



What's New in HR Law

Starbucks Class Action a *Timely* Reminder that Managers may be Entitled to Overtime Pay

March 22, 2021

Bottom Line

In Ontario, managerial/supervisory employees, among others, are exempt from the overtime provisions of the *Employment Standards Act, 2000* (“ESA”). However, an employee’s job title and/or the terms of their employment contract have little, if anything, to do with entitlement to overtime pay. Instead, overtime pay exemptions are tied to the duties actually performed by an employee. In practice, this makes it difficult to discern exactly when the managerial/supervisory exemption is engaged. This is particularly true in workplace settings where managers are themselves actively engaged in the operational activities. The Ontario Superior Court of Justice may soon grapple with the question of overtime eligibility for managers at Starbucks Coffee Canada Inc. if the class action proposed in *Trevor Hopman v Starbucks Coffee Canada Inc.* is certified.

This update is for general discussion purposes and does not constitute legal advice or an opinion.

Filion Wakely Thorup Angeletti LLP www.filion.on.ca

Toronto

Bay Adelaide Centre
333 Bay Street, Suite 2500, PO Box 44
Toronto, Ontario M5H 2R2
tel 416.408.3221 | fax 416.408.4814
toronto@filion.on.ca

London

620A Richmond Street, 2nd Floor
London, Ontario N6A 5J9
tel 519.433.7270 | fax 519.433.4453
london@filion.on.ca

Hamilton

1 King Street West, Suite 1201, Box 57030
Hamilton, Ontario L8P 4W9
tel 905.526.8904 | fax 905.577.0805
hamilton@filion.on.ca

Background Facts

On August 7, 2020, a former Starbucks manager, Trevor Hopman, filed a Statement of Claim against Starbucks Canada under the *Class Proceedings Act*. The claim alleges, *inter alia*, that Starbucks Canada required him and other Store Managers to work in excess of 44 hours per week without compensation at the overtime rate, in violation of the overtime provisions of the *ESA*. Mr. Hopman, the representative plaintiff for the proposed class action, worked as a Store Manager for Starbucks Canada from 2010 to 2017. Hopman alleges that, in addition to the supervisory and managerial duties he performed, he was frequently required to perform non-managerial tasks such as making drinks, cleaning, serving customers, and working cash. In doing so, Hopman alleges that he regularly worked between 50 and 80 hours per week and was not compensated with overtime pay.

Overtime Pay in Ontario

In Ontario, managers will only be exempt from overtime pay requirements if they: (i) perform managerial or supervisory duties; and (ii) refrain from performing non-managerial or non-supervisory work, except on an irregular or exceptional basis. If a manager regularly performs non-managerial tasks, such as serving customers, stocking shelves, or working a cash register, the manager will likely be entitled to overtime pay, regardless of their job title, the terms of their employment contract, or whether they are compensated on an hourly or salaried basis.

The Claim

The claim, which will require court certification to proceed as a class action, alleges that the proposed Class Members are “working managers” who regularly work alongside the individuals they supervise. The Statement of Claim alleges that Class Members were misclassified by Starbucks Canada as exempt from overtime and, therefore, Starbucks Canada acted in violation of the *ESA* by its failure to pay overtime pay for hours worked in excess of 44 hours per week. The claim seeks \$50 million in general damages and \$10 million in punitive damages on behalf of the Class Members.

Check the Box

The proposed class action serves as an important reminder to employers of the potential risks associated with misclassifying managers who regularly perform non-managerial or non-supervisory tasks. Employers should regularly review and evaluate the type of work their managerial staff performs to ensure that any overtime exemptions have been properly applied.

Need more information?

For assistance conducting an *ESA* compliance audit in your workplace, representation in employment standards litigation, or for more information about overtime entitlements generally, please contact [Emily La Mantia](#) or your regular lawyer at the firm.

This update is for general discussion purposes and does not constitute legal advice or an opinion.

Filion Wakely Thorup Angeletti LLP gratefully acknowledges Charles Muriithi, an articling student with the firm, for his assistance authoring this update.



Toronto

Bay Adelaide Centre
333 Bay Street, Suite 2500,
PO Box 44
Toronto, Ontario M5H 2R2
tel: 416.408.3221
fax: 416.408.4814
toronto@filion.on.ca

London

620A Richmond Street, 2nd Floor
London, Ontario N6A 5J9
tel: 519.433.7270
fax: 519.433.4453
london@filion.on.ca

Hamilton

1 King Street West, Suite 1201
Box 57030
Hamilton, Ontario L8P 4W9
tel: 905.526.8904
fax: 905.577.0805
hamilton@filion.on.ca

This update is for general discussion purposes and does not constitute legal advice or an opinion.