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Cleveland To Pay \$2M To Workers Who Faulted Its Timekeeping

By **Vin Gurrieri**

Law360, New York (June 04, 2014, 3:43 PM ET) -- The city of Cleveland on Tuesday agreed to pay \$2.2 million to nearly 4,000 municipal workers who alleged that the city's policy of rounding their starting and stopping times deprived them of wages in violation of the Fair Labor Standards Act.

The settlement, which ends a suit filed in November by named plaintiff Cheryl Armbruster, will cover all payment obligations for unpaid work time as well as attorneys' fees and costs. The city in March also eliminated its policy of rounding the clock-in and clock-out times of workers to intervals that didn't credit them for all time worked, according to a joint motion for settlement approval.

"If forced to litigate this case further, the parties would certainly engage in complex, costly, and protracted wrangling," the motion said. "The settlement, on the other hand, provides substantial relief to [the class members] promptly and efficiently, and amplifies the benefits of that relief through the economies of class resolution."

Armbruster, an employee of Cleveland's Department of Public Safety since 2001, brought the suit on behalf of anyone who worked for the city of Cleveland as an hourly, nonexempt employee subject to the city's rounding policy.

Armbruster's suit had alleged that the city's practice and policy of rounding the starting and stopping times of its nonexempt employees violated the FLSA as well as the Ohio Minimum Fair Wage Standards Act because it required that the city always round workers' starting and stopping times against them. This meant that workers who clocked in early, worked late or returned late from unpaid lunch breaks were not compensated for all the time they worked, according to the suit.

The settlement class encompasses approximately 3,746 current and former employees who were paid and were denied overtime pay due to this policy between January 1, 2011 and March 3, 2014 — the date the city modified its timekeeping practices.

All payments to individual class members under the settlement will be calculated proportionally based on each individual's overtime damages resulting from the defunct policy over an approximately two-and-a-half year period, according to the settlement.

The parties had disagreed over whether a two-year limitations period applied to Armbruster's claims for nonwillful wage law violations or whether a three-year limitations period for willful violations was more appropriate. The settlement splits the difference between the two periods — recovering about 124 percent of the class members' denied wages over the two-year period and about 84 percent when calculated under the three-year period, according to court documents.

The city had maintained substantially the same policy since 1991, but it amended its timekeeping practices in March to eliminate the rounding policy and require that all hourly employees be paid according to their actual time clocked without any rounding rules, according to court documents.

Counsel for the plaintiffs Anthony Lazzaro and Chris DeVito each noted Wednesday that the settlement is fair for the class members considering the complexity of the case. They lauded the the city and its outside counsel for its proactive approach to reviewing of the disputed policy.

"The city did the right thing making the change [to the policy] immediately and working with the plaintiffs to resolve the case," Lazzaro said.

DeVito added that the plaintiffs "are grateful the city along with its outside counsel revised its policy [since] that was always the plan,"

"They get high marks for professionalism in their review of the policy," he said.

Attorneys for the city were not immediately available for comment Wednesday.

The class is represented by Anthony J. Lazzaro and Sonia M. Gassan of The Lazzaro Law Firm LLC as well as Christopher M. DeVito of Morganstern MacAdams & DeVito Co. LPA.

The city of Cleveland is represented by Robert M. Wolff and Inna Shelley of Littler Mendelson PC.

The case is Cheryl Armbruster et al. v. City of Cleveland., case number 1:13-cv-2626, in the United States District Court for the Northern District of Ohio.

--Editing by Kat Laskowski.

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