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Xerox Affiliates Can't Dodge Call Center Worker Wage Claims

By Allissa Wickham

Law360, New York (July 11, 2014, 2:26 PM ET) -- A Washington federal judge on Thursday refused to let several Xerox Corp. affiliates escape a proposed class action's claims that their payment system violates the state's minimum wage and overtime laws, ruling that employees paid "per minute" are actually hourly workers.

In denying the companies' bid for summary judgment, U.S. District Judge John C. Coughenour ruled that the call center operator defendants — Xerox affiliates Affiliated Computer Services Inc., Affiliated Computer Services LLC, Livebridge Inc. and Xerox Business Services LLC — may have run afoul of Washington's minimum wage requirements by partly paying workers based on the number of minutes they spend talking to customers.

"The court is sympathetic to defendants' policy arguments and the reasons why the system was established in this manner," Judge Coughenour wrote. "But were this court to accept defendants' description, every employer could pay hourly workers a per-minute rate and thereby avoid the Washington law governing workers paid on a per-hour rate."

The suit, which pertains to employees at five of the defendants' Washington sites, was launched in April 2012 by named plaintiff Tiffany Hill, a former "customer care assistant" at ACS's location in Federal Way, Washington.

Hill accused the companies of failing to record all overtime and regular hours worked by employees and of using a "hybrid" compensation structure, known as the achievement-based compensation (ABC) plan, that resulted in employees performing unpaid work during their shifts.

According to the plaintiffs' October class certification motion, the Xerox affiliates paid call center workers in three ways. First, the employees were paid hourly wages for a limited set of "defined" activities, like meetings and trainings. Next, the workers were paid on a per-minute basis for time spent on calls, and those rates were calculated based on time and customer satisfaction.

Finally, the workers were given "subsidy pay" if their weekly per-minute pay and defined-activity hourly pay, divided by the total number of recorded hours, fell below the minimum wage requirements for the workweek, according to the motion.

But the plaintiffs allege that the subsidy did not ensure that employees would be paid on an hourly basis for other tasks, such as logging onto systems or reviewing announcements, meaning the pay system failed to meet Washington state's per-hour minimum wage requirements.

The employees sought to certify two classes, one for the defendants' Washington state call

center workers who were paid using the per-minute compensation plan since June 5, 2010, and another for employees from the same time period who were allegedly not paid for "off the clock" work performed before and after their scheduled shifts.

The affiliates moved for partial summary judgment in November, asking the court to find that the compensation plan at ACS's Federal Way location complied with minimum wage and overtime requirements, and that Hill was paid for all of her recorded hours.

But Judge Coughenour denied the companies' motion on Thursday, ruling that "per minute" employees are hourly workers, because the companies' "production minutes" are just calculated time units. The judge also nixed bids by both sides to strike statements from various declarations.

Lastly, the court ruled on the plaintiffs' certification motion, declining to certify the "off the clock" class due to a lack of common issues but agreeing that the ABC class met the certification requirements and presented a legal issue "capable of classwide resolution."

However, because some ABC class members' claims might be barred by a previous settlement with ACS, Judge Coughenour asked the parties to file briefs explaining how the proposed class would account for that settlement.

Attorneys for both parties did not immediately respond to comment requests Friday.

The Xerox affiliates are represented by Patrick M. Madden, Todd L. Nunn and Daniel P. Hurley of K&L Gates LLP.

The plaintiffs are represented by Toby J. Marshall and Marc C. Cote of Terrell Marshall Daudt & Willie PLLC, Jon W. MacLeod of MacLeod LLC and Daniel F. Johnson of Breskin Johnson & Townsend PLLC.

The case is Hill v. Xerox Corp. et al., case number 2:12-cv-00717, in the U.S. District Court for the Western District of Washington.

--Editing by Brian Baresch.

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