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Suits Say Wal-Mart Forces Workers to Toil Off the Clock

By STEVEN GREENHOUSE

After finishing her 10 p.m. to 8 a.m. shift, Verette Richardson clocked out and was heading to her car when a Wal-Mart manager ordered her to turn around and straighten up the store's apparel department.

Eager not to get on her boss's bad side, she said, she spent the next hour working unpaid, tidying racks of slacks and blouses and picking up hangers and clothes that had fallen to the floor. Other times after clocking out, she was ordered to round up shopping carts in the parking lot.

Some days, as soon as she walked in a manager told her to rush to a cash register and start ringing up purchases, without clocking in. Sometimes, she said, she worked for three hours before clocking in.

"They wanted us to do a lot of work for no pay," said Ms. Richardson, who worked from 1995 to 2000 at a Wal-Mart in southeast Kansas City. "A company that makes billions of dollars doesn't have to do that."

But she and 40 other current and former Wal-Mart workers interviewed over the last four months say Wal-Mart has done just that, forcing or pressuring employees to work hours that were not recorded or paid. Federal and state laws bar employers from making hourly employees work unpaid hours. Wal-Mart's policies forbid such work. But many current and former workers and managers said an intense focus on cost cutting had created an unofficial policy that encouraged managers to request or require off-the-clock work and avoid paying overtime.

Accusations like these are at the heart of a wide-ranging legal battle between Wal-Mart and employees or former employees in 28 states. In class-action and individual lawsuits, workers assert that these practices have helped Wal-Mart undersell the competition, push up profits and become the world's largest retailer.

In the process, these lawsuits contend, the company has cheated Wal-Mart employees and workers at its warehouse-store division, Sam's Club, out of hundreds of millions of dollars a year.

Wal-Mart officials insist that the off-the-clock phenomenon is minimal considering that the company has 3,250 stores and a million employees in the United States. The officials say the company, based in Bentonville, Ark., has a strong policy against such work, a policy that is spelled out in the handbook distributed to every employee.

"Off-the-clock work is an infrequent and isolated problem, which we correct

whenever we become aware of it," said William Wertz, a Wal-Mart spokesman. "It is Wal-Mart's policy to pay its employees properly for the hours they work."

Mr. Wertz said managers who required or requested off-the-clock work were subject to disciplinary action, including dismissal.

Two years ago, Wal-Mart paid \$50 million to settle a class-action suit that asserted that 69,000 current and former Wal-Mart employees in Colorado had worked off the clock.

But legal papers and interviews with workers suggest that the off-the-clock problems go far beyond Colorado. In depositions and in interviews with The New York Times, Wal-Mart employees in 18 states described these types of off-the-clock work:

*Former employees at stores in California, Louisiana, New York, Ohio, Oregon and Washington said that many evenings when their stores closed, managers locked the front door and prevented workers -- even those who had clocked out -- from leaving until everyone finished straightening the store. Workers said these lock-ins, which aim to prevent theft, forced many employees to work an hour or two unpaid and enraged parents whose school-age children worked at Wal-Mart. Wal-Mart officials acknowledged that employees were sometimes locked in but said the policy was to pay workers for every hour they were.

*Employees at stores in six states said managers ordered them to clock out after their eight-hour shifts and then continue working.

"We worked off the clock pretty much every shift," said Shannon Snyder, who worked two years ago stocking the health and beauty aids department at a Wal-Mart in Paso Robles, Calif. "The manager said if our jobs were not finished, we had to clock out and finish our jobs so no overtime would show up."

*Some employees said they frequently took it upon themselves to clock out after their regular shift and then return to work, with their managers' knowledge and approval. They said they feared that if they did not finish their daily tasks before going home, they would be written up or fired.

"You have to accomplish your job for that day," said Charlotte Johnson, who worked at Wal-Marts and Sam's Clubs in Georgia, Oklahoma and California for a decade before retiring this year. "If you don't finish it, you're more or less in hot water with your manager."

*A dozen Wal-Mart workers, including four in the payroll department, said managers deleted hours from employee timecards to avoid paying overtime. Wal-Mart officials said the company strictly forbade this practice and disciplined managers who did it.

Several current Wal-Mart employees said that despite the lawsuits, the problems continue. Alan Peto, who works at a Sam's Club in Las Vegas, said he worked off the clock several times each week while overseeing the electronics and hardware departments several years ago.

"They give you a lot of work to do, and there is no possible way to do that in the seven and a half or eight hours you've been assigned," he said. "So you feel pressure to clock out and do what you need to do."

Rewarding the Cost-Cutter

Although company policy prohibits off-the-clock work, Wal-Mart has created a system of rewards and punishments that critics say gives managers strong incentives to demand such work.

Under one bedrock policy, described in a deposition by a senior payroll executive, store managers are ordered to keep payroll costs below a target that headquarters sets for every store. If a store misses its target, several former executives said, the store manager faces a reprimand and sometimes demotion or dismissal.

Another policy strongly discourages overtime pay. A Wal-Mart handbook says managers are not to schedule workers for overtime, and several former store managers said the district and regional managers above them continually warned of a "zero tolerance" policy toward overtime, except during the busy holiday season. These former managers said managers were frequently reprimanded when they allowed workers to clock more than 40 hours in a week, enabling the workers to receive time-and-a-half pay.

Most hourly Wal-Mart workers earn less than \$8.50 an hour, which amounts to \$17,680 a year for a full-time worker.

Jon Lehman, who retired last October after working for the company for 17 years, including several as a store manager in Kentucky, said Wal-Mart warned managers repeatedly against going over budget or paying overtime.

"You got to hit the payroll budget they set for you, but if you're over, they discipline you," Mr. Lehman said in an interview. "People get demoted all the time for that. I've seen it happen numerous times to friends of mine. I've also seen store managers demoted for paying overtime."

When asked whether managers had been demoted for paying overtime, Rob Phillips, a company spokesman, responded, "Managers are evaluated, not on the fact of payment of overtime rates, but rather on how the business is managed."

Wal-Mart gives store managers another incentive to squeeze down labor costs by pegging annual bonuses to the profits of individual stores, a system rare among big retailers. The company declined to provide compensation figures, but according to depositions and interviews, many store managers have a base salary of \$52,000, with bonuses often running \$70,000 to \$150,000.

Many analysts say Wal-Mart's push to minimize costs is the fiercest in the industry, and holding down labor costs -- including fighting off unionization at its stores -- is at the heart of Wal-Mart's effort to be the nation's low-cost retailer.

By many measures the nation's largest corporation, Wal-Mart has grown into a colossus, with \$220 billion in annual sales, through a business model that goes well beyond holding down labor costs. It uses its size to buy in bulk and to pressure suppliers to keep prices down. It builds stores where real estate is cheap. It obtains many goods from low-wage manufacturers overseas. Its computerized inventory system and distribution network are considered the best and most cost-efficient

among retailers.

These efforts have paid off. Wal-Mart's operating costs are 16.6 percent of sales, below the retail industry average of 20.7 percent and well under those of other giant retailers, like Sears Roebuck, whose costs are 24.9 percent of sales.

"It's just ingrained in them to be very focused on controlling costs in all areas of their business all the time," said Sally Wallick, a retailing analyst at Legg Mason, an investment firm. "And in their business, small cuts can make a big difference."

Wal-Mart officials played down the extent of unpaid work by saying that employees often came forward to complain only after calling toll-free numbers that lawyers had established to seek information about off-the-clock work.

"Off-the-clock work is not prevalent at Wal-Mart despite the determined efforts of a few plaintiffs' attorneys to make it seem so," Mr. Wertz said.

But lawyers and union officials say that not only is the practice prevalent at Wal-Mart but that the complaints against the company are far greater than at competitors like Target, Sears or Kmart.

Frank Azar, a Colorado lawyer involved in more than a dozen lawsuits against Wal-Mart, said that more than 5,000 workers have contacted his and other law firms to complain of off-the-clock work at Wal-Mart.

To defend against such accusations, Wal-Mart officials have put forward dozens of employees who said they had never done off-the-clock work or been asked to do it.

Julie Rice, sales coordinator at a Sam's Club in Beavercreek, Ohio, said in a deposition that she had been compensated for "every minute of work" she had done for Wal-Mart. Dianne Huston, a cashier in Zanesville, Ohio, testified that she was never asked to work off the clock and that she was "not allowed to do anything off the clock."

Company officials note that few people have filed complaints about off-the-clock work with federal and state regulators.

But John Fraser, who ran the Federal Wage and Hour Administration for 11 years before retiring last year, said it was unlikely that the small number of complaints indicated anything about the pervasiveness of unpaid work at Wal-Mart. Workers, he said, are often reluctant to complain to the government, fearing they might lose their jobs if investigators contact their employer.

Mr. Fraser noted that even though few workers had filed complaints against Food Lion, the supermarket chain, the Labor Department, in an investigation a decade ago, found pervasive off-the-clock violations.

Retailing analysts, lawyers and Wal-Mart officials say it is hard to estimate the potential liability to the company in all these cases. Wal-Mart's defenders estimate liability could run several million dollars, while plaintiffs' lawyers say the cost could reach several billion.

In a recently certified class-action suit in Texas on behalf of more than 200,000

current and former Wal-Mart workers, statisticians estimate that the company underpaid its Texas workers by \$150 million over four years by not paying them for the many times they worked during their daily 15-minute breaks. That \$150 million estimate does not include other types of unpaid work. The statisticians, who analyzed time records from 12 Wal-Mart stores, found that the Texas employees averaged at least one hour of unpaid work each week from working through breaks.

In another lawsuit, involving just one store in Gallup, N.M., lawyers said, Wal-Mart agreed to a \$400,000 settlement, coming to more than \$2,500 a worker, after 120 workers complained of widespread unpaid work. Wal-Mart said that store was an isolated problem caused by a rogue manager.

Punch Out, Keep Cooking

Every morning at 6, Liberty Morales arrived at Wal-Mart No. 2066 in Houston to stock the store's restaurant with hot dogs, buns, chips and soft drinks. She said it was often two hours before she clocked in.

At 5 on many afternoons, Ms. Morales said, the store's payroll manager phoned to tell her to clock out. But she did not go home; the store manager, she testified in a deposition in the Texas lawsuit, ordered her to keep running the restaurant for another hour or two because nobody else could do it.

"They would call me and say, 'You need to clock out,' " Ms. Morales said in an interview. "I knew I had to go back and work after clocking out. There was no way the grill could continue operating with no one there to run it."

Ms. Morales said she knew better than to resist the demands because she had heard that those who complained were often fired, given fewer hours or put on overnight shifts. "I put up with it because I needed to work," said Ms. Morales, a 28-year-old mother of three who worked for Wal-Mart from 1996 to 2000.

Like many Wal-Mart workers, Ms. Morales has only a high school education and limited job skills, giving her few options better than Wal-Mart's.

She earned \$9.50 an hour and usually worked 50 to 55 hours each week. Occasionally, she said, the store manager paid her time-and-a-half for a few hours, "but most of the weeks, I didn't get overtime."

Managers, she said, often announced on the intercom, "There will be no overtime this week."

"The store manager and the personnel manager would say if we went over 40 hours, our time would be erased," said Ms. Morales, who said she quit because she felt overworked and underpaid.

Workers in other parts of the country told similar stories. Georgie Hartwig, who worked at a Wal-Mart north of Spokane, Wash., said her manager upbraided her one week because her timecard showed that she had worked a fraction more than 40 hours -- 36 seconds more, to be precise.

Colby LaGrue, who was in charge of the unloading operations at a Wal-Mart store

outside New Orleans, said the store manager told him not to clock in during his first hour or two, which he spent talking with managers about what needed to be done each night.

Mr. LaGrue, who worked at Wal-Mart from 1990 to 1999, recalled episodes when, at the end of a shift, his managers were upset because the trucks had been unloaded but merchandise remained strewn around the back of the store.

"They would tell me to have the workers punch out and then call them back to get the stuff off the floor," Mr. LaGrue testified in a deposition in a Louisiana lawsuit.

"It was like a plantation," Mr. LaGrue said.

How to 'Get It Done'

The official policy that Wal-Mart provides its store managers is clear: "It is a violation of the law and Company policy to work off the clock or for a Supervisor or Manager to request Associates work off the clock."

But eight former managers said in interviews that headquarters set their store's payroll and staffing levels so low that it was nearly impossible to run their stores properly unless some employees worked more than 40 hours a week.

"Store managers told me to lean on people to get them to work off the clock," said Judy Danneman, who worked for Wal-Mart from 1989 to 2001 and was an assistant store manager at four of its Florida stores. "Everyone knew there was a lot of off-the-clock work going on."

If there was one dictate for store managers, it was not to exceed the payroll amount assigned them. In a deposition in the Colorado lawsuit, Radonna Perrin, one of the top payroll directors for Wal-Mart stores, said every store had to send headquarters a daily report that told whether the store exceeded its payroll limit, which was usually 8 percent of sales.

"They threatened to write up managers if they didn't bring the payroll in low enough," said Joyce Moody, who worked as a Wal-Mart manager in Alabama and Mississippi. "There were some managers who were demoted back to hourly associate for this."

Several managers said they saw little that was improper in demanding off-the-clock work because they had done it themselves when they were hourly employees who were eager to get ahead. Several employees said they felt so much a part of the Wal-Mart family that they were happy to do extra, unpaid work.

But Robert Eckert, a former assistant manager at five stores in California, said it was assistant managers who were squeezed most often. Each Wal-Mart has one store manager and two to six assistant managers.

"They tell you that working off the clock is against the law, is not allowed by Wal-Mart, and then they tell you to get the job done," Mr. Eckert said. "But they didn't give you the budget to get the job done."

As an assistant manager from 1996 to 1999, he said, he got the job done without requiring off-the-clock work by putting in 75 hours a week himself. But he said many managers who wanted to lead a normal life felt compelled to bend the rules.

"The Wal-Mart system is hurting the assistant manager who wants to have a family, wants to be an honest person, wants to get the job done," said Mr. Eckert, who said he quit Wal-Mart because he was unhappy with how it treated its managers and other employees. "The assistant manager is put in a position of, if I want to go home to my wife and family, I have to put pressure on someone to work off the clock."

The Creative Timecard

As an assistant in a Wal-Mart's payroll department, Dorothy English said she was often asked to do startling things.

The store manager and several lower managers often ordered her to delete hours from employees' timecards, she testified in her deposition in the Louisiana lawsuit. If an employee had clocked 43 hours in a week, Ms. English said, her supervisor often asked her to delete three hours.

Other times, she said, when an employee worked through several 15-minute breaks, helping push that employee over 40 hours, her boss asked her to edit the timecard so it would show the worker had taken those breaks.

"It was a routine thing," she said in an interview. "I told them this wasn't right, but they said, 'This is how we keep people to 40 hours.' "

To delete time from cards, she used Wal-Mart's computer, which allows managers to edit the times that punches are recorded.

"Sometime people would ask, 'Where are my three hours?' " Ms. English said. "Then the managers would have to give it to them. But if people waited too long, you didn't get it. If you snooze, you lose."

In depositions, the store manager and payroll manager of Ms. English's Wal-Mart in Clearview, La., denied doctoring timecards. Wal-Mart officials insist that this practice is rare, saying the company disciplines and even fires managers found to have improperly deleted time.

But interviews and depositions pointed to additional cases of timecard manipulation in California, Colorado, Florida, New York, Oklahoma, Oregon and Washington.

Carolyn Thiebes, a former payroll manager at several Wal-Marts in Oregon, said she was often pressured to delete overtime. Ms. Thiebes, who has sued Wal-Mart over off-the-clock work, said in an affidavit that she sometimes edited time for legitimate reasons, such as when a worker forgot to clock back in after lunch.

But she added, "Many of the changes were made simply to reduce the amount of time associates would be paid for."