

RETAILERS FACE FLOOD OF CLASS ACTIONS RELATED TO "OFF THE CLOCK" WORK

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"Off the clock" work may prove costly, as retailers battle a flood of putative class actions based on claims that employees were not compensated for required work duties.

Recently, the parties in *Samantha Jones v. Abercrombie & Fitch Trading Co.* filed a joint motion seeking preliminary approval of a class action settlement for \$9.6 million. The plaintiffs alleged that the retailer failed to compensate them for time employees spent calling in to the stores. California law requires employers to pay the equivalent of at least two hours of work to employees who report to work. Class counsel argued the employees effectively reported to work when the retailer required the employees to call ahead of their scheduled shifts.

Abercrombie argued employees had no private right to bring their claims for reporting pay time claims under either PAGA or the Unfair Competition Law. Abercrombie also disputed class certification, on the grounds the employees' practice of calling in ahead of their scheduled shifts varied greatly from store to store.

The class includes 61,500 of the retailer's former and current employees. If approved, each class member will recover approximately \$130.

The proposed settlement comes as no surprise. Retailers such as Victoria's Secret and Pier1 settled similar claims for over \$12 million and \$3 million, respectively, and have thereafter abandoned call-in practices.

The Ninth Circuit is currently considering whether to reject similar putative class claims in *Herrera v. Zumiez, Inc.* Abercrombie filed an amicus brief in support of Zumiez to bolster management's argument that the employees were not owed reporting time pay because the time spent calling in to shifts does not qualify as reporting time under California wage and hour laws.

Recently, a California court recently declined to preliminarily approve a \$1.95 million settlement for Jamba Juice, requesting additional information on exactly what claims are being released. Plaintiffs alleged the company routinely required them to punch out during meal breaks but

continue working off-the-clock and use their personal vehicles to make bank deposits for the company.

A California federal court also granted class certification to current and former employees of H&M, who claimed the clothing chain failed to compensate workers for time spent in security checks. In its ruling, the court relied on the California Supreme Court's recent decision in *Troester v. Starbucks*, where the Court found the Federal Labor Standards Act de minimis standard didn't apply to the relevant state labor laws and wage orders, which "do not allow employers to require employees to routinely work for minutes off-the-clock without compensation."

A proposed nationwide class of hourly employees at Papa John's has also recently asked a California federal court to conditionally certify a lawsuit. The employees allege they were forced to complete mandatory off-the-clock training on the corporate website. The named plaintiffs allege violations of the federal Fair Labor Standards Act, as well as California and New York state laws.

In light of recent rulings and trends, employers should revisit their policies to determine whether their employees are performing any mandatory tasks "off-the-clock" to ensure their employees are compensated with all wages due.

For questions or more information, contact the author, [Traci Choi](#), or any member of our [Retail or Labor and Employment](#) teams.

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