

Kroger sued for cheating on overtime, 'retail's dirty little secret'



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Key Points AI-assisted summary ⓘ

- Kroger has been sued more than 20 times since 2020 by managers who accuse the grocer of misclassifying them to avoid paying overtime.
- The company recently settled a collective action lawsuit involving 2,500 current and former assistant store managers.
- This practice, known as wage theft, is a widespread issue in the retail industry, with other major companies facing similar lawsuits.
- A recent study estimates that American workers lose \$4 billion a year due to being improperly classified as managers to avoid overtime pay.

Battling soaring costs and penny-pinching customers, Kroger has a management problem: It keeps getting sued by its own managers who accuse the nation's No. 2 grocer of cheating them on pay to save on expenses.

Earlier this year, the Cincinnati-based supermarket giant settled a massive lawsuit with 2,500 current and former assistant store managers that claimed the retailer gave them dubious promotions to avoid paying them thousands of hours of overtime pay. Kroger is also working to finalize settlements in two other lawsuits and other similar litigation is pending.

An Enquirer investigation reveals Kroger has been sued more than 20 times since 2020, repeatedly accused of exploiting its most dedicated, hardworking employees to keep costs low and maximize profits, including in its home state of Ohio. For this story, The Enquirer tracked ongoing litigation, reviewed hundreds of pages of legal documents, spoke with workers involved in the lawsuits and examined similar allegations against rival retailers.

Lawsuit: [Lawsuit: Kroger 'recklessly' used assistant managers to fill jobs without paying overtime](#)

Ohio man among six plaintiffs suing Kroger

Thomas Schell, 30, a former assistant store manager from Dayton, Ohio, felt Kroger manipulated his work ethic and his desire to move up and be a leader in the company. He

was promoted after three years of loyal service and thought he was paying his dues for a brighter future. Instead, he said he was tricked into providing free labor.

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“I was promised a step forward ... (they) made me feel undervalued, misled and unable to fully do the job I believed I had earned,” Schell said. Schell was one of six named plaintiffs in half a dozen federal cases that were combined together representing assistant store managers from across the country.

The workers accused Kroger of giving them titles with virtually no supervisory responsibility, then tasked them to unload trucks, stock shelves and mop floors for 50 or 60 hours a week with no overtime in violation of federal labor laws.

In court filings, Kroger attorneys have denied the grocer abused workers or violated federal labor laws. Kroger officials declined to comment on the pending litigation or recent settlement, but noted no judge has ruled they violated the law.

"Kroger has not been found to have misclassified anyone or engaged in any form of wrongdoing and has denied any unlawful or wrongful treatment," Kroger said in a statement to The Enquirer.

Wage theft costs American workers \$4 billion a year

Inappropriately making employees exempt from overtime is a form of wage theft, which is the [second-most common corporate workplace violation](#) of federal labor rules behind safety and health hazards, workplace experts told The Enquirer.

Court records show other retailers have been accused of using fancy or made-up managerial job descriptions to improperly classify large swaths of hourly workers as “managers” who are exempt from receiving overtime under federal law:

- [Walmart](#) has defended itself against two similar cases since 2020.
- [Costco](#) is currently defending itself against a similar claim in New York state.
- Schell’s attorney has been involved in overtime cases against [Target](#), [Giant Eagle](#), [Food Lion](#) and others. He also sued [Staples](#) for similar accusations when Interim Kroger CEO Ron Sargent was then the chief executive of the office supplies retailer.

“It’s retail’s dirty little secret,” [attorney Jason Conway](#) said. “This case tells us there’s a systemic problem in America where we have blatant abuse of employees ... Kroger built abuse of employees into their business model and it really needs to stop.”

[Lauren Cohen](#), a business administration professor at Harvard University, recently co-authored a [study on corporate use of bogus titles to cheat employees out of overtime pay](#), which estimated American workers were losing \$4 billion a year. He is not optimistic that companies will stop.

“It’s widespread across the country and many firms – they get caught and still keep doing it because it’s fruitful to take advantage of this,” Cohen said. “Getting sued is just the cost of doing business.”

One of Cohen’s co-authors on the study, [Umit Gurun](#), an accounting professor at the University of Texas at Dallas, stressed the impact on employees affected by these schemes was devastating: depriving them of thousands of dollars of income a year, upwards of 13% of the pay they were entitled to receive.

“It’s so unfair – you work hard for this money, you should be paid,” Gurun said.

Legislation to toughen overtime violations has been proposed

Kroger’s flap comes at a time when consumers and voters have become more cynical about major institutions, including major companies. President Donald Trump has made hay thumbing his nose at the pro-business wing of the Republican party, while many Democrats also believe they need to renew their efforts to court middle-class voters who are worried about rising costs and yes, their paychecks.

Former U.S. Sen. [Sherrod Brown](#), who is challenging Sen. [Jon Husted](#) next year in Ohio's Senate race, read Cohen and Gurun’s study in 2023 and proposed the [Restoring Overtime Pay Act](#) that year. He said such legislation is needed to protect workers.

“If you put in extra hours, you should get extra pay. I call on retailers like Walmart, Kroger, and Costco to pay back their workers the overtime they’ve rightfully earned,” Brown said.

For years, Kroger played up career opportunities

While Kroger lures shoppers with the slogan “Fresh for Everyone,” for years the grocer dangled the prospect of a bright future for employees with the pitch “Come for a job, stay for a career.”

The company also highlighted that most of its senior executives began their careers with the company bagging groceries and stocking shelves: Longtime CEO Rodney McMullen, who [resigned in March](#), famously [worked his way through college as a stockboy](#).

Schell, then in his early 20s, was thrilled in 2018 when he was first offered the assistant manager position after three years of hard work with the grocer.

“I was excited for the chance to take on new responsibilities and mentor workers. I jumped in headfirst,” Schell recalled. “I hoped it would be everything I dreamed ... but I became a glorified clerk for every department.”

Schell was paid a salary of \$49,000 a year and as part of the management team was exempt from receiving overtime. He worked an average of 50 to 60 hours a week, according to court documents. He was routinely scheduled for five 10-hour days with hour-long lunch breaks that were either interrupted or skipped altogether. During the COVID-19 outbreak, he once worked 27 hours straight.

But his role was bereft of typical management duties, such as hiring, firing, budgeting or training other workers. Instead, Schell said, he was mostly filling in as a line worker in store departments where the store was shorthanded.

“It was basically ‘What department is on fire today? And where do they want me to work?’” said Schell, who quit in December 2020. “I realized I didn’t want to be doing this.”

Schell received his part of the settlement this year. Financial terms were not disclosed. Schell, who now works in the IT department for an auto dealership company, said Kroger lost him as a dedicated employee.

“They need to treat workers like actual professionals, not just placeholders with fancy titles,” he said.

Kroger and its subsidiaries are the subject of multiple lawsuits

Court documents in multiple jurisdictions show that Kroger and its many banner subsidiaries are currently or have recently been accused of using bogus management jobs to cheat workers out of overtime pay since 2020:

- Subsidiary [Fry’s Food Stores](#) is being sued for allegedly misclassifying “e-commerce supervisors” as exempt from overtime in a lawsuit filed early this year in [U.S. District Court in Arizona](#). The plaintiff in the case said they don’t make management decisions, such as hiring or firing workers, but have worked 55 to 60 hours a week. In court documents, the company admits the management position exists but denies other allegations. Court records indicate the parties are finalizing a settlement.
- [Smith’s Food and Drug](#), another Kroger banner subsidiary, is being sued by an “assistant store manager” in a case filed last year in [U.S. District Court in Nevada](#). The plaintiff “regularly works” 60 hours a week and estimates 90% of his duties are “clerk work” and is “never compensated overtime,” according to court documents. In a response filed in

court, Kroger has admitted the plaintiff is considered an employee ineligible for overtime, but denies the worker's allegations. A settlement is pending, according to court records.

- Kroger's Chicago-based subsidiary [Mariano's](#) is currently being sued by a former "deli manager and hot foods manager" who worked "frequently more than 60 hours per week" and whose position "required little specialized skills, no capital investment, and did not include managerial responsibilities" in a case filed in 2020 in [U.S. District Court in Chicago](#). In a filed court response, the grocer denies it violated labor laws.
- In another lawsuit filed in 2020 against Mariano's, the grocer was accused by a former meat manager and a former bakery manager of misclassifying them as managers ineligible for overtime when their duties were mostly "waiting on customers, preparing, cooking" and "stocking shelves and displays, and cleaning." The company denied it abused the workers' rights in a court response. Court records show both pending Mariano cases have been combined with more than 100 workers as plaintiffs.
- Mariano's in Chicago has been a particular sore spot for Kroger regarding accusations of misclassifying workers as overtime-exempt managers. Between 2021 and 2022, the grocer was sued another dozen times by workers for alleged labor law violations, federal court records show.
- Kroger's Colorado subsidiary [King Soopers](#) was sued in 2021 by a "supervisor" who worked at the grocer's curbside "pick-up" section whose duties were "substantially identical to those of the associates" and "routinely" worked more than 55 hours a week. Kroger settled the lawsuit in 2023. Financial terms were not disclosed.

Overtime rules difficult to enforce

Legal experts say the [Fair Labor Standards Act of 1938](#), which created time-and-a-half pay for overtime nearly a century ago, is difficult to enforce. Companies have figured out how to slow down the process, getting workers to sign forced arbitration and class-action waivers, among other legal maneuvers.

Federal laws could be changed with tougher penalties for violations that might deter companies from wage theft, said [Jason Solomon](#), an attorney and the director of the National Institute for Workers' Rights a California think tank affiliated with trade group the [National Employment Lawyers Association](#). But right now, employers have too many ways to skirt the rules.

"It's way too easy for employers to get away with not paying workers," he said.

