

The Recorder
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Wage-and hour lawyers seem to be turning up the heat on the computer industry.

A lawsuit filed Tuesday against computer giant IBM Corp. for allegedly not paying overtime to tens of thousands of rank-and-file employees arrives on the heels of a series of suits making similar claims.

Filed in U.S. District Court for the Northern District of California, the suit currently has three current and former workers as named plaintiffs and seeks class action status on behalf of IBM computer installers and maintenance workers across the country.

"I think there will be an increasing recognition in those industries that workers are not exempt from overtime pay," said Steven Zieff, of Rudy, Exelrod & Zieff, one of the plaintiff lawyers in the case. "Companies have been taking advantage that workers have not been able to band together and fight those pay practices."

The suit seeks compensation for the past four years for affected current and former IBM workers in California and three years of back pay for those in other states. The IBM employees usually worked at an IBM client's workplace, attorneys said.

A spokesman for IBM, Clint Roswell, said Tuesday that the company doesn't comment on pending litigation. He declined to answer questions about company counsel.

But this isn't the first computer industry player to get hit with a wage-and-hour suit. It's just one of the biggest.

Video game publisher Electronic Arts reached a tentative \$15.6 million settlement with some of its entry-level computer graphics artists last year and agreed to reclassify about 200 of them as hourly workers.

And there is currently a certified class action in San Mateo County Superior Court against Siebel Systems Inc. that alleges some software engineers were misclassified as exempt, and thus not eligible for overtime.

"I think the software companies have abused workers for years, paying them well but not nearly what they would be entitled if they were paid for all of the overtime," agrees Dickson & Ross partner Jeffrey Ross, who filed the original suit against Siebel.

"Many employees are on H-1B visas." H-1B visas are given to workers predominantly in the technology industries and have certain limitations.

According to one of the named plaintiffs in the IBM case, it isn't atypical for network technicians like himself to work 45 to 50 hours a week, through lunch breaks, into the evening hours and on the weekends.

Speaking at a press conference in San Francisco Tuesday morning, Exaldo Topacio, who no longer works for IBM, said he often missed his daughter's piano recitals and softball games.

Topacio said that he consulted with a lawyer after a colleague of his mentioned that IBM's overtime practice wasn't "right."

Eight plaintiff firms are involved in the IBM case, including California-based firms Lief Cabraser Heimann & Bernstein; Rudy, Exelrod & Zieff; Lewis, Feinberg, Renaker & Jackson; Goldstein, Demchak, Baller, Borgen & Dardarian; and Spiro, Moss, Barness, Harrison & Barge.

Additionally, Zieff points out that while the suit was filed against IBM because that is where the plaintiffs work, the computer giant is an industry leader that could set a new standard for other companies. He said the law firms teamed up in order to be able to take on such a large company.

"If they go after IBM, it may mean there is more of this to come," says Melinda Riechert, a partner at Morgan, Lewis & Bockius who is not involved in the case.

Currently Lief Cabraser partner James Finberg and Zieff are focusing on overtime, not lunch-break violations, but they said Tuesday that they're not ruling out moving in that direction. Both say they haven't yet decided if they will seek punitive damages.

Last year, Zieff obtained a \$24 million settlement in U.S. District Court for the Southern District of California on behalf of some 30,000 computer workers working for East Coast-based Computer Sciences Corp.

"We think this class is larger," says Zieff. "The concept is similar."

"I think it is going to be a very large case in terms of the number of people, in terms of the number of hours, and eventually a very large settlement of dollars," says Finberg.

The case is *Rosenburg v. IBM*, 06-0430.