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Companies face more overtime lawsuits

By Stephanie Armour, USA TODAY

As companies try to squeeze more work out of fewer employees, they're facing a backlash: lawsuits forcing them to pay back wages for unpaid overtime.

Last fiscal year, the government collected nearly \$143 million in back wages for violations of the Fair Labor Standards Act, which requires employees to be paid overtime. That's a 29% jump over the \$111 million collected the previous year, statistics released Wednesday by the Department of Labor show.

Compensation experts say confusion about how to classify employees is adding to the overtime problem. Most of the government rules on who gets overtime hark back to the 1940s, and federal officials say there are plans to revise those classifications. Proposed revisions could be ready in early 2003 — a major and potentially contentious undertaking.

"Overtime cases have become much more prevalent," says Tammy McCutchen, administrator of the Labor Department's wage-and-hour division. "Part of the reason is because, when the economy is in a recession, more employees complain because people lose jobs."

Under the Fair Labor Standards Act, employers are generally required to pay workers time-and-one-half their regular rate of pay for hours worked over 40 per week. The problem: determining who is exempt from that rule.

Executive, administrative and professional employees are generally exempt, but determining who fits into that classification is tricky because government descriptions of job duties haven't changed since 1949. Legal experts say the descriptions adopted in the industrial economy are archaic.

Typically, a worker must also earn a minimum annual salary of about \$8,000 to be exempt. Salaried workers aren't always exempt. Employers might mistakenly fail to pay overtime because they assume an employee is exempt, while others might purposely cheat workers.

Employers such as Starbucks, Wal-Mart and Radio Shack have faced

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litigation. Other cases:

- In a class-action lawsuit, a jury ruled last year that Los Angeles-based Farmers Insurance Exchange must pay \$90 million to settle claims from more than 2,000 adjusters who said they had been entitled to overtime. Company officials say the case is being appealed.
- Since May, the government has brought three lawsuits against poultry processors for alleged overtime violations. The Labor Department says workers were not paid overtime for time spent changing clothes.

The latest case was filed last month against George's Processing, a subsidiary of George's, based in Springdale, Ark. George's did not return calls.

- This year, Starbucks agreed to pay up to \$18 million to settle overtime claims alleging that California managers and assistant managers were not paid overtime.

"This is an extremely significant issue for employers," says Michael Lotito, a San Francisco-based employment lawyer with Jackson Lewis. "There is so much activity in this area because the litigation lends itself to class-action lawsuits with large damages. Plaintiffs' lawyers are willing to put time and energy into this."



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