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## Aldi Settles OT Suit With Store Managers For \$9.8M

By **Dave Simpson**

Law360 (April 30, 2018, 6:14 PM EDT) -- A collective and a proposed class of Aldi Inc. store managers suing the grocery chain for overtime asked a New York federal judge on Monday to preliminarily approve a \$9.8 million settlement to end the dispute.

The deal would give \$8.6 million to a **conditionally certified** collective of 388 store managers claiming violations of the Fair Labor Standards Act and \$1.2 million to a proposed class of 160 to 200 store managers alleging violations of New York labor laws, according to Monday's motion.

The settlement makes sense, the store managers said, given the potential risks of litigation.

"To the extent a class is certified under Rule 23, the class will be comprised of former and presently employed store managers, a number of whom may not wish to participate in pre-trial discovery and trial of this action," Monday's motion said. "Moreover, plaintiffs would have to overcome Aldi's defenses, including that class members were properly classified as exempt, that class members did not work as many hours each week as they allege, and that damages could not be determined using a common methodology."

The former upstate New York store managers filed suit in March 2016, bringing their case as a nationwide collective action under the FLSA and a statewide class action for violations of the New York Labor Law, according to court filings.

The complaint alleged that Aldi — which operates more than 1,400 stores in dozens of states — helps maintain its low prices by cutting labor costs, with each store typically staffed by one or two cashiers and either a store manager, shift manager or manager in training. Only the store managers are salaried employees, and they often work more than 50 hours a week without overtime pay, they claimed.

Part of the problem is that their job security depends on meeting their so-called productivity figure, which is the store sales divided by the budget of hours, the complaint alleged. The managers have little control over sales, so their only way to affect the figure is to work more in the place of nonexempt employees, as the unpaid time isn't counted toward the calculation, according to the complaint.

Ultimately, store managers spend 90 percent of their time doing the same duties assigned to nonexempt employees, but, since they are classified as exempt, they don't receive overtime pay, the complaint alleged. Meanwhile, they are given little managerial discretion, lacking the final authority to hire, fire, promote, discipline or even access the personnel files of their employees, according to the suit.

In December 2016, U.S. District Judge Lawrence E. Kahn granted Aldi's bid to dismiss the managers' unjust enrichment claim on behalf of the statewide class, saying it duplicates their FLSA allegation and is therefore preempted.

Two days later, the managers asked for conditional certification. Just prior, five former store managers for Aldi locations in other states filed FLSA consent forms to join as opt-in plaintiffs, according to court filings.

In February 2017, U.S. Magistrate Judge Andrew T. Baxter conditionally granted the certification request, finding first that the managers sufficiently alleged a common plan that violated the FLSA, namely that Aldi's emphasis on controlling labor costs and the pressure it puts on store managers to meet the productivity figure led to them working far beyond their scheduled 50 hours, doing manual labor that could otherwise be performed by nonexempt workers.

"Plaintiffs' counsel are experienced and realistic, and understand that the resolution of liability issues, the outcome of the trial, and the inevitable appeals process are inherently uncertain in terms of outcome and duration," the motion said Monday. "The proposed settlement alleviates these uncertainties. This factor therefore weighs in favor of approval."

The store managers are represented by Adam R. Gonnelli of the Sultzer Law Group PC, Innessa M. Huot of Faruqi & Faruqi LLP, Frank S. Gattuso of O'Hara O'Connell & Ciotoli LLP and Lloyd R. Ambinder of Virginia & Ambinder LLP.

Aldi is represented by Louisa Johnson of Seyfarth Shaw LLP.

The case is Griffin et al. v. Aldi Inc., case number 5:16-cv-00354, in the U.S. District Court for the Northern District of New York.

--Additional reporting by Cara Bayles and Shayna Posses. Editing by Alyssa Miller.

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