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## Attorneys map strategy for employers in wage suits

Attorneys map strategy for employers in wage suits, like ones facing Price Chopper and Stewart's

By Michael DeMasi

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Small and mid-sized employers face the same risks as Price Chopper supermarkets and Stewart's Shops -- two of the largest private-sector employers in the Albany, New York area -- when it comes to workers alleging they were not paid properly, attorneys said today. For employers to protect themselves, the attorneys gave this advice: Regularly monitor and update job classifications when responsibilities or staffing changes; check the federal Department of Labor website to distinguish between "exempt" and "non-exempt" employees; and keep excellent payroll records. "If there's a Department of Labor investigation or a lawsuit, those records will be important," said Ellen Bach, an employment attorney at Whiteman, Ostermann & Hannah LLP, the largest Albany-based law firm. "If there are no records, then there's a presumption in favor of the employee." Bach and another local attorney not involved with the lawsuits filed against Price Chopper and Stewart's -- Michael W. Macomber of Tully Rinckey PLLC -- spoke with me this week about the growing number of class action cases against private companies alleging violations of federal and state wage laws. The number of lawsuits involving the Fair Labor Standards Act increased between 1991 and 2012, with the largest increases concentrated in a few states, including New York, according to a report issued last week by the U.S. Government Accountability Office. Federal judges in New York and Florida pointed to the large number of restaurants and other service industry jobs in the states as one of the reasons for the spike in lawsuits, according to the report. Wage and hour

disputes are common in those industries. Macomber said another reason New York may have more of these lawsuits is state law enables plaintiffs to pursue lost wages over a six-year period, double the amount allowed by federal law. "If you have a company in New York and can go back six years, that's double the damages," Macomber said. Employers can run into legal problems if they wrongly believe an employee with supervisory duties is exempt from overtime. The federal test for distinguishing between exempt and non-exempt isn't as simple as labeling someone a manager. "I think a lot folks always assume if they are salaried they are not entitled to overtime, and if hourly they are," said Ryan Finn, an attorney at Hacker Murphy LLP in Colonie. "Under state and fed law, the issue is whether someone is exempt or non-exempt, which is a multi-factored test related to your position, responsibilities and duties." Finn is representing a former Stewart's employee who filed a \$20 million federal class action lawsuit in January claiming she and other hourly employees were not paid for all of the time spent on the job. Stewart's, the convenient store chain, has filed a motion to dismiss the case. Oral arguments are scheduled to be heard Aug. 11 before U.S. District Court Judge Thomas J. McEvoy. A separate lawsuit was filed July 30 in Massachusetts against The Golub Corp., owner of Price Chopper supermarkets. That suit was filed by a former supermarket department manager who claims she was not paid the overtime that she and others are entitled to receive. Price Chopper had not been formally served the lawsuit as of July 30, but the company said it complies with wage and hour laws.