



Tech Companies Fined \$116 Million for Exempt Pay Practices

BY RITA RISSE, ATTORNEY AT LAW

On November 23, 2006, IBM agreed to settle a class action suit for \$65 million. Nearly 32,000 current and former technical services professionals and information technology specialists throughout the United States alleged they were classified as exempt from overtime when they should have been nonexempt and compensated for overtime.

One of IBM's unsuccessful arguments was that this is standard practice in the industry, and in our experience it is. Plaintiff's attorneys LOVE wage cases because they are entitled to attorney's fees. We encourage every employer to review their policies for exempt and non-exempt employees immediately. To be properly exempt, employees must be executives, managers or high-level computer professionals who exercise independent judgment or creativity.

"These people were just following manuals to trouble-shoot computer problems," attorney James M.

Finberg said.

Siebel Systems, recently acquired by Oracle, settled a class-action suit by more than 800 workers earlier this month. The workers, who had job titles such as "software engineer" and "senior software engineer" will receive a total of \$27.5 million.

Last year, El Segundo-based Computer Sciences settled an overtime class-action suit by 30,000 employees for \$24 million.

What This Means To You:

Every tech company should immediately conduct an audit of its pay practices. Contact us for assistance at **800-458-2778**.



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Ask the Lawyers

- *Can we fire minister for lying on her application?*
- *Are "friendly" text messages from boss a problem?*
- *Can we fire fantastic employee for taking earned time off?*
- *How can we keep fired employee from coming back to facility?*
- *Can we fire a pregnant employee who goes AWOL?*
- *Does company have to pay for meetings during lunch?*
- *Can we fire employee in alcohol sales who enters rehab?*
- *When must an employee bring a doctor's note?*
- *Can we require employees to store their medications in the office?*

Get the answers to these and other questions at www.FairMeasures.com/ask/default.asp

Big Money*



\$12.9 million awarded to temporary dockworkers for wage and hour violations.

\$12.8 million class action settlement against Wells Fargo for improperly exempting employees from overtime pay.

\$10 million agreed to be paid by Cross Country healthcare staffing services provider for wage and hour violations.

About \$1 million to be paid by a tool and die company for refusing to hire women and blacks in entry-level laborer positions.

\$5 million class action settlement against Woodward Governor for discrimination against minorities and women in pay, promotion and training.

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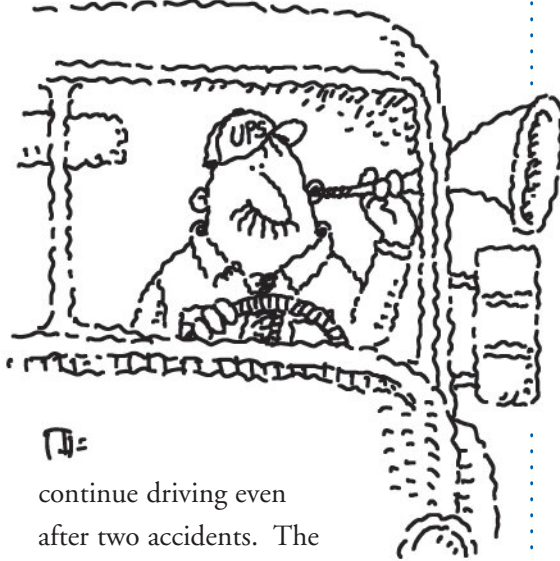
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Court Requires UPS to Hire Deaf Drivers

The Ninth Circuit Court of Appeals has ordered UPS to stop refusing to hire deaf persons as drivers.

UPS claimed it did so for safety reasons, but the Court held the company did not provide any credible evidence that deaf drivers have worse safety records than hearing drivers. UPS also pointed out that the Department of Transportation prohibits deaf drivers of large vehicles, but the Court noted the DOT regulation does not apply to vehicles the size of UPS trucks. The Court observed that UPS tolerated accidents by its hearing drivers, who were allowed to



continue driving even after two accidents. The Court said if particular deaf drivers proved to be unable to drive safely during their training or once on the road, the company was free to remove them from driving.

Bates v. UPS (9th Cir 10/10/2006)

What This Means to You:

Any time a company or hiring manager uses a blanket policy to exclude any group, on its face it is

illegal. Rather than looking at applicants by group, evaluate them based on their individual abilities.

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Managers Required to Stop Harassment from Outsiders

Managers sometimes feel helpless when their subordinates are harassed by outsiders such as customers or vendors.

What can the manager do to stop the harassment? A recent Court of Appeals case affirms that managers must take "all steps necessary" to prevent the harassment.

Although the particular case involved a woman corrections officer who was being harassed by prison inmates, the same principles apply no matter who is the harasser.

Employers are liable for the acts of non-employees when they "know or should have known of the conduct" and fail to "take immediate and appropriate corrective action." The court noted that "[t]his theory of liability is grounded not in the harassing act itself - i.e., inmate misconduct - but rather in the employer's 'negligence and ratification' of the harassment through its failure to take

appropriate and reasonable responsive action."

Freitag v. Ayers (9th Cir 09/13/2006)

What You Should Do:

If outsiders harass your employees, you can start by verbally warning them (and documenting it for your records). If that doesn't work, they should be banned from the premises.



Background Checks Prevent Discrimination

A new study in the current issue of the Journal of Law and Economics finds that employers who perform criminal background checks end up hiring more black workers – especially black men. Employers who systematically check criminal background during the hiring process are 8.4 percentage points more likely to have hired a black applicant into their most recently filled position.

"The results are consistent with the proposition that in the absence of a criminal background check, employers use race to infer past criminal activity, especially employers with a strong stated aversion to hiring ex-offenders," write Harry J. Holzer (Georgetown Public Policy Institute), Steven Raphael (University of California, Berkeley), and Michael A.



Stoll (University of California, Los Angeles).

Using a multi-city survey of more than 3,000 establishments in Atlanta, Boston, Detroit, and Los Angeles, the researchers found that the employers who are most averse to hiring ex-offenders were also the most likely to statistically discriminate. Those who perform criminal background checks are more likely to hire black applicants than those who do not, even when adjusting for proximity to black residential neighborhoods and proportion of black applicants.

<http://www.emaxhealth.com/38/8363.html>

What This Means to You:

Employers should do background checks on all employees – not just criminal records, but also checking past employers, education, and references. It not only prevents discrimination, but also stops you from making costly hiring mistakes.

Fair Measures specializes in training executives, managers, human resources professionals and individual contributors in practices that prevent costly employee lawsuits, and create respectful workplaces for all employees. Since 1982, we have trained over 50,000 managers and employees at over 250 of the most respected corporations in America.



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