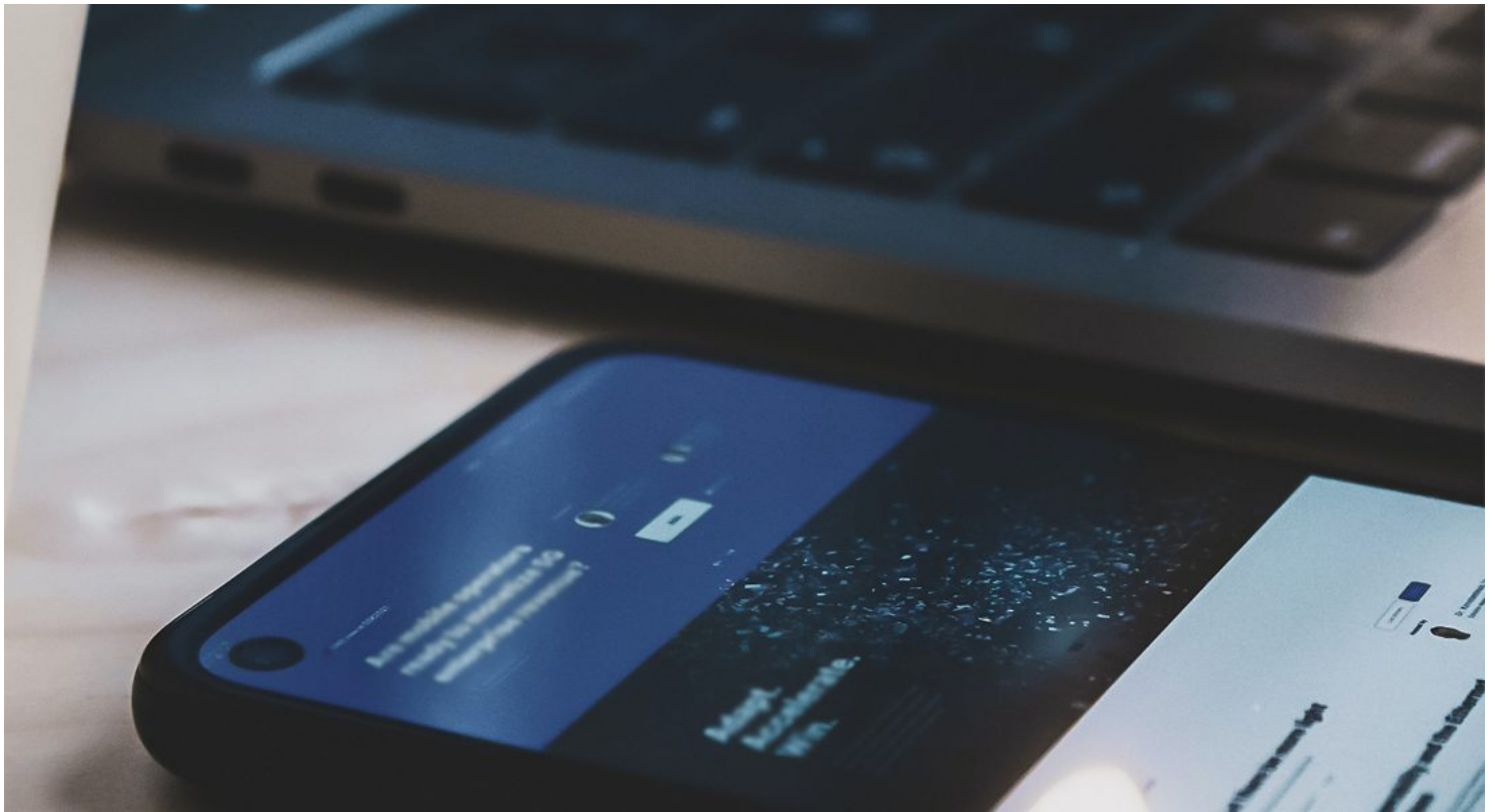


NEWS & INSIGHTS

Beware of Regular Rate Issues and Commissioned Employees

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On July 12, 2018, in the matter of *Johnson v. Cincinnati Bell Inc., et al.*, a U.S. District Court in Ohio certified a class of non-exempt commissioned sales representatives pursuant to § 216(b) of the Fair Labor Standards Act (FLSA). The class members allege that their employer, a telecommunications company, failed to properly include their commissions in calculating their overtime rates of pay.

The class members are compensated via a fixed weekly or hourly rate and additional monthly commission payments. The commission payments are paid to the class members in the final pay period of the month following the month in which the commissions were earned. The FLSA dictates that such commission payments must be

included in an employee's "regular rate" calculation before the addition of overtime multipliers. However, the class members allege that the employer improperly calculated their regular rates by failing to include these commission payments.

The *Cincinnati Bell* case serves as an important reminder of: (1) the need to properly calculate employee overtime under the FLSA (and the Pennsylvania Wage Payment and Collection Law) and (2) the relative ease with which a minor payroll error involving one or two employees can serve as the genesis for a class-action lawsuit resulting in an employer expending significant resources to defend. Employers who proactively communicate with their legal counsel over wage and hour issues, no matter how minor, will cost-effectively reduce or eliminate their risk of litigation.

If you have any questions regarding a wage payment or calculation matter, please do not hesitate to contact [Rick Hackman](#) or [Stephen Fleury](#) at [Saxton & Stump](#).

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