

# Overtime Lawsuits A Budding Industry

SOUTH, CENTRAL FLA. LEAD THE WAY

By MARY SHEDDEN  
The Tampa Tribune

**TAMPA** — With five children and a terminally-ill husband at home, Tarah Powell-Hicks had little time to worry about whether she was getting paid for working through lunch.

As office coordinator at a Tampa medical equipment company, Powell-Hicks rarely left her desk for lunch — maybe five times a month. Her paycheck, however, reported she took 30 minutes off each and every day she worked from March to July last year.

It wasn't until long after she left the job that she thought she may be owed time and a half for working through lunch and other times she stayed late. Her inspiration to sue: a law firm hawking its services on television.

"I didn't know until I saw the commercial," Powell-Hicks said of the advertisement for Morgan & Morgan, a firm better known for its personal injury lawsuits. "I deserved it, the pay, for what I

**See OVERTIME LAWSUITS, Page 4 ►**

*Number of cases jumped 250 percent in three years.*

# LAWSUITS

Continued From Page 1

worked."

Expect to see a lot more people like Powell-Hicks heading into federal courthouses across South and Central Florida, say those who watch labor trends. For lawyers, workers such as this Tampa mom are part of a new, lucrative niche industry addressing overtime compensation.

South and Central Florida are the capitals of this emerging industry. The 334 federal overtime claims in these two federal districts in 2006 are nearly four times the combined number of cases filed last year in the other three states that with Florida are the nation's four most populous states, New York, California and Texas.

Revisions to the 1938 Fair Labor Standards Act and the U.S. Department of Labor's recent multimillion dollar penalties against companies such as Wal-Mart raised awareness of overtime rules. The spike, however, stems from a more entrepreneurial source.

Legal experts point to a handful of high-profile lawyers handling these cases in explaining why the number of overtime lawsuits jumped more than 250 percent in three years.

Catchy TV commercials from these firms convince many workers there's potential to suing for back wages they deserve. It helps, too, that the lawyers don't ask for upfront fees.

The cookie-cutter cases aim to attract more unpaid workers to a claim, which translates into a huge potential source of revenue.

No matter the reason, lawyers and legal experts agree that overtime claims are likely to be hitting courts for years to come.

"There are so many cases out there," said Martin Hogan, a Virginia lawyer representing three Tampa bus drivers in an overtime case. "It's just a matter of finding them."

## Lawsuits Can Prove To Be Lucrative

Fort Lauderdale lawyer Richard Celler is juggling roughly 300 claims against Florida companies, and more keep coming through his door. One morning last week, he accepted six new cases by 11 a.m. Four more potential cases sat in his inbox.

His swift-growing practice caught the eye of perennial TV advertiser Morgan & Morgan, which recently absorbed Celler's firm and launched its own unpaid wage claim division with plans to go nationwide.

"If you pay your overtime fee correctly, I won't exist," Celler said.

Labor law specialists such as Celler appeal to workers who have been cheated but don't know they can sue instead of making a time-consuming complaint to the Department of Labor.

Lawyers say the lawsuit approach is more lucrative because federal court rules allow workers to recoup up to double the unpaid overtime wages. Going through the Labor Department will only net back wages. Suing also means lawyers won't ask the workers to pay lawyer fees: The employer can cover that cost, too.

In Florida, few state wage rules exist, meaning most labor cases head to the prevailing federal court. States such as New York and California see most of their wage and hour cases head to state court, where lawyers apply local and state rules to their complaints.

Attorneys on both sides agree that many cases are settled long before



Tribune photo by JASON BEHNKEN

Lawyer Richard Celler is a partner in the wage and hour division of Morgan & Morgan. He said he is juggling roughly 300 claims against Florida companies.

## FINES PLENTIFUL

The U.S. Department of Labor's Overtime Security Task Force was launched in 2005 to enforce revisions to the Federal Fair Labor Standards Act. Since then, it has collected more than \$239 million in unpaid wages. These fines do not include civil complaints pursued in civil court.

Year	2006	2005
Cases	11,223	11,134
Wages collected	\$120,500,820	\$119,397,287
Employees	194,811	188,959

Source: U.S. Department of Labor



Tampa Tribune Kelvin Ma

HART bus driver Mike McCoy is suing for unpaid overtime hours he says he and his co-workers accrued while doing administrative work.

trial because lawyer fees companies would have to pay often far exceed the relatively small amount of overtime pay requested by plaintiffs.

"Employers know they're not paying overtime correctly, and they're just hedging their bets that no one complains," said Celler, who represents Powell-Hicks in her claim against All-Med Services of Florida. Calls to All-Med for comment were not returned.

## Additional Plaintiffs Are Welcome

Most all of the federal cases filed look for additional plaintiffs, or "class-action status." Powell-Hicks' claim, for example, includes a caveat applying to the "plaintiff and those similarly situated." The language allows other underpaid workers to join in without having to file separate \$350 claims.

Tampa labor defense lawyer Wendy Smith said class-action cases help plaintiff lawyers make millions. These lawyers boost a firm's revenue because one class-action suit allows them to handle one case and reap the rewards of dozens if not hundreds of

said Mark Levitt, a partner with Tampa's Allen, Norton & Blue law firm. "On the small [business] level, it is ignorance."

One common overtime violation involves employers who think all workers can be classified as salaried employees. The Department of Labor lays out guidelines as to the types of work appropriately classified as "exempt" from hourly pay and overtime wages.

Though labor lawyers know to check out the wage and hour rules, small business owners may not. Employers who invest in a wages audit or train supervisors to watch worker hours are less likely to be sued, Smith said.

"Even the most well-meaning employers may be violating a technical portion of the law, and they're victimized," she said.

## Labor Law Is Nothing New

The rule guiding all these cases — the Fair Labor Standard Act — is nothing new, said University of Florida law professor Juan Perea. Since 1938, it's been in place to guide employers on paying employees.

"A company that behaves ethically and legally has nothing to worry about," Perea said.

There's no one industry more prone to overtime complaints. Short-term office workers such as Powell-Hicks are as likely to file suit as Mike McCoy, a veteran Hillsborough Area Regional Transit Authority bus driver and president of the local employees union who sued the transit agency late last year.

McCoy and two other veteran Tampa bus drivers sued despite a detailed collective bargaining agreement that dictates how and when bus and streetcar drivers and vehicle mechanics will work.

McCoy said he didn't need to see an advertisement about overtime law to know he wanted to sue; he knew once supervisors refused to pay overtime when he and his co-workers did some additional administrative work.

As a union leader who watches worker issues constantly, he sees a benefit in the increase in independent lawyers pursuing labor cases, he said.

Levitt, the labor attorney representing HARTline, said McCoy's claim is complicated because it's intertwined with the union's bargaining agreement. More often, overtime cases involve a smaller company that isn't up to speed with wage rules.

The biggest bosses have their hands full, too. Look at the world's largest retailer for evidence of the money to be made and recouped from overtime violations. Jurors in Pennsylvania last year penalized Wal-Mart \$78.5 million for making employees work off the clock and during breaks.

Also, late last month Wal-Mart agreed to pay the Department of Labor \$33 million in overtime it miscalculated during the past five years. The settlement doesn't address the civil suits.

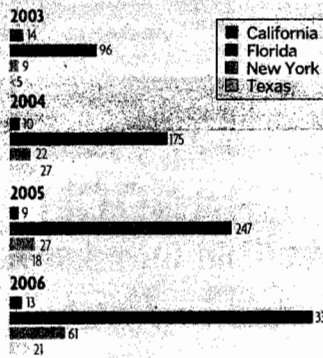
UF's Perea said the Department of Labor and independent plaintiff attorneys enforce established laws so workers are paid fairly. Both actions are justified if the law is being broken, he said.

"Unfortunately, the law doesn't deter everyone," Perea said. "It's why lawsuits are important."

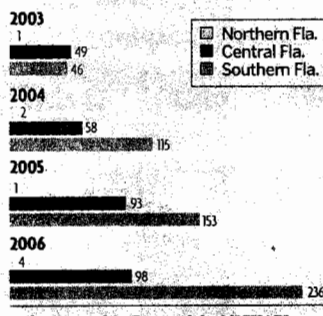
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## OVERTIME LAWSUITS

Florida leads among the four most populous states in filings of overtime wage lawsuits. Filings increased quickly after a 2004 revision to the Fair Labor Standards Act.



Since 2004, the number of overtime compensation complaints filed against employers in Florida has exploded.



Tribune graphic; Research by MICHAEL MESSANO; Sources: district courts of California, Florida, New York and Texas

claims.

"In Florida, we just have lots and lots of lawyers," said Smith, of Fisher & Phillips law firm. "When you have too many lawyers, they're scraping around looking for work, and this is a huge cash cow."

Employers who violate overtime law should be penalized, Smith and other defense lawyers acknowledge. Even the world's largest retailer, Wal-Mart Stores, has been slapped with multimillion dollar lawsuits involving violations of overtime law.

Most defendants are small busi-