



## Managerial Exemption And Class Actions

Insights

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On March 20, 2013 a California Appellate court reinforced the fact that employees who attempt to certify class claims of “misclassification” of exempt employees (and related meal- and rest-period claims) face an uphill battle. *William Dailey v. Sears, Roebuck and Company*.

### Background

Sears operates several auto centers throughout the San Diego area. The auto centers are managed by one manager either alone or with one or more assistant managers, depending on the sales volume of the auto center. As set out in their job descriptions, employees in this position were “expected to spend well over 50 percent of [their] time on management duties on a daily and weekly basis.”

William Dailey, individually and on behalf of a proposed class of other similarly-situated employees, sued Sears alleging that Sears violated California’s wage and hour laws regarding overtime pay and meal and rest-break periods, with respect to its auto center “managers” and “assistant managers.”

Dailey filed a motion to certify the proposed class, arguing that although managers and assistant managers are categorically classified as exempt from overtime and meal or rest-break requirements, Sears implemented policies that had the effect of requiring the proposed class members to work at least 50 hours per week and spend the majority of their time working on nonexempt activities. Dailey argued that these employees were not, in fact, exempt from overtime pay, but were actually non-exempt hourly employees.

The trial court denied class certification, and the appeals court agreed with the ruling, concluding that common questions of fact *did not* predominate over individual ones and that Dailey’s claims were “not amenable to proof on a class-wide basis.”

### The Court’s Reasoning

To support its conclusion, the court pointed to the evidence regarding different job duties performed by employees at different locations, as well as declarations provided by Sears which stated that employees spent divergent amounts of time on non-managerial tasks (anywhere from 1% to 40% of their time). The court also cited evidence presented by Sears that managers and assistant managers had discretion to adjust staffing, modify their own weekly work schedules, and customize displays and pricing.

The court credited evidence presented by Sears showing that the role of managers and assistant managers is “a managerial one, involving communicating, coaching and controlling the workflow of the auto center, and ensuring that work is allocated and completed in an efficient and timely manner.”

In denying certification on the meal- and rest-period claims, the court noted that Dailey’s declarations failed to establish sufficient common proof that employees were *required* to skip their breaks and work on duty during meal and rest periods although they might have actually skipped them on occasion. Citing *Brinker Restaurant Corp. v. Superior Court* (2012), the court noted that the lack of a written meal and rest policy for managers – who were classified as exempt from the meal- and rest-period requirements – was not substantial evidence that the managers nonetheless were not free to take them as they wished. Finally, the court rejected Dailey’s sampling methodology as nothing but a “generic proposal not tied specifically to the facts of this case.”

### **The Bottom Line**

This great result was achieved in part by effective human resource practices by Sears with regard to its managers. Indeed, Sears’ efforts to undermine class certification were successful in part because of their detailed, accurate job descriptions, and effective efforts to secure reliable declarations refuting Dailey’s claims.

To strengthen your company’s ability to defend claims by managerial employees that they were misclassified, revisit job descriptions and other internal procedures to make sure that managers are working in accordance with their exempt duties. If you’d like help, give us a call.

*For more information, contact the author at [CCalvert@fisherphillips.com](mailto:CCalvert@fisherphillips.com) or 949.851.2424.*

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