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# California Supreme Court Approves Certification Of Statewide Class In Overtime Class Action

## WHAT HAPPENED?

On August 26, 2004, the Supreme Court of California upheld a statewide class of Sav-On Drug Stores employees in an overtime class action. *Sav-On Drug Stores, Inc. v. Superior Court*, No. S106718 (Cal. August 26, 2004) (available at <http://www.courtinfo.ca.gov/opinions/documents/S106718.PDF>). This was a case being watched closely by labor and employment attorneys and will allow plaintiffs' lawyers to target your company for wage and hour violations occurring in California.

## WHAT DID SAV-ON DO WRONG?

The plaintiffs alleged that Sav-On misclassified operating managers and assistant managers as exempt from California's overtime laws and failed to pay them overtime wages. Plaintiffs presented evidence that Sav-On classified operating and assistant managers as exempt from overtime rules without any regard to what duties they actually performed. It was also established that Sav-On categorically reclassified all of its assistant managers from exempt (not entitled to overtime) to nonexempt (entitled to overtime) in December 1999, without changing their job descriptions or their duties. *Id.* at 6-7. Sav-On argued against class certification on the ground that liability for overtime would require individual computations of how long each class member actually spent working on exempt and nonexempt tasks. *Id.* at 8-9.

After considering all of the admissible evidence, the trial court decided that common issues of law and fact predominated and "the class action proceeding is superior to alternate means for a fair and efficient adjudication of the litigation." *Id.* at 13. As a result, the trial court certified a plaintiffs' class of:

All current and former salaried operating managers and current and former assistant managers employed by defendant in California at any time between April 3, 1996 and June 22, 2001, inclusive.

*Id.* at 4. The class was estimated to have between 600 and 1400 members. *Id.*

The Court of Appeals reversed the trial court's certification of a class because "with so many stores and managers operating under different conditions, plaintiffs failed to sustain their burden to show that common issues predominate over individual issues." *Sav-On Drug Stores, Inc. v. Superior Court*, 118 Cal. Rptr. 2d 792, 800 (Cal. App. 2002).

However, noting that the only question on appeal was whether the trial court abused its discretion, the Supreme Court reversed the Court of Appeal and held that:

A reasonable court could conclude that issues respecting the proper legal classification of ['assistant managers'] and ['operating managers'] actual activities, along with issues respecting defendant's policies and practices and issues respecting operational standardization, are likely to predominate in a class proceeding over any individualized calculations of actual overtime hours that might ultimately prove necessary.

*Slip op.* at 12 (citation omitted).

## WHAT SHOULD YOU DO TO PROTECT YOUR COMPANY?

The California Supreme Court's decision in *Sav-On* will pave the way for other trial courts inclined to certify classes in future wage and hour cases. There are, however, steps that employers can take to better protect themselves from wage and hour claims. For example, employers should consider having a wage and hour audit to determine what proportion of the duties for various job descriptions fall into exempt categories, and requesting periodic audit reviews. Furthermore, employers can formulate policies and conduct training with a view toward assuring that exempt employees perform predominantly exempt work.