



10 Steps Mine Operators Should Take as Overtime Class/Collective Actions Surge Across the Country

Insights

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In recent months, we have seen a substantial uptick in class and collective actions filed against mine operators on behalf of current and former hourly miners (and other hourly field personnel) alleging violations of the Fair Labor Standards Act (FLSA) and various state wage laws. The good news is that there are proactive steps you can take to reduce the chances you face such claims. This Insight will review the most common types of claims we're seeing filed against mine operators and 10 steps you can take to boost your compliance efforts.

What Are These Cases About?

These lawsuits primarily allege that mine operators required their miners and other mining field personnel to perform compensable pre- and post-shift work activities "off the clock" (without paying them). They often include off-the-clock allegations relating to:

- donning and doffing personal protective equipment (*e.g.*, federally mandated safety gear like hard hats, respiratory devices, SCRSs, and proximity tracking devices);
- preparing and transporting tools;
- attending meetings; and
- traveling from the preparation site to the mine site.

The workers claim they were not properly compensated for these activities—and, as a result, they were not paid for all hours worked and were deprived of overtime pay when they worked more than 40 hours in a workweek. Many of these lawsuits also seek money for alleged meal and rest break violations and the failure to include all compensation (like certain bonuses and shift differentials) in the employees' regular rate of pay for purposes of calculating overtime.

The lawsuits request relief not only for the unpaid overtime compensation but also seek liquidated (double) damages, penalties under state law, and attorneys' fees and costs. Because these lawsuits can involve numerous employees, the damages can compound quickly.

Top 10 Steps You Should Take

We expect these class and collective actions to have a ripple effect across the mining industry and other similar sectors. Plaintiffs' attorneys often target companies in the same industry and those with comparable practices. Operators should take the following 10 steps now to reduce your risk and increase your chances of successfully defending such claims:

1. Review pay practices and policies for **off-the-clock work risks**, especially for positions requiring extensive PPE or jobsite travel.
2. Evaluate PPE **donning/doffing procedures** to determine whether the time involved is compensable.
3. Ensure **accurate timekeeping protocols** that allow employees to accurately record or otherwise report all compensable work activities.
4. Consider whether **technological innovations** could assist in capturing all working hours, such as electronic timekeeping methods, or practical methods such as placement of time clocks in areas that will help capture all working time.
5. Conduct **privileged compliance audits** with the assistance of your legal counsel focused on exposure under federal and state law tied to shift preparation, equipment handling, safety procedures, post-shift activities, and the inclusion of bonuses or other additional pay in the regular rate for purposes of calculating overtime.
6. Explain and enforce a **well-written policy** that requires employees to accurately report all time worked and that expressly prohibits unreported work.
7. **Train supervisors and HR personnel** on FLSA requirements, any applicable state or local wage laws, and company policies regarding proper timekeeping.
8. Train HR personnel or other payroll personnel regarding the **discretionary or non-discretionary nature of bonuses** or other additional pay and whether such pay should be included in the regular rate for purposes of calculating overtime.
9. **Discipline supervisors** who require or permit employees to work off the clock or otherwise fail to ensure their non-exempt employees are following company policy requiring them to accurately record all time worked.
10. Make sure you are **subscribed to Fisher Phillips' Insight System** to get the most up-to-date information on these and other important issues.

Conclusion

If you have any questions, contact the author of this Insight, your Fisher Phillips attorney, or any attorney on our [Mine Safety & Health Team](#) or [Wage and Hour Team](#).

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