



# **Payala V. Wipro Offers Effective Class Litigation Strategy**

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Perhaps no field of class action litigation in California is more fraught with complex certification issues than determining whether the administrative exemption applies to network, internet and database administrators or related positions in information technology departments. When faced with such a challenge in federal court, however, employers have consistently found success by demonstrating that common questions of law or fact do not predominate over the putative class members. This is true even if all of the other prerequisites for class certification have been satisfied

## **IT Workers Seek to Band Together to Bring Class Action**

This issue was recently addressed in the Central District of California case of *Payala v. Wipro Technologies Inc.* In that case, an employee providing computer-related services claimed that he received compensation below the statutory threshold necessary to apply California's computer software exemption. He presented evidence to show that he worked overtime hours for which he received no additional compensation.

The plaintiff attempted to bring the claim as a class action. His attorney contended that all exempt employees falling into any of 10 different job descriptions should be included in the class. They included solutions delivery analysts, technical leads, architects, project leads, consultants and project engineers.

## **Workers Satisfy the First Hurdle ...**

The first step in a court's analysis of a motion for class certification under Rule 23(a) of the Federal Rules of Civil Procedure requires that a putative class representative show that four prerequisites are met: numerosity, commonality, typicality and adequacy of representation. The court quickly determined that each of these threshold factors was satisfied.

For example, the court determined that the plaintiff offered sufficient common questions for which an adjudication would offer common answers, especially given the similarities between the 10 job classifications. These included whether the administrative exemption applied to technical job duties such as computer troubleshooting, testing and debugging of existing third-party products.

The court also found that, even though there was some variation in the elements and duties of each of the relevant positions, the claims were reasonably coextensive with those of absent class members. A further finding by the court that both plaintiff and his attorney were adequate and that the requirement of numerosity had been met allowed the court to move to the next critical step in the analysis.

### **... But Cannot Clear the Second Hurdle**

In seeking certification under Federal Rule of Civil Procedure 23(b)(3), the plaintiff next needed to prove that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class is superior to other available methods for adjudicating the controversy fairly and efficiently. This he could not do, leading to the employer victory.

Generally, uniformity in work duties and experiences among class members supports a finding that common questions of law or fact predominate because there is less need for individualized inquiries. The question of whether the exemption requirements can be satisfied often turns on whether the defendant has made a common mistake with respect to all putative class members (i.e., treating a nonexempt task as exempt).

In the Wipro case, the plaintiff argued that common issues predominated for more than 400 class members, all allegedly related to the defendant's failure to pay overtime. Most critically, he cited to the fact that the overtime policies at issue were company-wide, and that the legal tests used to determine the administrative exemption issue could easily extend to all of the job duties at issue.

Importantly, when one or more of the central issues in the action are common to the class and can be said to predominate, the action may be considered proper under the federal rules even though other important matters will have to be tried separately (such as damages or some affirmative defenses peculiar to certain individual class members). However, in cases where exempt status depends upon an individualized determination of an employee's work, and where plaintiffs allege no standard policy governing how employees spend their time, common issues of law and fact may not predominate.

The court concluded that the task descriptions of the employees provided by the plaintiff in the Wipro case were too generic and imprecise to satisfy the necessary legal standards. For example, the court found that the plaintiff provided no additional information for vague descriptions such as "design," "analysis" or "rework."

The plaintiff also did not provide evidence showing that some or all of the different task descriptions were uniformly understood, adopted or applied by management. Further, the plaintiff did not submit evidence of any uniform job descriptions for the 10 job positions included in the proposed class definition

Consequently, the court determined there was no evidence of standardized criteria in defining and using those terms necessary for the court to effectively adjudicate the claims on a class-wide basis.

### **Court Also Rules On Individuality**

The court further rejected the plaintiff's attempts to bring his claim as a class action because the issues impacting each of the class members would be too individualized to form a proper class.

The parties agreed that the putative class members who were primarily involved in "computer network and internet and database administration" work would fit within the administrative exemption definition as outlined in California Industrial Welfare Commission (IWC) Wage Order 4-2001, but the defendant contended that a substantial amount of individualized inquiries were still necessary in order to assess the case.

Notably, the defendant contended, and the court ultimately agreed, that individualized issues would be necessary to determine which class members engaged in responsibilities defined as "maintaining the well-being of the client's computer network," or "high-level problem solving," or "capacity and expansion planning," or "integration planning," or similar duties. Because individualized inquiries would be required to determine the proper exemption classification of the putative class members, the court determined that a class action was not necessarily superior to separate litigation of each employee's individual claim.

### **Court Relied in Part on Prior Rulings**

The court reviewed prior court rulings addressing similar issues. The court denied class certification because the predominance requirements under Rule 23(b)(3) in this particular case were not satisfied from facts unique to the case at hand, noting that the broad categories of work at issue encompassed varying tasks, with varying levels of complexity, and were executed with varying levels of judgment. Further, the tasks performed by the proposed class members were not "reasonably definite." Thus, individual inquiries were necessary to determine whether the employees were actually performing similar duties, ruining the chances of a viable class action.

### **What This Means For Employers**

Although the cases reviewed by this court in its analysis did not reach the merits of whether the administrative exemption ultimately applies to the IT positions at issue, the cases under consideration by the court demonstrate that the administrative exemption may well apply. Employers should keep in mind that plaintiff attorneys will certainly attempt to amalgamate diverse IT jobs into one class action, but the Wipro case demonstrates the significant difficulties they face when seeking class certification on such issues. Finally, during the prelitigation posture, employers

should conduct self-audits of their IT employees in computer network, internet and database administration to make sure they have properly classified the exempt positions.

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