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Sutherland faces another overtime suit

By: Will Astor ◉ February 10, 2017

Some five years after Sutherland Global Services Inc. agreed to pay \$4 million to 1,800 workers to settle a claim that the company had wrongly withheld overtime pay, the Perinton-based outsourcing firm faces a new lawsuit alleging similar violations.

Like the previous employment action, the new case, filed Jan. 18 in U.S. District Court in Rochester, accuses Sutherland of skirting the Fair Labor Standard Act's and the New York Labor Law's overtime-pay provision.

Both the federal and state laws each call for employers to pay hourly workers 1 1/2 times their regular rate for hours worked over 40 in any given week.

Plaintiffs in the previously settled class action accused Sutherland of skirting the FLSA by altering employee sheets and not factoring overtime rates into commissions and bonuses earned during overtime stints.

Sutherland settled on the condition that it would not have to admit to violating overtime laws.

The new case accuses the firm of skirting overtime-pay rules by routinely requiring hourly employees to perform essential duties before they clock in.

Sutherland officials did not respond to a request for comment.

Filed by Cordello Law PLLC, a Rochester employment-law boutique firm, and the Lazzaro Law Firm LLC of the case seeks certification as class action and a collective action.

Both types of lawsuits are designed to give large numbers of plaintiffs with similar, small-money beefs the opportunity to band together to press claims that would not be worth pursuing as individuals.

In collective actions, plaintiffs have to opt-in to the complaint to collect whatever share of damages won that is coming to them. Any potential plaintiff whose situation fits into a class-action complaint is eligible to opt out unless they opt out.

The case's lead plaintiff, Sarah Allen, worked for Sutherland in a Syracuse call center as a customer service representative and a sales representative for five years from 2010 to 2015.

Other hourly workers who currently work for Sutherland or previously worked for the company in those call centers within the past three years, are potential plaintiffs, the court complaint states.

According to the court action, Sutherland routinely requires such workers to put in extra time booting up their computers and signing on to various programs before they can clock in.

For lead plaintiff Allen, the allegedly unpaid extra time added "approximately 15-20 minutes when (Sutherland) computers were working properly or longer when computer systems were slow or not working," the court claims.

The complaint asks the court to order Sutherland to pay all affected workers for the allegedly unpaid hour of overtime they put in, to effectively double those payments by adding an equal amount in liquidated damages and add interest.

Individual plaintiffs' claims could be small, the filing acknowledges. However, it states, the number of potential plaintiffs, a group that would include most if not all of Sutherland's U.S. call-center workers, could be very

Sutherland is a call center operator and business-process outsourcing firm with extensive U.S. and international operations. An employer of 2,438 locally, it ranked 11th on the RBJ 75 list of the region's largest private e

In addition to three Rochester area locations, its U.S. operations include facilities in Syracuse, New York and other states. The company also fields operations in 18 other countries, employing 38,000 globally.

If the new lawsuit ends with a payoff for workers, it could be a long time coming. Finalized in October 2011, a \$20 million settlement in the previous FLSA overtime claim was reached six years after the complaint's initial filing in June 2005.

In addition to double damages plus interest, the new case asks for Sutherland to bear the plaintiffs' legal costs. Plaintiffs in the 2005 case also asked for Sutherland to pay their legal costs.

The agreement that finally wrapped up the case in 2011 called for the \$4 million award to cover the plaintiffs' million attorney fee.

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