KPMG Hit With OT Action By Associates

By **Leigh Kamping-Carder**

Law360, New York (May 3, 2011) -- A former KPMG LLP associate accused the accounting firm on Tuesday in New York federal court of withholding overtime wages for a putative class of entry-level employees in its advisory services business, following a nearly identical suit lodged by audit associates.

KPMG classified advisory associates as exempt from the overtime protections of the Fair Labor Standards Act and New York Labor Law, even though they did not legally qualify for those exemptions, Michelle Trawinski claimed.

The suit is the latest action contesting the way the major accounting firms classify their entry-level employees. Deloitte LLP, Ernst & Young LLP and PricewaterhouseCoopers LLP have all faced similar claims in recent months.

“It's a corporate culture in this country that salaried employees just assume that they're supposed to work as many hours as the company says, and if they're called exempt, generally people just believe it because they don't know any better,” Trawinski's attorney, Brian S. Schaffer of Fitapelli & Schaffer LLP, told Law360.

Trawinski said she routinely worked as many as 60 hours per week performing duties such as photocopying, researching, inputting data and fetching coffee. She was required to submit billing sheets logging her hours so KPMG could bill its clients, but the firm prohibited her from reporting more than eight hours per day, even if she was in the office for 10 or 12 hours, Schaffer said.

Though KPMG advisory associates must have a college degree, they do not need advanced training or a certified public accountant's license, the suit says. Many are recent college graduates and, closely supervised by more senior staffers, exercise little discretion or independent judgment over their jobs, the suit alleges.

Trawinski is angling to certify two classes — an opt-in class under the FLSA that would include advisory associates who worked at KPMG from May 2008 through final judgment and an opt-out class under the NYLL that would stretch back to May 2005. There are at least 50 putative members of the NYLL class, Trawinski says.

Trawinski worked in the New York office of KPMG from September 2008 to April 2010, according to the complaint. She is seeking unpaid overtime wages, liquidated damages, interest, attorneys' fees and a ruling letting her notify putative class members of the action as soon as possible.

“We have not been served with the complaint and are not in a position to comment,” a KPMG spokeswoman said.

KPMG, with 24,000 employees in the U.S., is facing a similar suit brought by two former audit associates who claim the firm misclassified them under the FLSA. Launched in January, the suit aims to certify a nationwide collective class of associates and associate “seconds” who worked for KPMG's auditing arm.

“They essentially do the grunt work on the projects,” Schaeffer said, noting the case is virtually indentical to his own. “They do all the heavy background lifting up to over 60 hours per week.”

In March, U.S. District Judge Colleen McMahon rejected KPMG's bid to consolidate the suit with litigation in California that seeks an opt-in class for current and former uncertified customer service workers, which the firm argued could include audit associates.

The California case had shown “no significant movement” since it was filed in 2007 and no movement at all since it was stayed in 2009 pending the outcome of an appeal in an analogous case against PricewaterhouseCoopers, Judge McMahon ruled.

Trawinski is represented by Joseph A. Fitapelli, Brian S. Schaffer and Eric J. Gitig of Fitapelli & Schaffer LLP.

Counsel information for the defendant was not immediately available.

The case is Trawinski et al. v. KPMG LLP, case number 1:11-cv-02978, in the U.S. District Court for the Southern District of New York.