Federal Appeals Court Makes It Easier For Workers To Advance Class Claims

Insights
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The 9th Circuit Court of Appeals has lowered the bar when it comes to the type of evidence plaintiffs need to present in order to have their claims certified as a class action. The federal appeals court panel ruled that courts are permitted to certify class actions based on evidence that is not even admissible at trial. The May 3 ruling will make it easier for class claimants to advance their claims against employers, and should spur employers and their defense counsel to adjust their litigation strategy accordingly.

Here are three things you need to know about the *Sali v. Corona Regional Medical Center* decision.

1. 1. 1. **The Evidence Supporting The Class Action Was Not Your Typical Evidence.**

Marilyn Sali and Deborah Spriggs used to work as Registered Nurses (RNs) for Corona Regional Medical Center. They allege their former employer did not comply with California wage and hour law and filed a lawsuit seeking to recover unpaid wages on behalf of themselves and an entire class worth of other current and former employees.

When someone files such a lawsuit, the court does not automatically grant them the right to proceed as a class action. Instead, the plaintiffs must present evidence sufficient to convince the court to certify the class. In federal class actions, the court requires them to prove at least four elements, including "typicality"—that the injuries allegedly inflicted by the employer are similar to the injuries of the putative class members.

In Sali's and Spriggs's case, their attorneys filed a sworn declaration from one of their own paralegals as evidence to support the typicality element. The paralegal said he reviewed time and payroll records to determine whether they were fully compensated under Corona's pay practices, including conducting a spot check of random timesheets, to conclude that each plaintiff was regularly undercompensated. He put his findings into an Excel spreadsheet and submitted these findings as evidence to support their claims.

Not surprisingly, the lower court rejected this evidence and denied class certification because the paralegal's declaration contained no evidence based on personal knowledge of the facts, offered improper opinion testimony, and was more akin to expert witness

of the facts, offered improper opinion testimony, and was more akin to expert witness testimony. The lower court judge also noted that the plaintiffs' submissions contained no sworn testimony from Sali or Spriggs. But in somewhat of a surprising decision, the 9th Circuit reversed the lower court's ruling and breathed new life into the class action proceeding.

2. **New Standard: Inadmissibility Alone Shouldn't Block Class Certification Proceedings.**

The 9th Circuit panel rejected the reasoning of the lower court and said that Sali and Spriggs should be able to proceed with their class certification process because the paralegal's "evidence" should not have been ignored. The appeals court said that it does not believe a "mini-trial" should take place at the class certification stage, and therefore lower courts should not apply "the formal strictures of trial to such an early stage of litigation."

After all, the appeals court said, the evidence a plaintiff might need to prove a class's case often lies in the possession of the employer, and the only way for a plaintiff to get their hands on it is through the discovery process—which can only take place properly after class certification. "Limiting class-certification-stage proof to admissible evidence," the appeals court said, "risks terminating actions before a putative class may gather crucial admissible evidence."

The appeals court set a new standard for lower courts throughout its jurisdiction: inadmissibility alone is not a proper basis to reject evidence submitted in support of class certification. Instead, lower courts can consider any material sufficient to form a reasonable judgment about the certification elements, regardless of its admissibility at trial.

2. **Employers Can Find A Few Silver Linings In The Decision.**

This is a difficult decision for employers to swallow, not only because it will make it easier for plaintiffs to survive class certification proceedings, but also because it might make it more likely that such lawsuits will be filed in the first place. However, there are four silver linings available to somewhat ease the pain:

- The appeals court acknowledged that the process for certifying a class still requires the trial court to "**conduct a rigorous analysis**" to determine certification status. Plaintiffs should not be able to stroll into court without having done some sufficient level of work and receive the OK from a trial court to proceed with a class action.
- The appeals court also said that lower courts need to **set <u>some</u> standards** when examining evidence submitted by plaintiffs. Although they should not dismiss evidence out of hand solely because of admissibility, they can consider "whether the plaintiff's proof is, or will likely lead to, admissible evidence." In fact, if expert testimony is submitted as

evidence, lower courts should still follow the familiar *Daubert* standards established by the Supreme Court.

- The appeals court reminded litigants that any certification ruling is **preliminary in nature**, meaning employers always have another bite at the apple to seek denial of class status should the plaintiff's evidence not pan out. The court cited to the language of the civil procedure rules, which specifically state that class certification orders "may be altered or amended before final judgment," and pointed out that any such orders are "inherently tentative" and "limited."
- Finally, **not all employers** will find themselves stuck under this new standard. The May 3 ruling only applies to employers in the 9th Circuit's jurisdiction (California, Washington, Nevada, Arizona, Oregon, Alaska, Hawaii, Idaho, and Montana), joining the 8th Circuit (covering Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota) as having previously ruled in such an expansive manner. Meanwhile, the appeals court specifically noted that the 5th Circuit disagrees with this position, meaning employers in Texas, Louisiana, and Mississippi have no such worries. Moreover, appeals courts for the 7th Circuit (which oversees federal courts in Illinois, Indiana, and Wisconsin) and 3rd Circuit (New Jersey, Pennsylvania, and Delaware) have suggested that a higher admissibility standard should be applied. If there's any good news about this patchwork of conflicting legal standards, it's that the May 3 decision might make it more likely that the Supreme Court will step in and resolve the matter—perhaps overruling the 9th Circuit.

Unless and until that happens, however, employers need to be prepared to defend against class certification proceedings knowing that this new standard makes it easier for employees to get their foot in the door. For more information about this decision and how it might impact your workplace, contact your Fisher Phillips attorney.

This Legal Alert provides an overview of a recent federal appeals court decision. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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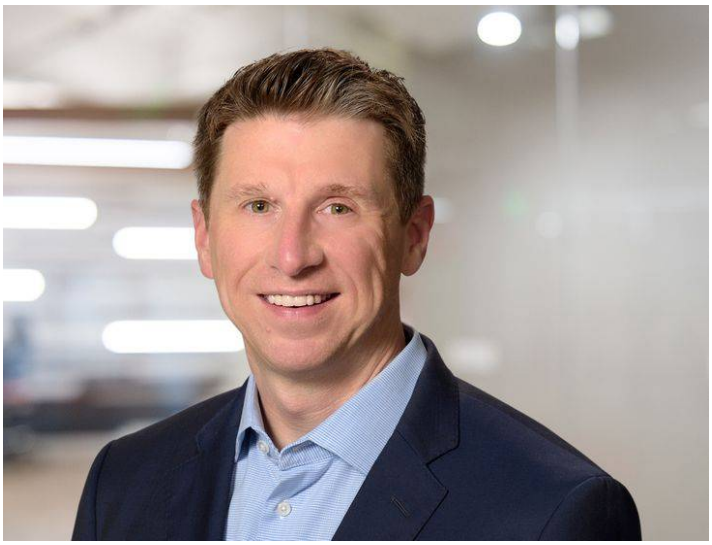

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