Overtime pay: An employment class action authorized in Madden c. Nordia Inc.

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On March 18, 2024, Superior Court Justice Lukasz Granosik authorized a class action based on Québec's *Act Respecting Labour Standards* (the Act) following an application regarding an overtime pay calculation.

Grounds for authorization: the decision

In *Madden c. Nordia Inc.* (2024 QCCS 861), the plaintiff alleges that Nordia, a customer service company, failed to pay overtime at the proper rate by basing its calculation on a percentage of the base hourly rate rather than the regular hourly rate, which includes various bonuses.

The plaintiff argues that this constitutes misrepresentation on Nordia's part and that the bonuses should be included in the calculation of overtime pay, even though this is not explicitly stated in the company's employment contracts.

In addition, the plaintiff claims that Nordia is not complying with the Act by failing to calculate public holidays and overtime pay based on anything other than the base salary.

The judge referred to case law to note that not all hourly bonuses should be excluded from the calculation and specified that only those related to inconveniences of performing work should be excluded under Section 55 of the Act. He concluded that this issue will require further examination at trial, as the authorization should be limited to establishing a mere possibility of success on the merits and not to presenting a realistic or reasonable chance of winning.

Key takeaways

While class actions in employment law prove relatively rare in Québec, this decision provides a good example of the collective risk employers face if they fail to fulfill their obligations under the Act or employment contracts, even in non-union contexts.

In this particular case, Judge Granosik's decision is a reminder that employers should clearly define in their employment contracts the distinction between bonuses related to inconveniences suffered in the course of work and those linked to the employee or their role. Only the former are excluded from overtime calculations.

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