

Immigrants cheated out of pay, suit says

Roofing firm says it did not flout laws on overtime

By Diane E. Lewis, Globe Staff | December 22, 2004

A class-action lawsuit filed yesterday in Middlesex Superior Court alleges that one of the largest roofing companies in Massachusetts withheld an estimated \$1 million in overtime pay and regular wages from Brazilian workers over the last several months while paying the Americans who worked beside them higher wages and time-and-a-half when they logged more than 40 hours per week.

Filed on behalf of 50 Brazilian workers, the suit claims Superior Roofing Industries Inc. of Shirley asked the workers to travel farther to punch a time clock, causing them to lose 90 minutes to two hours' worth of wages daily. They earned \$10 to \$16 per hour.

Sean Green, owner of the roofing firm, denied the allegations. Green said he frequently sponsors immigrants, providing them with jobs and helping them to become US citizens.

"They wanted more money, but it all depends on experience," he said. "If people come in with no experience, they start at a lower pay scale."

Boston lawyer Shannon Liss-Riordan, a partner at Pyle, Rome, Lichten, Ehrenberg & Liss-Riordan PC, said most of the allegations stem from "the fact that the Brazilian workers were never paid overtime, just straight time for all hours, even though they were working 60 and 70 hours per week." Massachusetts law requires that most hourly employees who work more than 40 hours in a week be paid 1.5 times the regular rate of pay for all hours over 40.

The case was filed after news reports about millions of low-wage employees across the country who are giving employers free work time, even though federal and state laws prohibit such practices.

Workers who are unaware of their rights often do not receive paid meal breaks, overtime, paid travel time, or they are told to clock out earlier or between breaks, resulting in lower wages, said Benjamin E. Goldman, a partner at Squire Sanders & Dempsey LLP in Los Angeles who specializes in employment law. Such practices are said to be more common if immigrants are involved.

A study released last week by the University of Massachusetts at Boston and Harvard University's schools of Law and Public Health said the state lost \$152 million in uncollected income tax revenue from 2001 to 2003 because employers misclassified hourly workers as self-employed or independent contractors to avoid paying such benefits as overtime, unemployment insurance, worker's compensation, and sick time.

Goldman said he expects to see many more wage cases filed by low-income workers in 2005 as they become more aware of laws that allow them to seek immediate redress in court, without waiting for state or federal agencies to act.

"This is the new hot area in employment law," he said. "The first wave of these lawsuits involved the misclassification of . . . employees. But employers are beginning to do internal audits, and they are reclassifying people. So, now we are seeing cases that involve the lower-

wage worker. They include overtime violations, denial of meal breaks or rest breaks, or cases where people are expected to work during those break times without pay."

In the lawsuit, Josiel Ferreira, 20, of Lowell, said he began working at Superior Industries in July 2003 and quit a year later, after learning from an American co-worker that he and others on the job were not receiving the same benefits. Ferreira, whose wages increased to \$16 per hour from \$10 over the course of the year, said that in summer he and his Brazilian co-workers labored from 6 a.m. to 8 or 9 p.m.

Ferriera said they journeyed from their homes to the company's shop in Shirley and were then transported to job sites, where they were allowed to punch in. He said the American workers punched in at the office and were then transported to the job sites.

Yesterday, Middlesex Superior Court Judge Peter Lauriat barred the company from transferring assets outside its ordinary course of business without court approval. Lauriat granted the temporary order after the workers' attorneys said they were worried that the company, which owns several other firms, might transfer funds to avoid paying damage claims.

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