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The following article is an adaptation of one written by the Director of Public Relations for the Alabama School Boards Association. It describes a growing wave of litigation over wage and hour claims. Although the litigation it discusses has been in Mississippi and Alabama, the issues it discusses may also be lurking for Virginia school boards.

Attorneys to Target State with Wage & Hour Claims

By Susan Rountree Salter

Plaintiffs attorneys who are expected to garner up to \$25 million from wage and hour claims against Mississippi school boards are taking their show on the road. . . The attorneys are believed to have begun advertising a toll-free number school employees can call if they think they have not received all the overtime pay they are entitled to. . .

“It’s a train that’s hard to stop once it gets going,” cautioned Jim Keith, an attorney with Adams & Reese, a Jackson firm, which has defended many Mississippi school boards against the claims over the last two years.

Although Alabama has had few such claims in the past against public or private employers, Keith and fellow Adams & Reese attorney David Watkins are advising school boards and their attorneys around the South to begin preparing for a barrage of claims . . . “Timing is everything. You may not hear anything for a while, and then all of a sudden, you have a bunch of cases filed,” Watkins said.

The genesis of Mississippi school boards’ troubles was a lawsuit filed about five years ago by a group of school secretaries who claimed they had not been paid for overtime they worked. Despite an earlier warning from the U.S. Department of Labor, the school system had not corrected its overtime practices, and the school board ultimately was ordered to pay the group close to \$600,000 in overtime claims, damages and attorneys’ fees, Watkins said. That decision almost bankrupted the

school board. It also led the plaintiffs’ lawyers to conclude school boards might just be easy pickings for these kinds of complaints, Watkins said. . . .

Courts Overwhelmed

Since the summer of 2000, the attorneys have filed lawsuits against 97 of Mississippi’s 152 school boards, representing an estimated 6,000 claims by current or former employees. The barrage overwhelmed the courts, Watkins said, noting that even if each claim could have been litigated in two hours, it would have taken the courts 1,500 trial days – or over six years – to handle them all.

“The strategy truly is to clog up the courts,” Watkins said. And it worked. “(The judges) were very disturbed at the sheer volume of this. There was tremendous pressure put on us to proceed with settlement conferences. They made no bones about it. They wanted these things settled.”

. . . To arrive at settlement figures, Watkins said judges suggested they would be looking for an amount at least equal to what it would cost the school board to try each claim, putting most in the \$4,000 to \$6,000 range. In addition, the school boards also had to pay payroll taxes on the portion of the settlement amounts that represented back pay, he said. By law, each settlement amount also included “liquidated damages,” which essentially are punitive damages, and the plaintiff’s attorney’s fees.

Bad Facts

In addition to judges' desire not to have to try the sheer volume of cases, many school boards had no choice but to settle because their poor, misleading and/or non-existent records left them virtually defenseless, Keith said. The Fair Labor Standards Act, which regulates employee overtime, requires employers to keep accurate records of the hours worked by employees eligible for overtime and puts the burden on the employer for proving the records are accurate. But, in many of the Mississippi cases, attorneys discovered that was a problem.

"Our records killed us," Keith said.

Watkins agreed, noting that some school systems produced timesheets showing employees arrived every day for years at 8 a.m. and left every day at 5 p.m. "Every human being knows you're not going to get there exactly 8 a.m. every day. It just doesn't work that way. The burden is on the employer to provide proper documentation. It's always the employee's word against your word, and if you can't meet that burden, you lose," said Watkins, who estimates about two-thirds of the 6,000 Mississippi claims involved shoddy record keeping.

A number of school boards also were hurt by employees' testimony that they were forced to sign inaccurate timesheets and that their principals or supervisors ordered them to work "as long as it took" to get the job done. One principal even put such an edict in a memo, which a janitor turned over to his lawyer, Watkins said.

In many such cases, Watkins said administrators are to blame for failing to manage employees, such as janitors, properly by ensuring they understood they could not take 60 hours a week to do a 40-hour job. "We just have had a massive failure of our administrators to properly manage our staff," he said. . . .

Still other Mississippi school boards' problems arose because they failed to recognize situations likely to cause wage and hour problems, such as employees who worked two or more jobs for the system . . . For employees subject to overtime, overtime pay begins when the employee hits a total of 40 hours in a workweek – not 40 hours in either job. But, in the case of bus drivers, some boards paid a flat fee for out-of-town trips, which violates FLSA's requirement that employees receive time-and-a-half for overtime. Or, boards calculated the anticipated overtime – at the time-and-a-half rate – into the salary for certain janitorial positions, but they failed to keep records of doing so. When claims were filed, the boards' attorneys were left to rely on employees' memories.

But Watkins insists that in most cases, the school boards erred on the side of trying to help their employees pick up extra cash, rather than trying to exploit them.

"Our school boards just missed it. They failed to change their practices" when FLSA was extended to cover public employees in 1988, he said.

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