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April 1, 2014

**HEADS UP!**

**EMPLOYEE CLASS ACTIONS: BIGGEST THREAT TO EMPLOYERS ?**

The recent explosion of class action lawsuits initiated by employees against their employers now represents the most serious threat facing California employers, according to commentators.

A class action lawsuit involves the same or similar claims brought by several employees against the employer. Traditional employment litigation is devoted to the claims of one employee.

Class actions present the employer with the prospect of a monetary award several times that of a single claim, simply by virtue of the increased number of claimants. However, what is often overlooked is the fact that, because the defense of such cases requires many times the legal work of a single claim, the employer's defense costs can be expected to sky-rocket commensurately.

This feature is also true of the attorneys prosecuting the class action against the employer. This becomes a "detail" of tremendous significance once it is understood that these cases typically entitle the "prevailing party" to an award of attorneys' fees required to prosecute the action. Employees are deemed the "prevailing party" even if the award is nominal. A resulting award of attorneys' fees is based on the time expended by the prevailing party's legal counsel, not the amount (or lack thereof) of the award. As a result, it is not uncommon for an award of attorneys' fees to dwarf the underlying judgment.

If this weren't bad enough, one pernicious dynamic is in play in class actions that is not generally recognized. That is, the initiation of a class action lawsuit by employees will quickly infuse the entire workforce with the anticipation, if not hope, of a future "windfall" at the employer's expense. This can have the unfortunate effect of uniting the workforce, generally (as the hopeful beneficiaries), against the employer.

Employers have good reason to be alarmed at this development, which could make it very difficult or impossible to find witnesses willing to assist in the employer's defense. Since employment cases often depend exclusively on the employer's workforce for witnesses with knowledge of pertinent events, the unavailability of employees for this purpose could quickly transform the task of the employer's counsel from "difficult" to "insurmountable."

It is now estimated that between five and ten class actions are filed in California every day.

**Now, the good news.** California courts have recently held that properly-drafted employment policies can provide employers with potent protection against class action claims.

One final note: The courts evaluate the enforceability of employee handbooks according to the formal rules of contract interpretation. Thus, employers are encouraged to enlist labor law counsel to promptly update employee handbooks, arbitration policies and related documents with necessary amendments in order to take advantage of this important development.

As for employee handbook software currently available on the market, the author has two precautionary comments: 1) Read the fine print, whereby legal sufficiency is typically disclaimed by the vendor, and 2) you get what you pay for.

Given the enormous stakes and the central role handbooks play in employment cases, another adage comes to mind: "Anything that's worth doing is worth doing well."