

Wage and hour class action — a free lunch for plaintiff's attorneys

Valley agribusiness feeds the world — as well as out-of-area plaintiff's attorneys, apparently.

I was disheartened recently to read about several wage and hour class actions filed against Valley agribusiness employers by Pennsylvania lawyers. The grievance of a typical wage and hour class action is the simple allegation of a single employee that an employer failed to allow the employee to receive a meal and rest break. The employee then purports to represent every other employee of the employer.

Meal and rest period requirements sound reasonable in theory, but unfortunately, in practice, these rules lead to draconian results in which plaintiff's attorneys score a windfall. In the end, the irony is that employers that face these allegations have to account for their losses in reduced hiring, stagnating salaries and layoffs, thereby hurting the very people the lawsuits are allegedly trying to help.

How can a simple claim of a missed meal period result in such devastation? It is the result of stacking numerous violations and penal-

ties on top of the penalties associated with the missed meal period itself.

For example, if an employee alleges he or she worked two minutes of his or her 30 minute meal period, then that employee also claims to have worked an unaccounted two minutes — a minimum wage violation.

If these two minutes increase the daily time to over eight hours — an overtime violation.

Because the employee was not properly paid, the employee's wage statements were incorrect — a wage statement violation.

Because meal and rest breaks are found in an Industrial Wager Order — a wage order violation.

If the employee has left employment — a failure to pay last and final wages.

Because all of these violations are alleged on behalf of all employees in a class action lawsuit over a three-year period, damages and penalties can be in the tens of millions of dollars. And, because the term "employer" is defined broadly, there can be personal liability for the owner and supervisors.

There may be an unjustified perception that "greedy" employers should simply make sure they pay their employees properly, thus avoiding the prospect of these lawsuits. This is easier said than done. First, the rules are extremely technical

and even attorneys that practice in the area argue as to their application. This confusion makes sense, because there are 17 different Industrial Wage Orders. Accordingly, just figuring out which wage order applies is extremely challenging. In some instances, employees may even work under more than one wage order in a single day, thus subjecting them to different meal and rest break and overtime rules on an hour-to-hour basis.

In addition to California wage and hour laws, there is also federal law. Even in instances where an employer's time records reflect that they have successfully navigated the statutory and regulatory minefield, a common plaintiff's tactic is to allege that the "real policy" was that the employees were told to work off the clock. Accordingly, by the nature of allegation, the employer can provide no documentation to disprove the employee's allegation.

So what is the answer? First, simplifying the existing laws so that well-intentioned employers can easily follow the rules. Second, new rules must be made to disincentivize wage and hour class action lawsuits. This can be accomplished by establishing a cap on the amount of penalties and attorney's fees that can be recovered that correlates with the actual amount of wages recovered, shortening the statute of limitations,

and making it more difficult to file on behalf of other employees. Third, a safe haven needs to be designed to permit employers that have identified an inadvertent mistake to make back payments without the requirement to pay the large associated penalties. Fourth, there should be an administrative prerequisite that employees file a complaint with the Department of Labor Standards Enforcement (DLSE) prior to filing a civil lawsuit to determine the validity of the allegation. If the employer submits to the DLSE's jurisdiction, it should prevent the employee from filing a lawsuit. Fifth, the DLSE should be willing to readily answer employer questions to proactively prevent the violation in the first place.

Being an employer in California is not easy. Until changes are made, hungry plaintiff's attorneys will continue to belly-up to the wage and hour class action buffet, while Valley employers' work overtime attempting to comply with the seemingly never ending laws and regulations. As the adage goes, there is no such thing as a free lunch — unless, of course, you are suing those that feed us.

Steven M. Crass, Esq. is an attorney with Fresno law firm, Baker Manock and Jensen, PC. Mr. Crass can be reached at (559) 432-5400.

GUEST VIEW



Steven M. Crass

Experts: What to say when a customer says 'no'

There's nothing more frustrating than delivering a killer pitch or demonstrating your service, only to have a potential customer turn you down. But don't take "no" as a final answer yet. Two small business owners share strategies they use to win over stubborn buyers.

Get to the bottom of it

First, figure out why a customer is turning you down, says business coach Amy Walker, president of Amy Walker Consulting in Pendergrass, Georgia. If he or she truly has no need for your product or service, let them go, Walker says. "We do not want or need 100 percent of the people we meet to purchase our products."

However, customers may be interested in what you offer, but hesitate to commit because they're struggling to make decisions on their own, overanalyzing or struggling with price. Ask the person, "If [objection] wasn't an issue, would you be interested?" "If the answer is yes," Walker says, "they are closeable. But now you can come from a position of helping them get what they want, versus talking them into something they already rejected."

Close the deal

Once you've provided any information your potential customer is missing, Walker suggests transitioning the buyer to a purchase

with a statement such as, "My intention is not to talk you into something you don't want. But I'm hearing that you need (define their need or problem that your business could solve). If you feel like my product or service could help, I'll do anything I can to help you get it. But first, I need to know if you want this."

It's a more powerful selling tool when a client says they want a product than you telling them what they want, Walker says. Once the customer affirms that he or she is interested, Walker suggests sharing stories about what other clients have done to work around similar objections, such as offering different payment methods or timeframes.

Pull out the right hook

Small business owner John Turner, CEO of UsersThink in Pittsburgh, Pennsylvania, has a counterintuitive yet successful approach to winning over stubborn buyers: telling them why they should not buy his product. "This approach disarms a skeptical customer with honest helpfulness, and also gives you a chance to frame the advantages of your product by letting them know what it can't do, and thereby managing expectations," Turner says.

The approach works especially well with inbound conversations,

Turner says, such as one he recently had with a prospective customer. After an email exchange — in which Turner was honest about what needs his product could not meet — the individual ultimately purchased Turner's product and recommended it to others.

"The best thing I heard from this customer is that they didn't reach out to me first. They reached out to a much larger, more established competitor, with the same questions, and gave up on them almost

immediately," Turner says. "The competitor made no effort to help that person, and instead went straight into sales mode. By doing so, and giving me the chance to actually help, not only did they lose a customer, but helped me in gaining one."

Founded in 1943, and headquartered in Nashville, Tennessee, the **National Federation of Independent Business** is America's leading small-business advocacy association.

NFIB
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WEB POLL

SHOULD CALIFORNIA TIGHTEN ITS RULES ON VACCINE EXEMPTIONS?

84% SAY YES
15% SAY NO
1% SAY MAYBE

As a measles outbreak that is believed to have originated at Disneyland rages on, the spotlight has been focused on so-called "anti-vaxxers" who use personal belief exemptions to enroll their children in school without the regular course of vaccinations required for most other kids. A whopping 84 percent of respondents to this week's Web poll believe these exemptions should be tightened to ensure more children receive vaccinations. Fifteen percent believe the current exemption rules are adequate, while 1 percent is unsure.

ONE HUNDRED SIXTY-FIVE VOTES WERE CAST.