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Steer Clear of the Wage and Hour Class Action Quagmire

On Sunday, July 9, the Chicago Tribune featured a cover page article entitled "More Workers Suing to Get Overtime Pay." As the article correctly notes, wage and hour class action lawsuits are now outpacing suits involving employment discrimination claims. This recent trend has been fueled by recent changes to both federal overtime regulations and state wage and hour laws, resulting in a dizzying number of costly wage actions for employers.

In addition to large potential damage awards, employers also face fines and penalties imposed by various laws intended to further deter and punish such violations. Many states that do not currently have such penalty provisions are considering them. For example, on Friday, July 14, Governor Blagojevich signed legislation which amends provisions of the Illinois Minimum Wage Law and Illinois Wage Payment and Collection Act to establish employer liability for punitive damages where employers have underpaid or improperly withheld wages. Stay tuned for a management alert describing the recent amendments and the implications they carry for all Illinois employers.

Now more than ever, it makes business sense for all employers to learn about the recent changes in applicable wage laws and the potentially far-reaching, and costly, consequences of failing to comply with them. The best way to do this is to conduct an audit to examine

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existing pay policies and practices to ensure compliance. Whether comprehensive or targeted to a particular location or issue, the audit should, at a minimum, ask (and find answers to) critical questions such as:

- Are your employees properly classified as exempt under federal and state law?
- Have you properly included bonus and commission payments in calculating overtime for your non-exempt employees?
- Have you explored the available alternative pay mechanisms for both exempt and non-exempt employees?
- Does your vacation policy comply with state law?
- Is your pay deduction policy lawful?
- Are your commission and bonus policies lawful?
- Are your pay practices discriminatory?
- Are you properly documenting pay and timekeeping practices?
- Is your time rounding practice lawful?
- Are your employees properly paid for “off the clock” work?

We would welcome the opportunity to discuss your company’s current pay policies and practices with you. In addition to working with you to identify the problem areas or risks of liability, we also will work with you to assess and implement the most appropriate solutions and policies for your workplace and organization. We have a wealth of practical experience in working with a broad range of employers on such topics, as well as defending employers in court on these issues. We even have defended, and are currently defending, wage and



hour lawsuits and class actions brought by both of the plaintiff's attorneys quoted in Sunday's Tribune article.