

Pharmaceutical Firms Hit with FLSA Class Action

By David Shadovitz

The pharmaceutical industry recently became the latest sector to come under attack for allegedly violating the Fair Labor Standards Act by misclassifying sales representatives.

In a type of suit some believe is likely to become more common, sales representatives are suing nine pharmaceutical companies for violating federal and state labor laws by failing to pay overtime wages.

The lawsuits were filed as class actions in state and federal courts in New York, New Jersey and California.

They charge that the companies unlawfully characterize the plaintiffs as "exempt" in order to deprive them of overtime pay.

Among the companies named in the suits are AstraZeneca, Pfizer, Johnson & Johnson, Amgen, Eli Lilly, Hoffman Laroche, GlaxoSmithKline, Bayer, Boehringer-Ingelheim and Merck.

"These workers are entitled to protection under federal and state overtime pay laws," says Eric Kingsley, a partner with Kingsley & Kingsley, a Los Angeles-based law firm representing plaintiffs in the case. "Our lawsuits allege that the corporations are trying to avoid paying overtime wages by providing fancy sounding titles like specialty health-care representative or professional health-care consultant to workers who are entitled to overtime pay under the law."

The plaintiffs are seeking back pay and punitive damages.

In press reports, the drug companies denied the allegations, saying they were without merit.

Thomas B. Lewis, an attorney with Stark & Stark in Princeton, N.J., suggests class-action suits targeting specific industries for violating the FLSA are going to become more common, since the act leaves a lot of questions unanswered.

Because most pharmaceutical sales-rep jobs are similar, there's little difference going after one employer or many employers, Lewis says. "It's the same job at Glaxo or Merck," he says.

Lewis describes the suits as the "tip of the iceberg," noting that similar ones have already occurred in industries such as banking, securities and mortgages. He notes other industries are prime targets for this type of class action in the future, including computers, high technology and the airlines.

In the end, he says, it's going to come down to whether or not the sales representatives are actually making sales.

Charles Joseph, a partner with Joseph & Herzfeld LLP, a New York-based law firm also representing the plaintiffs, says the pharmaceutical industry has undergone significant changes over the past 10 or 20 years.

"Years ago, pharmaceutical reps had more control over [their] schedules and lives ... and how they promoted drugs to doctors," Joseph says. "Now, that autonomy has been undermined and the demand on their time has become excessive."

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