

FOCUS LEGAL

Case illustrates complexity of wage and hour violation suits

By Andrew Gomes
PBN Contributor

Even a dog recognizes its owner. That was the alarming message Sung Kyung Chung, a butcher and fish handler at Palama Super Market, says he recently received from fellow workers and managers donning headbands with the saying in Korean.

He interpreted the display to mean he was lower than a dog, a lowly animal in Asian culture. Chung, however, is not retreating with his tail between his legs. He's standing his ground in court for what he says was nearly a year of underpaid overtime.

An immigrant to Hawaii from Korea four years ago, Chung has worked at Palama Super Market since June 1998. Until recently, he averaged 79 hours of work a week but claims he was paid for overtime at only his regular hourly wage, which ranged from \$6 to \$7.50 since he started.

Previously, he thought he had the support of coworkers, who he said also felt they got paid unfairly. Now Chung, who continues to work at the market but at hours restricted to 40 a week, is alone trying to fight an alleged problem that is not uncommon.

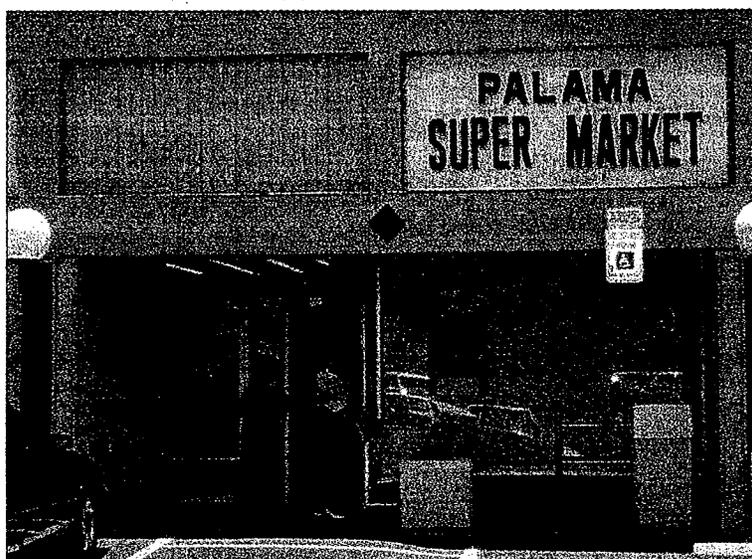
The state Department of Labor and Industrial Relations investigates about 1,000 cases of wage and hour violations a year.

DLIR spokesman Patrick Stanley says the number of investigations in the last 10 years fluctuated up and down in no distinct pattern. In 1997, it hit a high of 1,300. So far this year, there are 450 to 500.

Attorney Jared Jossem, however, suggests there has been a significant increase in compliance problems over the last two years regarding unlawful payment of wages and overtime.

Jossem, a partner at Jossem & Toyofuku, represented Hawaii employers on labor law practices for 30 years. He said escalating trouble is partly due to increased awareness of employees and, to some extent, heightened enforcement by state and federal authorities.

Violators are typically smaller family-owned businesses paying employees partly on and partly off the books in order to keep payroll down and thus reduce taxation,



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Palama Super Market is the target of a lawsuit alleging overtime wage violations.

mandated benefits and other costs, he says.

However, that can get businesses into "a lot of trouble." Jossem says the penalty is double the amount underpaid. Furthermore, federal audits can go back as far as three years; state audits, six years.

"There's probably a lot more exposure out there than many people realize," he says. "Those hours can really add up, and small businesses can really be looking at liability that can wipe out their entire net worth. There's a tremendous financial incentive for small businesses to make sure they are in compliance with the laws."

What may account for Jossem's observation of heightened wage and overtime compliance problems and the state's static investigation load is the reality that many violations never become known.

Stanley says DLIR officials recall receiving a complaint from someone identified as a Palama Super Market employee, but that person refused to come forward.

Steven Pang, a partner in the law firm Deeley King & Pang, had a similar experience. He says six supermarket employees, including Chung, were in his office on

March 29 wanting to file a claim. Four backed out for one reason or another. But Chung and one other employee, Won Jong Chung (no relation), pursued the suit, filed on April 16 in federal court alleging unpaid overtime amounting to more than \$1 million over the past three years.

Won Jong Chung has since "disappeared," according to Pang, who says attempts to derail the case have been blatant as other would-be plaintiffs have allegedly been dissuaded by intimidation, threats, promotion or other consideration.

With a different story to tell is Paul Saito, an attorney with Torkildson Katz Fonseca Jaffe Moore & Hetherington-Attorneys at Law representing Palama Super Market and its owners Hyo Kyu Lim and Hae Joo Lim.

He says employees share responsibility for the overtime payment situation and that plaintiffs' attorneys hoping for a windfall are driving the suit. Saito refers to a company memo dating back to August 1998 he says informed employees that supermarket payment practices needed to be adjusted to comply with the law and that employees, including Sung Kyung

Chung, refused the changes.

"This is not a case of the employer screwing the employees," Saito says. "The employees wanted to be paid overtime and be paid in cash."

Pang bristles at this notion, saying his client never asked for cash.

"[Chung] was basically told how things are. He only took what was given to him," Pang relates, adding that any honest employer would follow the law in any case.

Saito allows that his clients may not have complied with the law, but asserts it was only by mistake. Since April, he says supermarket owners have complied with labor laws (in part by eliminating employee overtime). He added that all workers as of the week of July 19 should have been compensated for previously underpaid overtime.

"All the employees are going to be paid the overtime they're entitled to," he says.

That defendants in any way bought the silence of would-be plaintiffs is a charge Saito flatly denies.

"None of it happened," he says. "There is absolutely no evidence of any buy off or payoff."

He also disputes the vanishing of Won Jong Chung, who he says sent his own attorneys a letter indicating his desire to drop the case. Instead, Saito suggests the "disingenuous" suit rests on promises of a big pay out. He says plaintiffs initially demanded \$447,808 for Chung (based on 80 hours a week of work up to projected retirement) when his unpaid overtime compensation totals \$6,367.

Pang says that figure was for three potential plaintiffs, not for Chung only.

Saito says a judge refused the larger claim.

More recently, Saito says, the plaintiff refused a \$20,000 settlement offer. Pang says this offer came late and "basically just offended our client." Now a jury will decide the issue of damages.

A judge will hear merits of the case. The next hearing is a motion for summary judgment on Oct. 15. The case is set for jury trial April 18, 2000.

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