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Court greenlights employee class action lawsuit against Natural Grocers

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Grocery basket with products

Nodar Chernishev

A federal court has granted preliminary approval to a class action lawsuit against Lakewood-based Natural Grocers on behalf of assistant store managers alleging the company improperly exempted them from overtime pay.

Natural Grocers operates more than 150 stores in 20 states, with over 3,000 employees total. The class action suit seeks to represent all assistant managers from Jan. 31, 2017 to the present who did not receive compensation for overtime work.

Plaintiff Michael Levine was an assistant manager in Highlands Ranch for approximately one year between 2018 and 2019, and said he worked on average 50 to 55 hours per week.

“I had to work these hours in order to complete my job duties, help customers, and satisfy Natural Grocers’ business needs. This was a routine and necessary part of my position as an ASM,” Levine wrote in a declaration to the court. He added that his salary was \$47,500.

According to his federal complaint, Natural Grocers assigned assistant managers similar duties as hourly, non-exempt employees. Five other people who worked as assistant store managers joined in the legal action, alleging similar treatment. Declarations from assistant managers in Colorado, Washington, Idaho, North Dakota and Missouri indicated that the hierarchy from store to store "did not vary significantly."

“The performance of manual and/or clerical labor occupied the majority of the working hours of Plaintiff,” court documents stated. “The work performed by Plaintiff and the members of the ASM Class and ASM Collective constitutes compensable work time under the FLSA.”

The Fair Labor Standards Act generally requires employers to provide one-and-one-half times the rate of pay for overtime work. Executive, administration and professional employees who are salaried are exempt from the overtime mandate. The U.S. Department of Labor notes that the “ultimate burden” of applying an exemption to that rule lies with the employer.

Natural Grocers argued that the tasks of assistant managers were not consistent from person to person, and in some stores the assistant manager was “frequently” the highest-ranking employee on duty. As such, a class action suit covering all such workers was inappropriate.

“The evidence shows that their duties widely varied depending on a host of factors, such as length of time on the job, rapport with and level of delegation by the Store Manager, level of skill, performance, ability to handle increased responsibility, store size and sales volume, and other factors. Collective or class-wide treatment of all ASMs with this varied record is simply untenable,” wrote Steven Gutierrez, an attorney representing the company.

U.S. Magistrate Scott T. Varholak, in giving preliminary certification to the class action suit, rejected Natural Grocers’ request that a notice posted to employees about the lawsuit should describe the “potential burdens of litigation.” Varholak believed such information could discourage assistant store managers from joining the litigation.

The magistrate's Nov. 6 order also cast aside the company's argument that the notice should not appear in stores. Varholak instead approved the posting of a legal notice in the employee-only section of Natural Grocers stores.

Jason Conway, a Philadelphia-based attorney representing Levine and the other plaintiffs, said he looks forward to sending notice of the class action suit to the approximately 440 assistant store managers nationwide.

"We have received no indication from the company that they have either reclassified the position to bring it into compliance with the Fair Labor Standards Act or have conducted any type of investigation to do that," Conway said.

The general counsel and vice president of Natural Grocers, Jonathan Dhillon, acknowledged the company did not have plans to change its protocols, arguing the existing classification of assistant managers does not run afoul of federal law.

"We're really highly focused on our crew and incenting them and rewarding them. We feel strongly that our current policies and classification practices are fair, they are correct and they comply with the law," he said.

Dhillon added that the magistrate had employed a more lenient standard in giving preliminary approval to the lawsuit as a class action, and stressed that the proceedings thus far were based on a relatively small number of plaintiff allegations that the company had not yet rebutted in full.

The case is *Levine v. Vitamin Cottage Natural Food Markets Inc.*

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