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### **Labor and Employment Alert: Kentucky Supreme Court Rules That Wage-Hour Class Actions Are Permitted Under State Law**

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The Kentucky Supreme Court recently held that Kentucky's wage-hour law (Kentucky Revised Statutes §337.385) permits class actions for unpaid wages and overtime. This is the first time that class actions have been permitted in this context. The Court's ruling in *McCann v. Sullivan University Systems, Inc.*, magnifies the potential liability for Kentucky employers and reinforces the importance of wage-hour compliance.

After Sullivan University terminated Mary McCann, she filed a class action and collective action under both the Federal Fair Labor Standards Act (FLSA) and Kentucky wage-hour law claiming that she had been misclassified as an exempt employee and denied overtime. McCann settled her federal FLSA claims, but then continued her class claims under Kentucky law.

When she moved to certify a class, the state trial court and then appellate court denied the motion on purely legal grounds. Kentucky law provides that an action to address unpaid minimum wage and overtime violations "may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself, herself, or themselves." This could be interpreted to mean that an employee can maintain her own action or two or more employees could maintain an action for and in behalf of themselves alone, but not on behalf of a class of employees. Construing the statutory language in this manner, both courts concluded that class actions may not be brought under Kentucky's wage-hour law for failure to pay unpaid wages or overtime. McCann appealed to the Kentucky Supreme Court, which reversed the lower courts and held that Kentucky law does indeed permit class actions for violation of its minimum wage and overtime laws.

The Supreme Court agreed that "the actual words used in the statute do not expressly permit the use of a class action, nor do those words explicitly prohibit its use." But, according to the Court, "a statute need not contain specific language authorizing the use of a class action precisely because our Rules of Civil Procedure perform that function." Because the Supreme Court has the authority to determine the

procedures used in the state courts, it can determine whether a class action procedure can be used unless the legislature decides otherwise. If the legislature desires to prohibit class actions for wage-hour violations, it may do so “by creating a special statutory proceeding that provides for a comprehensive, wholly self-contained process that prescribes each procedural detail of that cause of action.” The court held that no such special statutory proceeding existed under the wage-hour act – therefore, class actions are permitted to enforce rights under the act.

Employers in Kentucky should take note of the court’s decision. Employees can now bring a class action to enforce Kentucky wage-hour law, whereas they previously had been limited to pursuing claims under the FLSA. Given that class actions require class members to affirmatively opt-out of the lawsuit, class actions generally increase potential exposure more than the FLSA, which requires class members to affirmatively join the lawsuit. Further, the FLSA has a two- or three-year statute of limitations. Kentucky law provides for a five year statute of limitations for unpaid wages and overtime. Contact your Vorys lawyer if you have questions about Kentucky wage-hour law or about wage-hour compliance in general.