



HRHero.com

# FLORIDA

## EMPLOYMENT LAW LETTER

Part of your Florida Employment Law Service

G. Thomas Harper, Editor  
www.HarperGerlach.com

Vol. 24, No. 6  
August 2012

### What's Inside

#### Health Insurance

Supreme Court upholds Obama healthcare reform—what's next for you? ..... 2

#### Insurance Policies

Litigation can be costly—especially if you're not properly insured ..... 3

#### Agency Action

USCIS says country has met fiscal year 2013 cap on H-1B visas ..... 5

#### Attorneys' Fees

Employer's \$4.5M award in attorneys' fees temporarily set aside ..... 6

#### Legislation

Arizona's controversial immigration law takes hit from high court ..... 7

### On HRHero.com

#### Health Care

The U.S. Supreme Court has upheld the Affordable Care Act, President Barack Obama's healthcare reform law. It's essential that you continue implementing the law's requirements. At www.HRHero.com, you can find the following tools to help ensure you're in compliance:

- HR Sample Policy—Eligibility for Benefits, [www.HRHero.com/lc/policies/513.html](http://www.HRHero.com/lc/policies/513.html)
- HR Sample Policy—Health and Welfare Benefits, [www.HRHero.com/lc/policies/514.html](http://www.HRHero.com/lc/policies/514.html)

© BLR®

### WAGE AND HOUR LAW

## Mattress retailer pays \$1.6M to settle overtime claims by managers

*The U.S. District Court for the Middle District of Florida recently approved a settlement agreement to resolve a class action lawsuit filed against Mattress Firm, Inc. Thirteen managers of the retail chain joined together and sued the mattress giant over a dispute involving unpaid overtime wages. Specifically, the managers alleged that they regularly worked more than 40 hours a week but weren't paid overtime for the extra hours because the employer had misclassified them as exempt from overtime under the Fair Labor Standards Act (FLSA).*

### Managers 'firm' on demands

All lawsuits begin with a complaint. In this case, the initial complaint was filed on behalf of Bradley Hosier, a Mattress Firm employee who worked as a manager or manager on duty. The complaint was filed as a collective action, meaning that other employees who were in the same situation as Hosier could join the lawsuit. Ultimately, 12 other employees signed on as litigants in the case.

The managers' suit sought relief for two different classes of employees who served as managers or managers on duty. The first class consisted of managers who typically didn't receive more than 50 percent of their weekly compensation from commissions and didn't receive overtime pay for hours worked in excess of 40. The second class consisted

of employees who participated in one or more workweeks of training to become managers but didn't receive overtime pay for the overtime hours worked in those weeks.

The managers' complaint not only sought to recover unpaid overtime compensation but also asked for reasonable attorneys' fees and liquidated damages. An award for liquidated damages and attorneys' fees can significantly increase an employer's payout in a class action suit. In a case like this one, it's standard for the charging party to seek attorneys' fees and liquidated damages on top of a claim for unpaid wages.

The employees in the lawsuit were referred to as managers or managers on duty; however, they weren't actual store managers or general managers. The employees' job duties consisted of checking inventory, stocking, setting displays, cashiering, and serving customers. They argued that they (1) didn't receive more than 50 percent of their weekly compensation from commissions and (2) weren't paid at least 1½ times their regular pay rate for hours worked over 40 in a workweek. They also argued that employees weren't paid time and a half for overtime hours worked during training periods. Their arguments were based on the contention that Mattress Firm improperly

Harper Gerlach PL—Florida Labor & Employment Attorneys—  
www.HarperGerlach.com—is a member of the *Employers Counsel Network*



classified them as exempt from the overtime requirements of the FLSA.

### ***Employer succumbs***

The case never made it to trial. Mattress Firm denied the allegations in the lawsuit. However, rather than take a chance in the courtroom, it elected to settle with the employees—for \$1.6 million! That's no small price for any employer to pay. Further, the suit involved only 13 employees. Under the terms of the settlement agreement, Mattress Firm must place \$1.6 million into a common fund to pay back overtime wages owed to the managers. Thirty percent of that amount, or \$480,000, went to pay the employees' attorneys' fees.

In a class action lawsuit like this one, the court must give final approval of any settlement agreement. In this case, the court found the \$1.6 million settlement to be both fair and reasonable. Mattress Firm never disputed the reasonableness of the agreement, suggesting that it simply wanted to make the claims go away. *Hosier v. Mattress Firm, Inc.*, 2012 LEXIS 94958 (M.D. Fla., 2012).

### ***Rest assured***

This case shows the dangers of misclassifying employees as exempt from the overtime requirements of the FLSA. Even commission-based employees and employees who are considered managers can be nonexempt from the Act in certain situations. All nonexempt employees are entitled to a pay rate of at least 1½ times the minimum wage or 1½ times their regular hourly rate.

It can be very costly if a current or former employee who was misclassified as exempt decides to challenge his classification and seek unpaid overtime wages. It's always smart to consult with wage and hour counsel before classifying an employee's status. As in this case, employees may join together in a collective action to pressure the employer into a settlement agreement.

Mattress Firm elected to settle the case for \$1.6 million (which doesn't include its own attorneys' fees) before it went to trial. That may seem like a staggering amount, especially considering there were only 13 employees in the class. However, if it had gone to trial and lost, the payout could have been significantly larger. If there's any question about whether an employee's duties or job title qualify him as exempt from the overtime requirements of the FLSA, it's always better to play it safe and consult legal counsel first. It's more strategic and cost efficient to be proactive and take preventive steps than it is to take a chance in court.

➔ *You can research the FLSA or any other employment law topic in the subscribers' area of [www.HRHero.com](http://www.HRHero.com), the website for Florida Employment Law Letter. Access to this online library is included in your newsletter subscription at no additional charge. ❖*

To subscribe to the Florida Employment Law Letter or for more information on this monthly newsletter visit:  
<http://hrhero.com/flemp.shtml>

For a copy of this article please send an e-mail request to Tom Harper at:  
[gth@harpergerlach.com](mailto:gth@harpergerlach.com)