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Securitas Guard Vacation Pay Class To Be Certified

By **Michael Lipkin**

Law360, San Diego (September 19, 2014, 4:05 PM ET) -- A California federal judge on Thursday said he would give early certification to a class of Securitas Security Services Inc. guards alleging the company's vacation pay policy is essentially a bonus program in disguise, tasking the parties to agree on a class definition.

U.S. District Judge Jon S. Tigar said he would grant preliminary certification to potentially tens of thousands of guards, according to hearing minutes, but only after Securitas and the guards stipulate to a definition. If they don't agree by next week, Judge Tigar said he would choose one side's proposal over the other's.

Securitas does not pay its guards for vacation they take, instead giving them a lump sum payment each year to compensate them for vacation time. The plaintiffs, however, claim the payment is really a nondiscretionary retention bonus because it is based on the number of hours worked, isn't dependent on vacation taken and is not given to guards who leave before their anniversary. The guards say Securitas should include the bonus in overtime calculations under the Fair Labor Standards Act.

John R. Hurley of Prometheus Partners LLP, representing named plaintiff Michael Deatrack, told Law360 his proposed class definition included all Securitas employees who received lump sum vacation pay since October 2010. But Judge Tigar ordered the parties to come up with another plan because Securitas made a "valid point" that the definition would include administrative employees.

Administrative workers, unlike security guards, get paid vacation, and if any cashed out their vacation days it could be seen as a lump sum payment under the proposed definition, according to Hurley.

Judge Tigar, however, rejected Securitas' argument that a nationwide arbitration agreement signed by some employees barred preliminary certification, according to Hurley. Securitas claimed the policy was voluntary for existing employees and a condition of employment for new guards and that therefore Deatrack was not similarly situated to the class because he opted out of the agreement, unlike many guards.

"Judge Tigar rejected an argument that certification should be denied because a significant portion of the collective group may potentially be subject to arbitration agreements," Hurley said. "His ruling in this regard is consistent with decisions out of a number of other district courts, but it is potentially significant here because of the size of the suit."

An attorney for Securitas did not immediately respond Friday to a request for comment.

The plaintiffs are represented by Eduardo G. Roy, Daniel C. Quintero, Jill Dessalines and John R. Hurley of Prometheus Partners LLP.

Securitas is represented by Sherry B. Shavit and Gabriel J. Padilla of Tharpe & Howell LLP and J. Kevin Lilly of Littler Mendelson PC.

The case is Michael Deatrck v. Securitas Security Services Inc., case number 3:13-cv-05016, in the U.S. District Court for the Northern District of California.

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