

EMPLOYMENT LAW

R E P O R T

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

Financial Institution Hit with Potentially Broad “Class” Action for Pay Practices

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Federal wage and hour law has become the subject of significant nationwide lawsuits. Financial institutions and their industry have not escaped the significant exposure posed by these lawsuits, as a recent ruling shows.

In *Sexton v. Franklin First Financial Ltd.*, the U.S. District Court for the Eastern District of New York recently ordered Franklin First to send out notices to hundreds of its current and former loan officers, giving them notice of their right to join the lawsuit challenging the bank’s pay practices. This “conditional certification” of a collective action under the Fair Labor Standards Act (“FLSA”) means that Franklin First could be facing significant exposure for misclassifying employees as exempt from overtime pay.

The law suit alleges, in part, that because Franklin First Financial paid its loan officers on a commission basis rather than a guaranteed weekly salary of at least \$455, those employees should have been classified as non-exempt and should have been paid overtime. Since they were not paid overtime, the lawsuit claims, Franklin First violated the FLSA and must make back wage payments to these loan officers over a period of up to three years.

Like other employers, financial institutions have become recent targets of collective action law suits regarding illegal pay practices. Plaintiffs’ lawyers across the country allege that employers in several service industries have misclassified employees under the FLSA. In fact, FLSA collective actions are now the most common type of class action brought in federal court. The classes range from dozens to thousands of employees, leaving employers facing significant damage exposure. Further complicating this concern is the typical exclusion for wage and hour claims in employer practices liability insurance. Financial institutions would be wise to conduct legal audits of their pay practices to ensure compliance with the law.

Unless an employer can prove they are otherwise exempt, employees are considered non-exempt and must receive overtime pay for all hours worked over 40 hours in one week. To be exempted from overtime pay requirements, an employee’s rate of pay and job duties must meet the requirements of the FLSA’s exemptions, the most common of which are the professional, administrative, executive, outside sales, and certain computer employee exemptions. However,

particularly for services industries, the rules governing these exemptions are vague and fact-specific, and generally considered unhelpful in many instances to the employers who must prove that all aspects of the particular exemption are met.

Concerns regarding the proper classification of employees and the corresponding overtime pay requirements should be addressed. If you would like help in conducting an investigation into whether your pay practices are compliant with the law, or you have questions about this Alert, please contact one of our labor attorneys listed below.

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