

OUR PRACTICE

Wage and Hour

When a client needs help with federal or state wage and hour issues, our labor and employment attorneys bring a wide range of experience to the table. We help companies address all such issues, including:

- Determining which employees may be exempt from overtime pay and minimum wages;
- How certain bonuses and other payments may affect overtime pay;
- Which pre-shift and post-shift activities may be compensable;
- What travel time may be compensable;
- What breaks are required; and
- What breaks are compensable.

We conduct compliance audits, assist with structuring pay systems, and assist with wage and hour issues applicable to various government contracts.

We're also there for clients when the U.S. Department of Labor (DOL) gets involved. In recent years the DOL has stepped up the number of its employer investigations, and wage and hour litigation has increased dramatically. We represent companies before the DOL during investigations and audits, defend on child labor law issues, and obtain opinion letters for clients from the DOL on a variety of novel matters.

Given the more employee-friendly environment that has surfaced as a result of increased federal funding and new legislation, employers should expect the DOL and other agencies to more aggressively enforce laws in cases that might have been considered marginal in the past. Companies should consider self-audits and other internal compliance reviews to avoid being on the receiving end of agency investigations and enforcement actions, as well as private litigation. Baker Donelson can assist with those internal reviews.

Employers should also expect a continued increase in single-plaintiff and collective action wage and hour litigation. Baker Donelson attorneys have handled more than 110 collective actions in the last several years. These include cases for national restaurant chains, food processors, cable/satellite/telecom companies, transportation companies and energy companies. In cases throughout the country, our attorneys have successfully argued that classes should not be certified under Rule 23 in Title VII cases, that collective actions under the FLSA should not be certified or should be decertified, and that claims brought by multiple named plaintiffs should be severed and litigated in separate suits. These favorable rulings have often been followed by successful resolution of the litigation, through nuisance value settlement, summary judgment or defense verdict after trial.

Representative Matters

- Settled on favorable terms or achieved decertification of numerous FLSA collective actions across the country in which employees sought unpaid wages and overtime related to donning and doffing, pre- and post-shift activities, and meal breaks.
- Successfully defeated a 45,000-individual collective action in a suit alleging that our client's business model of using independent contractors violated the law. After the court granted certification, we achieved a number of critical victories surrounding the notice process, the discovery process and the proposed class, resulting in less than 1,400 plaintiffs opting in to the case. We then argued for and used the information from the individual discovery process to seek dismissal with prejudice of the opt-

in plaintiffs' claims. Plaintiffs approached about voluntary decertification, which was more favorable than an order from the court.

- Obtained settlements and court approvals for at least five wage and hour collective actions involving hundreds of employees and multiple facilities.
- Provided advice regarding Service Contract Act wage issues involving food-service contracts on military bases.
- Successfully negotiated resolution of an individual wage and hour law claim when an employer failed to appropriately classify the employee.
- Advised clients with respect to Davis-Bacon Act record keeping and wage requirements for VA hospital construction.
- Representing employers in multiple wage and hour class and collective actions in the restaurant and cable installation industries.
- Decertified a wage and hour collective action made up of 45 truck drivers resulting in a nominal settlement favoring a longstanding Firm client.
- Obtained a complete defense verdict on behalf of an automobile dealership and its owner accused of violating federal wage and hour laws.
- Defended a federal court lawsuit in which hourly employees of a restaurant company brought FLSA claims to recover unpaid overtime, claiming they were required to work off the clock. The case was conditionally certified and then settled after years of litigation.
- Defended hybrid FLSA/Rule 23 wage claims in federal court in Nashville, Tennessee in which restaurant servers allege they were forced to work off the clock.
- Obtained summary judgment as co-counsel of major American corporation against collective action brought pursuant to Fair Labor Standards Act, USDC,WD,TN.
- Conducted a timecard internal investigation for an Eastern seaboard civil engineering company/government contractor.
- Represented a food service vendor in an FLSA collective action alleging overtime not paid by subcontractors and joint employer theory. Settled favorably with payment by codefendant.
- Obtained conditional certification and settlement after years of litigation for two separate national restaurant matters. In the first, company managers sued to recover unpaid overtime, alleging that they were misclassified as exempt due to the employer's policy of docking their pay for cash shortages and damaged or missing property. In the second, hourly employees of a restaurant company sued to recover unpaid wages and overtime because they were allegedly forced to work "off the clock."
- Defeated at the pleadings stage an effort to certify a class under Rule 23 of more than 80,000 plaintiffs in a case asserting state-law claims for unpaid compensation.
- Convinced the trial court to decertify a donning and doffing collective action under the FLSA and to dismiss the claims of current and former employees who had opted to join the suit.
- Obtained a stay in an FLSA collective action of the claims of all opt-in plaintiffs who were parties to arbitration agreements.
- Prevented conditional certification and notice to potential opt-in plaintiffs in an FLSA collective action seeking to hold a general contractor responsible for wage and hour violations committed by its subcontractors.
- Negotiated a nuisance value settlement in a statewide collective action under the FLSA alleging that employees were misclassified as independent contractors.
- Defeated class certification on behalf of a municipality and obtained directed verdict at trial on claims by multiple employees alleging unlawful pay disparities.
- Obtained favorable jury verdict for employer on claim in FLSA collective action that employer did not provide bona fide meal periods.

- Favorably settled FLSA claims to recover unpaid overtime when property damage appraisers for an insurance company said they were allegedly misclassified as exempt. The case settled on favorable terms before notice to the putative class.
- Defended two nationwide restaurant chains in three wage and hour class actions that included over 21,000 class plaintiffs. The class plaintiffs alleged in one or more of the cases that the defending restaurants had improperly treated their managers and assistant managers as exempt from the overtime pay and minimum wage requirements of the Fair Labor Standards Act because, among other things, they had allegedly required the managers and assistant managers to make up cash shortages and perform nonmanagerial work. They also alleged that the restaurants had worked non-exempt employees off the clock and had improperly taken the tip credit.
- Our client, a pediatric health care company, was facing a collective action wage and hour misclassification that would have resulted in its closure and a liquidation bankruptcy. By working with bankruptcy counsel, we negotiated settlement of the Fair Labor Standards Act claims with the participation of the Department of Labor, plaintiffs' counsel and the bankruptcy judge, ultimately resulting in a reorganization of the company and payout over a three-year period. Our client avoided closure, saving the nurses' jobs and securing patient care for children in need.