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Raymour & Flanigan Hit With OT, Commission Pay Class Action

By **Lisa Ryan**

Law360, New York (July 31, 2014, 4:54 PM ET) -- Raymour's Furniture Co. on Wednesday was slapped with a putative class action in New York federal court, alleging the retailer improperly withholds overtime and commission wages from its sales associates.

The suit claimed the company misclassifies its Raymour & Flanigan Furniture retail sales associates and other commissioned employees as exempt from overtime pay in violation of the Fair Labor Standards Act. The lead plaintiff also said the employees are not properly compensated for many hours they are required to work where they don't have a chance to earn commission.

"Throughout plaintiff's employment, it was Raymour's policy and practice to deny sales associates overtime wages for hours worked in excess of 40 per workweek," the complaint said.

Lead plaintiff Connie Patterson worked as a sales associate at a Raymour & Flanigan store from May 2005 to February of this year, and she alleged that during her employment, she was routinely denied overtime wages and her full commission earnings.

The suit alleged Patterson and other commission-based employees went through periods where less than half of their compensation represented commission, and also workweeks where they worked more than 40 hours, with their total compensation not exceeding time and one-half the minimum wage for each hour worked.

Raymour's also frequently required sales associates to work many hours during which they had no opportunity to earn commission, including required weekly staff meetings. During those meetings, the associates were not properly compensated, even though they couldn't possibly earn commission during that time, the complaint said.

The suit also alleged that the sales associates at Raymour & Flanigan are paid pursuant to a commission agreement where they receive commissions based on the gross profit of each sale, though the retailer routinely reduced the gross profits by incorporating incorrect costs, such as gift cards and customer discounts, in an effort to unlawfully lower the commission amounts.

Patterson further alleged Raymour & Flanigan failed to furnish its sales associates with proper wage notices, wage statements or commission statements, according to the complaint.

The suit brings claims for violations under the Fair Labor Standards Act on behalf of an opt-in collective group of commission-based employees who worked for the company

between 2008 and the date the suit was filed, in addition to violations of New York Labor Law for a class of employees who worked during that same time.

Representatives for the parties didn't immediately respond to requests for comment Thursday.

The putative class is represented Joseph A. Fitapelli, Brian S. Schaffer and Eric J. Gitig of Fitapelli & Schaffer LLP and Justin M. Swartz of Outten & Golden LLP.

Counsel information for Raymours wasn't available Thursday.

The suit is Patterson v. Raymours Furniture Company, Inc., case number 1:14-cv-05882, in the U.S. District Court for the Southern District of New York.

--Editing by Chris Yates.

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