

Collective Action Against Hotel Over Unpaid Overtime Is Authorized, With Modifications

Former housekeeper Kemper alleged hotelier Westbury Operating Corp.'s violation of Fair Labor Standards Act §207's overtime pay requirement. Kemper sought conditional authorization to proceed as a collective action under FLSA §216, as well as authorization to circulate a "notice of lawsuit and consent to join lawsuit" form to similarly situated individuals. Finding plaintiffs' similar situation demonstrated, the court granted Kemper's motion, with modifications. The complaint's allegations as to defendants' failure to pay overtime warranted authorizing notice for a three-year period rather than the act's general two-year statute of limitations. Addressing defendants' objections to the proposed notice, the court held that references to claims arising under New York law may help potential plaintiffs determine if they want to opt into suit or pursue claims in different forums. Further references to the websites of plaintiffs' counsel—and the information contained therein—fell well within the bounds of permissible attorney advertising. Noting plaintiffs' consent, the court ordered removal of an instruction referring potential plaintiffs to plaintiffs' counsel in the event of retaliation.



**Magistrate Judge
E. Thomas Boyle**
Eastern District

Kemper v. Westbury Operating, CV 12-0895 (Oct. 18)