

# archive

This article recently appeared in the *East Bay Business Times*, October 29, 2004.

## *Big settlements feed rush to sue firms*

by David A. Kadela

If you are a retail, restaurant or franchise executive who does not already have enough keeping you up at night, consider visiting [www.myclassactionlawsuit.com](http://www.myclassactionlawsuit.com).

Any hope of a good night's rest will be dashed by the site's open invitation:

"If you are a victim, you may deserve your settlement from a class-action lawsuit!"

This lure of easy money is making class-action lawsuits extremely popular. And, with no shortage of people who feel victimized by corporate America, the number of class-action cases will only grow along with executives' sleepless nights.

Class-action lawsuits can be an executive's worst legal nightmare. Typically, one angry employee, customer, shareholder or activist files a lawsuit. The plaintiff, or the party's attorneys, spread word of the suit, enticing others with the same complaint – real or imagined – to join in, hoping for a piece of the big settlement.

### **Hardest hit include restaurants**

During the past two years, the num-

ber of class-action suits – in particular, employment-related cases – has exploded, often resulting in astronomical settlements. Hardest hit are companies with large work forces in multiple locations, including chain retailers and restaurants.

Bigclassaction.com is another Web site that helps increasingly aggressive workers haul their current and former employers into class-action court.

Bigclassaction.com even allows visitors to send their accusations to plaintiffs' attorneys who eagerly seek new cases.

### **Driving the rush to sue**

Several factors are driving the rush to sue:

- Laid-off workers are retaliating against their employers, frequently alleging sex or age discrimination.
- Employees are more knowledgeable about their rights, the result of the media covering big cases.
- The Internet makes it easier for employees to find attorneys and classaction suits to join.

State labor codes also have become

more complex and diverse, making companies with multistate operations targets of plaintiffs' attorneys who uncover often inadvertent noncompliance with the codes' requirements.

Neglecting overtime pay obligations and altering pay records are still the leading causes of employment class-action suits. But a potentially darker cloud is on the legal horizon.

Increasingly, employees are filing class-action lawsuits over company employment practices and policies and violations of state labor codes.

Policies and practices on commissions, bonuses and vacations also are becoming class-action trouble spots. An example is a class-action suit that Integrated Health Services, a defunct nursing home company formerly headquartered in Sparks, Md., faces regarding vacation pay it allegedly withheld from employees.

The potential for even more problems is growing.

If a computer hacker accesses your employees' private information, a classaction lawsuit is bound to be

filed. And if sweeping changes to overtime rules proposed by the U.S. Labor Department are enacted, employers will need to understand and properly implement them, lest they face a federal collective action – the government’s version of a class action.

Employers can take several steps to reduce the likelihood of being hit with a class-action suit:

- Thoroughly review if employees treated as exempt from overtime pay requirements are properly classified, since classification problems are the leading cause of class actions.
- Audit employment policies to ensure they are complete and comply with all state and federal laws.
- Train employees – especially managers and supervisors – on employment policies and ensure that their participation in training is documented.
- Monitor changes in federal and state labor codes, update policies and retrain employees, as needed.

Even if a class-action suit is filed, an employer that has taken these steps will have a much greater likelihood of prevailing, ultimately spending much less on its defense. And everyone in management will have a better chance of getting a good night’s rest.