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## Employees Say CVS Owes \$47M For Illegal Scheduling

By **Amanda Ottaway**

Law360 (July 24, 2020, 8:31 PM EDT) -- Former Bay Area CVS employees moved for a \$47.5 million judgment against the pharmacy giant on Thursday, saying data from its own scheduling system shows it "habitually" violated California labor laws by slating employees to work shifts longer than nine hours and without the required number of rest days.

The proposed class of workers cited three provisions of the state labor code that CVS allegedly violated that limit the amount of time pharmacy and drugstore employees can work, for their own safety and that of the general public, due to the sensitive and critical nature of their jobs.

"There is no excuse for CVS, whose primary business is selling at retail drugs and medicines, to have not educated itself about these provisions of the Labor Code," the workers wrote, later adding, "The truth is that CVS was too busy reaping profits from doing business in the state of California to care about complying with the provisions of the Labor Code designed to protect the public health and safety of its citizens and employees."

Plaintiff Ryan Hyams, a CVS pharmacist and San Francisco resident who dispensed up to 300 prescriptions a day according to the lawsuit, alleged he was "routinely" scheduled for 12-hour shifts, and sometimes worked even more than 12 hours a day.

Hyams' co-named plaintiff Regine Duhon, a pharmacy technician and cashier also in the Bay Area who worked at a CVS inside a Target, said in the complaint she was overworked and as a result wasn't able to take breaks during the day.

"While we do not comment on ongoing litigation, we are committed to complying with all laws applicable to our business and employees," CVS spokesperson Mike DeAngelis said in an email Friday.

The alleged staffing issues are not limited to the West Coast — earlier this month, Oklahoma's State Board of Pharmacy **levied \$125,000 in fines** against CVS for chronic understaffing at four locations that reportedly caused long lines, incorrect medication dosages, and wrong information on prescription refills.

CVS' scheduling software, mySchedule, calculates how long tasks should take employees and uses that information to estimate how many hours it needs to meet demand, the California workers wrote. The system also allows for a maximum-hours setting that would help prevent labor law violations, though CVS did not take advantage of that function, the employees alleged. Their motion is based on information they gathered during discovery, said plaintiffs' attorney Beth Gunn of Gunn Coble in an email Friday.

Managers add employee availability to the system and then review it to make sure there are no "overs or shorts," meaning the store is staffed with neither too many nor too few workers to handle demand, the workers explained.

"In other words, the scheduling practices are designed to increase CVS' profits," they said. Its scheduling data shows the company "habitually" violated those laws by lining up more than 23,000 shifts that were over nine hours long, the motion said.

The employees noted CVS' timekeeping system showed that between July 2017 and December 2019

— the specified period from the lawsuit — pharmacy workers clocked over 148,000 shifts longer than nine hours, while front-store employees worked over 100,800 such shifts.

One section of the labor law is violated every time an employer even asks someone to work past the limits or makes it possible for them to do so, the plaintiffs noted, pointing out that this makes even the scheduling a violation, whether or not the employees actually worked for that time.

"Before plaintiff brought this lawsuit, CVS made no effort to comply with the employment laws limiting work hours in retail pharmacies that California enacted as a measure for the protection of the public health," said the law firm for the workers, Gunn Coble, in an emailed statement Friday.

"CVS has taken every advantage of conducting profitable business in California without bothering to comply with the laws known to regulate that business. We are confident that, as a result of this motion, the court will hold CVS accountable for putting its 'path to profits' above its alleged mission of 'helping people on their path to better health.'"

The employees said in their motion that 75% of the judgment, about \$35.67 million, would go to California's Labor and Workforce Development Agency as a penalty, while they would take the remaining 25%, about \$11.89 million.

They added that CVS' February 2020 adjustment of its scheduling practices, which specifically addressed the labor laws at issue in the case, "is an admission that it has known that its practices were unlawful."

CVS has a market value of \$77 billion, its employees noted in their motion, and has not been severely damaged by the pandemic like other retail stores have.

"It has weathered the recent COVID-19 crisis well, with a substantial increase in its first quarter 2020 earnings, and a plan for future growth positioned to take economic advantage of the pandemic," the plaintiffs said.

CVS attorney Jennifer B. Zargarof of Morgan Lewis & Bockius LLP did not immediately comment Friday.

The employees are represented by Beth Anne Gunn and Catherine Jean Coble of Gunn Coble LLP.

CVS is represented by Jennifer B. Zargarof and Sonia Andrea Vucetic of Morgan Lewis & Bockius LLP.

The case is Hyams and Duhon et al v. CVS Health Corporation et al, case number 4:18-cv-06278, in the U.S. District Court for the Northern District of California.

--Editing by Emily Kokoll.