- Interpretations and enforcement of the 2004 DOL regulations that will impact you
- Diminishing the threat of wage and hour class actions by invoking the *Class Action Fairness Act*

Pre-Conference Primer:

Fundamentals of Wage and Hour Law

October 25, 2005

Plus! 1 day event on:

Employment Discrimination Claims

October 28, 2005

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Is your client adequately protected against the recent surge of wage and hour claims?

Unfortunately for employers, wage and hour claims continue to be a red-hot issue. According to the federal Department of Labor, the number of workers receiving back wages has increased by over 33 percent since 2001. In 2004, the DOL's Wage and Hour Division recovered more than \$196 million in back wages.

There has also been a dramatic increase in the number of wage and hour class actions filed. In 2003, the number of FLSA class actions exceeded the number of class actions under all other federal statutes combined. And, the number of class actions increased steadily throughout 2004, as savvy plaintiffs' counsel have launched new and creative actions against employers. The newest development: record numbers of claims are being brought over exempt v. non-exempt status and in the area of off-the-clock claims.

ACI's 2nd Advanced National Forum on **Wage and Hour Claims and Class Actions** will give you tools to reduce exposures, proactively ensure compliance, and successfully defend against this growing threat. Focusing on both California and federal law, top wage and hour specialists will bring you valuable, practical insights on how to:

- Manage exposures relating to exempt v. non-exempt status
- Use the Class Actions Fairness Act to minimize potential damages
- Prepare for the fallout from the recent FLSA amendments
- Strategically defend — on procedure and substance — your client against wage and hour actions
- Respond when you are a target of regulators

Take this opportunity to get practical, "real-life" strategies for dealing with a difficult area. The conference will fill quickly — register now by calling **1-888-ACI-2480**, or by faxing your registration to **1-877-927-1563**. You can also register online at www.AmericanConference.com/wageandhour. We look forward to seeing you in San Francisco in October.

WHO SHOULD ATTEND

- In House Counsel
- Employment and Labor Law Attorneys
- Class Action Lawyers

CONTINUING EDUCATION CREDITS

Accreditation will be sought in those jurisdictions requested by registrants which have continuing education requirements. To request credit, please indicate on the Registration Form.



This conference has been approved in accordance with the requirements of the **New York State Continuing Legal Education Board** for a maximum of 14.0 credit hours. An additional 4.0 hours will apply to workshop participation.

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Ben Greenzweig
Manager, Business Development, US
(212) 352-3220 ext. 238 or
B.Greenzweig@AmericanConference.com

“Very informative; terrific panelists; very well organized; broad range of subjects.”

John Quisenberry
The Quisenberry Law Firm

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Pre-Conference Workshop
Tuesday, October 25, 2005

2:00 p.m. – 5:30 p.m. (Registration Opens at 1:30 p.m.)

Fundamentals of Wage and Hour Law

Lee Schreter

Partner, Littler Mendelson (Atlanta, GA)

Speaker TBA

Rules, exemptions, definitions, exceptions... Wage and hour law can be extremely confusing for counsel to navigate—especially counsel who are new to the area. The FLSA is one of the most complex federal statutes, and California wage and hour law is also extremely complicated. In this special workshop, you will get a firm grasp of the nuts and bolts of federal and California wage and hour law, from seasoned practitioners. Topics will include:

- Analysis of relevant California and federal legislation
 - California Labor Code wage and hour provisions
 - FLSA
- Significant differences between federal and California wage and hour law
- Practical effects of the 2004 DOL regulations under the FLSA
- The relevant regulators and their roles
 - scope of authority
 - types of actions taken and typical orders/penalties
- Exempt v. non-exempt employees
- Ensuring compliance under the federal and California labor codes when compensating salaried and commissioned employees
 - the salary basis test
 - determining hours worked
 - regular rate of pay v. bonuses, commissions, tips, etc.
 - weekly overtime calculation
 - special rules for inside salespersons
- Record keeping requirements
- Overcoming common problems with meal and rest periods
- Preparing for and responding to DOL audits
- Settling wage and hour claims: who's involved and what's the process?

Whether you are new to the area, or just need a comprehensive refresher, this workshop will give you the tools you need to get the most out of the 2-day conference that follows.

Wednesday, October 26, 2005

8:00 Registration and Continental Breakfast ☞

9:00 Co-Chairs' Opening Remarks

Ken Sulzer

Partner, Seyfarth Shaw (Los Angeles, CA)

Paul J. Siegal

Partner, Jackson Lewis LLP (Woodbury, NY)

9:15 Exempt/Non-Exempt Status:
Protecting Your Client from New
and Emerging Exposures

Lynne Hermle

Orrick, Herrington & Sutcliffe LLP (Menlo Park, CA)

Walter B. Connolly, Jr.

Partner, Connolly & Scharman PLLC (Detroit, MI)

Catherine A. Conway

Partner, Akins Gump Strauss Hauer & Feld LLP
(Los Angeles, CA)

Robert Whitman

Partner, Orrick, Herrington & Sutcliffe LLP
(New York, NY)

- What decisions on “not exempt” employees mean for new claims:
 - claims adjusters after *Bell v. Farmer's Insurance* and subsequent cases
 - insurance underwriters after *Edwards v. Audubon Insurance Group* (S.D. Miss. 2004)
- Preparing for new and emerging exposures:
 - loan originators, given the DOL's recent assertion on exempt status
 - other financial services positions
 - software engineer and related cases
 - other claims in the high-tech area: salespeople, instructors
- Latest decisions/definitions on administrative workers:
 - to what positions might the exemptions apply?
 - what criteria do courts look at?
- Classify independent contractors
- What do you need to do in light of the recent increase in personal attendant and home healthcare cases?
- Executive exemption cases after *Starbucks* and *Sav-On*
- Key differences between the California Labor Code and the FLSA on exemption issues

10:45 Coffee Break ☞

11:00 The 2004 DOL Regulations: Ensuring
Your Client's Employment Practices
Measure Up?

Edward W. Bergmann

Partner, Seyfarth Shaw (Chicago, IL)

Tammy D. McCutchen

Partner, Dickstein Shapiro Morin & Oshinsky LLP
Former Administrator, Wage and Hour Division
US Department of Labor
(Washington, DC)

- Where is the enforcement focus with respect to the 2004 changes
- Re-classification decisions and back pay: what should counsel be doing now?
- How the new FMLA regulations will change the landscape
- Evaluation of key employment practices in light of post-2004 actions

12:00 Using the Class Action Fairness Act to
subvert Wage and Hour Class Actions

Dennis F. Moss

Partner, Spiro, Moss, Barness, Harrison & Barge
(Los Angeles, CA)

Lee Schreter

Partner, Littler Mendelson (Atlanta, GA)

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- Key provisions for defendants
- Impact of the Act on plaintiffs' use of the FLSA?
- What wage and hour cases will likely end up in Federal Court under CAFA?
- The impact of CAFA on state law wage and hour actions
- Questions raised by CAFA that will require court guidance

12:45 **Networking Luncheon for Delegates and Speakers** 

2:00 **The Use and Misuse of Arbitration Clauses to Prevent Wage and Hour Claims**

John S. Battenfield
Morgan Lewis (Los Angeles, CA)

- What the *Discover Bank* decision will mean for arbitration clauses that expressly preclude class actions
- Continuing impact of *Bazze* where the arbitration agreement is silent on class-wide arbitration
- Arbitration clauses that will help you avoid having to deal with collective actions
- Other developments regarding the use of arbitration agreements

2:30 **Refreshment Break**

2:45 **Record Keeping and Preventive Audit Practices: Practical Advice for In-House Counsel Seeking to Avoid Wage and Hour Claims**

R. Brian Dixon
Partner, Littler Mendelson (San Francisco, CA)

Jacqueline K. Gallagher
Counsel, Obermayer Rebmann Maxwell & Hippel LLP (Philadelphia, PA)

- Record-keeping requirements, federally and in California
- Conducting internal wage and hour audits—in anticipation of the real thing
 - who should be involved?
 - what documentation is critical?
 - effect of an internal audit on the good faith defense
 - what privileges protect internal reviews?
- How to respond to unannounced visits by the Department of Labor
- What do you need to keep to be able to respond effectively to a DOL or EDD audit?
- Avoiding the appearance of red flags when reclassifying employees as contractors
- Legitimately moving employees back and forth between employee and contractor status: how can you avoid allegations of willful violation?
- How to respond when a violation is alleged
- Beefing up your documentation: what do the regulators want to see?

3:45 **Meal Breaks, Rest Periods, PAGA, and Other Wage and Hour Law Issues Unique to California: Recent Developments**

John Nadolenco
Partner, Mayer, Brown, Rowe & Maw (Los Angeles, CA)

Steven G. Zieff
Partner, Rudy, Exelrod & Zieff LLP (San Francisco, CA)

Meal Breaks and Rest Periods

- Analysis of recent litigation over meal break and rest period violations
- The class action explosion in meal break and rest period class actions: strategies for minimizing exposure and defending the case
- What is the effect of the new California regulations on communication by the employer to the employee about breaks?
- Monetary assessment of violations as penalties rather than wages and the implications for
 - limitation periods under various relevant statutes
 - conduct of the litigation

Section 17200 litigation

- What has been the effect of Proposition 64 on s. 17200 litigation?
- What types of employers are being targeted now?
 - a sampling of the verdicts-and the practical implications arising from them

PAGA (the “bounty hunter” law)

- How has it been used to date?
- What are the advantages and disadvantages for plaintiffs who sue under it-and what can defendants learn from this?
- A look at audits under PAGA

Improper Bonus Deductions

- What *Ralph's Grocery*, the sequel, will mean for bonus deduction cases

5:15 **Conference Adjourns to Day Two**

Thursday, October 27, 2005

8:30 **Continental Breakfast** 

9:00 **Co-Chairs' Opening Remarks**

9:15 **Defeating Class Certification in Wage and Hour Claims**

E. Jeffrey Grube

Partner, Paul Hastings, Janofsky & Walker LLP (San Francisco, CA)

Rex S. Heinke

Partner, Akin Gump Strauss Hauer & Feld LLP (Los Angeles, CA)

Walter B. Connolly, Jr.

Partner, Connolly & Scharman PLLC (Detroit, MI)

Jason Reisman

Partner, Obermayer Rebmann Maxwell & Hippel LLP (Philadelphia, PA)

- At the certification stage
 - contact with putative plaintiffs before the class is certified
 - other issues
- Using demurrers and motions to strike in wage and hour class actions

- What are the applicable certification standards, federally and in California, for wage and hour class actions?
- How to win the certification fight in:
 - exempt/non-exempt cases
 - off-the-clock cases
- Using surveys to help defeat class certification
- Timing of the certification motion
 - summary judgment in advance of the hearing: pros and cons
- The importance of the plaintiff's deposition in defeating class certification
- Discovery in wage and hour actions
 - at the initial stage (notice stage/conditional certification)
 - after notice to the class is issued
 - class wide discovery or individualized discovery?
 - knowing what to ask for so you can get what you need

An Inside Look at the Implications of the *Sav-On* Case

Hear from Rex Heinke, who argued the case on appeal.

- What impact is *Sav-On* having on certification?
 - how significant was the court's deference to the trial judge's findings and what will the implications be for class actions going forward?
- What was the court's decision based on? What significant issues were left undecided?
- Why did the court find that common questions predominate?
- What were the court's findings on what trial courts may do after certification?
- How to ensure that job descriptions don't put you into a *Sav-on*-like situations

There will be a 15-minute coffee break at 10:30 a.m.

11:15 Off-the-Clock Claims: New Exposures and Practical Strategies for Reducing Risk

Paul J. Siegal

Partner, Jackson Lewis LLP (Woodbury, NY)

In this session, you'll get key insights from a top litigator on the current wave of off-the-clock claims and class actions. What are some of the creative strategies plaintiffs are using to bring actions? How are defendants responding? How has the US Supreme Court weighed in? Find out in this valuable session.

12:15 Networking Luncheon for Delegates and Speakers

1:30 In-House Counsel Roundtable: Best Practices for Preventing Class Actions and FLSA Collective Actions

Rachel E. Courtney

Assistant General Counsel

E*Trade Financial Corporation (Palo Alto, CA)

Richard Parr

General Attorney and Assistant General Counsel

SBC West (San Francisco, CA)

Susan J. Sandidge

Vice President and Assistant General Counsel

Brinker International, Inc. (Dallas, TX)

David Otsuka

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Wells Fargo & Company (San Francisco, CA)

Steven L. Sitley

Associate General Counsel

Sears Holdings Corporation (Hoffman Estates, IL)

Mary Thomas

Director, Employment Law

UnitedHealth Group (Minnetonka, MN)

This panel of experienced in-house counsel from a variety of industries will share their insights from the front lines on effective preventative techniques for avoiding these suits, including best practices, effective employment policies, and successful compliance strategies.

3:00 Refreshment Break

3:15 Proactive Settlement Strategies for Wage and Hour Actions

Ken Sulzer

Partner, Seyfarth Shaw (Los Angeles, CA)

Hunter R. Hughes III

Partner, Rogers & Hardin (Atlanta, GA)

Hon. William F. McDonald

Mediator/Arbitrator, JAMS

(Orange County, CA)

- Settling the FLSA action v. settling state actions:
 - attorney fee awards
 - enhancements
 - reversions and claims made settlements
 - removal
- Obtaining positive outcomes when using mediation and arbitration in wage and hour cases
- Using a special master to assist with settling the case
- Dealing with the issues that arise after the handshake: what counsel should know
- Practical considerations, including MOU's, timing of payments, and tax issues
- Practical strategies for dealing with:
 - objectors
 - multiple plaintiffs' counsel

4:30 Conference Concludes

What Past Delegates Have Said

"...the speakers and panels you assembled were excellent. They presented a great deal of subject matter expertise and experience. I practice regularly in this area of the law, but still learned enough to make the trip well worth while."

Todd Gilman

Corporate Attorney, Labor Ready

"Cutting-edge issues and great information"

Tim Freudenberger

Partner, Carlton, DiSante & Freudenberger LLP

PREVENTING AND DEFENDING

WAGE & HOUR CLAIMS & CLASS ACTIONS

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EMPLOYMENT DISCRIMINATION CLAIMS & LITIGATION — Conference Code: 825L06-SNF

- YES! Register for **WAGE & HOUR CLAIMS** \$1795
- YES! Register for **WAGE & HOUR CLAIMS & FUNDAMENTALS WORKSHOP** \$2295

SAVE \$200 Register for this conference and American Conference Institute's "Employment Discrimination Claims & Litigation" conference (October 28, 2005)

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Registration Fee

The fee includes the conference, all program materials, continental breakfasts, lunches and refreshments.

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PREVENTING AND DEFENDING EMPLOYMENT DISCRIMINATION CLAIMS & LITIGATION

October 28, 2005

Sheraton Fisherman's Wharf Hotel, San Francisco

- Key regulators from the EEOC and California's DFEH will be there to answer your critical questions
- Special in-house counsel roundtable will give you practical strategies for preventing employment discrimination claims
- Expert litigators will give valuable updates on the key areas of exposure: age, gender/sex, race/religion
- Hear from a *Dukes* defense litigator on gender bias litigation

8:00 Registration Opens & Continental Breakfast ☞

8:30 Co-Chairs' Opening Remarks

Margaret Ryan Kreeger

Managing Attorney, Western Region of Labor and Employee Benefits, BP America Inc. (La Palma, CA)

Maureen O'Neill

Partner, Paul Hastings Janofsky & Walker LLP (Atlanta, GA)

8:45 Age Discrimination: Managing Disparate Impact Claims and Other New Exposures

Anne M. Brafford

Partner, Morgan Lewis (Los Angeles, CA)

- The impact of *Smith v. City of Jackson* on:
 - disparate impact theory
 - under the ADEA
 - under Title VII
- collective actions under the ADEA
- What can counsel take from the decisions and implement?
- Analysis of recent state and Title VII actions
- Is your standard form waiver of employment claims clear? The aftermath of *Thomforde v. IBM*
- How to prevent your forced ranking systems from leading to allegations of discrimination: *3M*, *Goodyear* and *Sprint*

9:30 Race/National Origin Claims, Religious Discrimination and "Lifestyle" Cases: Understanding Emerging Issues and Trends

Leslie A. Lanusse

Partner, Adams & Reese LLP (New Orleans, LA)

- Dealing with "lifestyle" cases in the wake of *Hewlett-Packard*
- Impact of increased EEOC enforcement in this area
- National origin harassment claims: preventing and defending them after 9/11
- Managing religious accommodation claims
 - veiling of faces v. legitimate corporate security issues
 - prayer

10:15 Coffee Break ☞

10:30 Avoiding and Minimizing Damages from Sexual Harassment Claims

Allison B. Marshall

Partner, Jones Day (Washington, DC)

- Consensual workplace relationships as a form of sexual harassment after *Mackey v. Department of Corrections*
- Recent decisions on what constitutes severe and pervasive harassment?
- Availability of affirmative defense after *Faragher/Ellreth*
- Best practices for avoiding harassment suits

11:15 Preventing and Defending Gender Bias Claims

Walter B. Connolly, Jr.

Partner, Connolly & Scharman (Detroit, MI)

George Stohner

Partner, Morgan Lewis (Los Angeles, CA)

- Recent case law and developments across the country
- Pay and promotions for women after *Costco* and *Wal-Mart*
- Strategies for dealing with pregnancy claims

Dukes v. Wal-Mart: A Case Study

- What are the plaintiffs' theories regarding the case?
- Proving a "culture" of discrimination
- How will damages be proven/challenged?
- Who is an adequate class representative?
- How to prove/defend typicality, commonality, etc.
- Defense options and theories
- Update on status of the litigation
- What is the likely impact of *Dukes* on labor and employment law?

12:30 Networking Luncheon for Delegates and Speakers



1:45 The Regulators Speak! The Year in Review and a Look Ahead

H. Joan Ehrlich

Director, EEOC, San Francisco District Office (San Francisco, CA)

Elizabeth Grossman
Acting Regional Attorney
EEOC, New York District Office (New York, NY)

Suzanne M. Ambrose
Director, Department of Fair Employment and Housing
(San Francisco, CA)

2:30 Refreshment Break

2:45 Investigating and Resolving Employee Harassment and Discrimination Allegations

Katherine A. Lawler
Senior Corporate Counsel
US Bank National Association (Minneapolis, MN)

Margaret Ryan Kreeger
Managing Attorney, Western Region of Labor and Employee Benefits, BP America Inc. (La Palma, CA)

Maureen Sutton
Counsel - Labor and Human Relations
Cingular Wireless (Atlanta, GA)

- What kind of avenues should exist for complaints?
- Systems you can implement to lessen your exposure to these suits
 - job analysis and promotion systems that work
- Creative accommodation techniques
 - responding to requests for accommodation of "stress"
 - managing religious diversity in the workplace
- What the employer is legally required to do when faced with an employment claim
- Avoiding retaliation claims
 - creating a whistle-blowing program

4:00 Defending the Employment Discrimination Class Action: Practical Strategies for Success

Maureen O'Neill
Partner, Paul Hastings Janofsky & Walker LLP
(Atlanta, GA)

Joan B. Tucker Fife
Partner, Winston & Strawn LLP (San Francisco, CA)

- What has been the effect of the new *Class Action Fairness Act* on employment discrimination litigation to date? What will be its effect long-term?
- What *Morgan Stanley*, *Home Depot* and *Boeing* will mean for employment class actions going forward
- Developing the game plan for opposing class certification
- Using experts to defeat class certification
- Proactive steps an employer can take to minimize the risk of class actions being alleged
- If a class is certified: strategies for proceeding on the merits
- Settling the class action: key considerations

5:15 Conference Concludes

EMPLOYMENT DISCRIMINATION CLAIMS & LITIGATION — Conference Code: 825L06-SNF
WAGE & HOUR CLAIMS — Conference Code: 806L06-SNF

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