

Wage and Hour Laws

Up-to-date information on wage-hour principles and developments from Fisher & Phillips attorneys who focus their practices on these matters.

[Home](#) [Archive](#) [Contact](#) [Subscribe](#) [Log in](#) [Fisher & Phillips Website](#)

Filter by APML

<< "No Opinion Letters" Policy Reaffirmed |

Court Rejects Kentucky Wage-Hour Representative Actions

March 20, 2015 01:39
By Tim Weatherholt

The Kentucky Wages and Hours Act provides the mechanism for pursuing redress for minimum-wage or overtime violations under that law. KRS 337.385 provides, in pertinent part, that "[s]uch action may be maintained in any court of competent jurisdiction by any one (1) or more employees for and in behalf of himself, herself, or themselves."

This language differs significantly from the federal Fair Labor Standards Act's analogous provision for private lawsuits. The FLSA says that a lawsuit may be brought "by any one or more employees for and in behalf of himself or themselves *and other employees similarly situated*." 29 U.S.C. § 216(b) (emphasis added). The highlighted words establish that the FLSA specifically contemplates representative actions; some had argued that the KWAH permits them also, despite the absence of a similar clause in KRS 337.385.

Earlier *Dictum* Rejected Representative Actions

A number of state and federal cases had allowed class actions brought under KRS 337.385 to proceed in that form. But in its November 2013 ruling in *Toyota Motor Manufacturing, Kentucky, Inc. v. Kelley*, the Kentucky Court of Appeals stated in *dictum* that the KWAH does not permit this approach.

The court approvingly noted the argument of Fisher & Phillips attorneys Jeff Savarise, Jim Polkinghorn, and Tim Weatherholt that the plain language of the Act precluded representative actions and said that it would rule that way if called upon to do so. However, the court ultimately resolved the case on other grounds.

Issue Squarely Resolved

The Kentucky Court of Appeals has now expressly decided against KWAH representative actions in *McCann v. Sullivan Univ.* Following *Kelley*, *McCann* found that the wording of KRS 337.385 "contrasts sharply" with the FLSA's language.

The court noted, "[KWAH] plainly expressed that an action may only be brought by one or more employees on behalf of himself, herself, or themselves It did not permit actions to be brought on behalf of employees who are similarly situated." Interestingly, the court also determined that no class action was available under the state's procedural rules.

The Bottom Line

It is of course possible that the Kentucky Supreme Court might accept discretionary review in *McCann* to address whether representative actions are available under the KWAH. For now, though, Kentucky law does not authorize such actions.

◇ Have a comment or something else to add? Please use our comment feature below.

Be the first to rate this post

Enforcement | Litigation | State-Specific Posts

Tags: Kentucky Wages and Hours Act, KWAH, collective actions, class actions, representative actions, *McCann v. Sullivan Univ.*, *Toyota Motor Manufacturing, Kentucky, Inc. v. Kelley*

[Share](#) | [Email This](#) | [Permalink](#) | [Comments \(0\)](#)

Related posts

Court Rejects Individual Enforcement Of FLSA Breastmilk-Break Requirement

A federal court has ruled that an employee could not enforce the FLSA's Section 7(r) in a lawsuit.

Big Supreme Court Win For Pharmaceutical Industry

The U.S. Supreme Court ruled today that GlaxoSmithKline's pharmaceutical sales representatives were ...

Appellate Court Enforces Private FLSA Settlement (Updated 01/07/13)

A decision by the Fifth Circuit U.S. Court of Appeals suggests that courts might begin to enforce pr...

Page List

[About Us](#)

[Privacy Statement](#)

[Terms And Conditions Of Use/Disclaimer](#)

[Enter search term](#)

SUBSCRIBE

[ADD THIS BLOG](#) to your feeds or put your e-mail in the box below and hit GO to subscribe by e-mail.

GO

RECENT POSTS

Court Rejects Kentucky Wage-Hour Representative Actions

Comments: 0

Rating: 0 / 0

"No Opinion Letters" Policy Reaffirmed

Comments: 0

Rating: 0 / 0

FLSA Exemption Changes: A Possible "Plan B" For Retailers

Comments: 0

Rating: 0 / 0

"Tipped Minimum Wage" Nonsense Continues

Comments: 0

Rating: 0 / 0

A Substantial Salary-Test Jump Is Likely

Comments: 0

Rating: 0 / 0

"Predictable Scheduling": An Undiscovered FLSA "Right"?

Comments: 0

Rating: 0 / 0

Judge Vacates Parts Of USDOL Home-Care Regulation

Comments: 0

Rating: 0 / 0

Interesting Comments From U.S. Labor Solicitor Smith

Comments: 0

Rating: 0 / 0

Court Vacates Imminent Bar To Third-Party Employer's Claiming Companionship/Live-In Domestic Exemptions

Comments: 0

Rating: 0 / 0

Add comment

Name*
E-mail*
Company*

Captcha* 

b i u quote

I agree to the [Terms and Conditions](#)

Email me followup comments

FLSA Insurance-Adjuster Overtime Exception Buried In Appropriations Bill

Comments: 0
Rating: 0 / 0

CATEGORY LIST

-  Administrative Exemption (17)
-  Breaks (11)
-  Child Labor (9)
-  Compensation Generally (15)
-  Compliance (74)
-  Computer Employees (7)
-  Coverage (1)
-  Criminal Penalties (2)
-  Deductions Or Repayments (4)
-  Employee Status (39)
-  Employer Status (35)
-  Enforcement (26)
-  Executive Exemption (15)
-  Exemptions And Exceptions (66)
-  Final Regulations (7)
-  Government Contracts (11)
-  Government Enforcement (74)
-  H-1B (2)
-  Hours Worked (34)
-  Independent Contractor (18)
-  Interns (15)
-  Legislation (33)
-  Litigation (33)
-  Meals (5)
-  Minimum Wage (37)
-  Outside Salesman Exemption (8)
-  Overtime (41)
-  Overtime Compensation (56)
-  Paid Leave (4)
-  Pay Plans (21)
-  Prevailing Wage/Fringe Benefits (5)
-  Professional Exemption (15)
-  Proposed Regulations (17)
-  Quick Quiz (28)
-  Recordkeeping (25)
-  Remedies (9)
-  Retaliation (5)
-  Salary Basis (16)
-  Settlements (5)
-  State-Specific Posts (1)
-  Timekeeping (27)
-  Tips And Tip Credit (10)
-  Volunteers (6)
-  Workweek (6)

MONTH LIST

2015

- March (2)
- February (3)
- January (3)

2014

2013

2012

2011

2010

Related Links

Fisher & Phillips LLP

No poll

Show Results

TAG CLOUD

\$10.10 \$2.13 13(A)(15) 13(B)(10)(A)
13(B)(21) 7(R) 778.114 Administrative
Exemption Age Age Limit Bonus Bonuses
Break Breaktime Breastmilk Child Child
Labor Classification Commissions
Companionship Companionship Exemption
Companionship Services Compensable
Work Compliance Computer Employee
Exemption Contract Employees Contract
Workers Contractor Davis-Bacon Act
Deduct Deduction Direct Care Direct-Care
Workers Domestic Domestic Service
Employee Status Employer Status
Enforcement Executive Exemption Exempt
Exemption Exemption Changes Extra Pay
Fair Labor Standards Act Federal
Contractors Federal Contracts Final Rule
FLSA Fluctuating Workweek Hazardous
Work Home Care Home Care Workers
Hours Worked Independent Independent
Contractor Intern Lawsuits Interns
Internship Lactation Live-In Domestics
Mechanic Minimum Wage Minimum-Wage
Increase Minor Misclassification
Misclassification Initiative NPRM Nursing
Overtime Partsman Professional
Exemption Quick Quiz Recordkeeping
Recoup Recover Regular Rate Repay
Right To Know Salary Salary Basis
Salesman Section 207(R) Section 4207
Section 7(R) Service Advisor Service
Contract Act Service Manager Service
Salesman Service Writer Timekeeping
Tipped Employees Tips Unpaid Unpaid
Interns Worktime Workweek Young
Youth Zz