

## Aggrieved Kinko's bosses can sue company

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**(03-20) 15:10 PDT SAN FRANCISCO** -- A federal appeals court says as many as 490 managers of Kinko's copy shops in California can go to trial in a lawsuit claiming they have been illegally denied overtime.

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The Ninth U.S. Circuit Court of Appeals in San Francisco reinstated a class-action suit Thursday by managers of the 200 retail stores owned by Fedex Kinko's Office and Print Services in the state. The suit was filed in 2005 and includes employees who had worked at the stores as early as April 2002.

The company classifies the managers as executives who are exempt from the state law that entitles employees to be paid 1 1/2 times their normal wage for any hours over eight in a day or 40 in a week. Executives are also not entitled to the meal and rest breaks that the state requires for other employees.

U.S. District Judge Sandra Brown Armstrong of Oakland dismissed the suit in 2007, citing the company's evidence of several managers' descriptions of their workdays, and a survey submitted by the company of 150 store managers around the nation.

The evidence showed that the employees spent more than half their time on managerial tasks, such as hiring and firing, training other employees and planning store operations, Armstrong said. Under state law, employees who devote more than half their work hours to such tasks, and who direct the work of at least two other employees, are exempt from overtime.

But the appeals court, in a 3-0 ruling, said the employees had presented enough evidence, from their own statements and an expert's critique of the company survey, to let a jury decide whether they were ordinary workers or executives. Before the case goes to trial, however, Armstrong can reconsider the size of the class action and decide whether some of the 490 employees should be excluded because of differences in their jobs, the court said.

Matthew Bainer, lawyer for the store managers, said they contend they spend more than half their time on such everyday tasks as taking orders, making copies and helping customers.

Employers "should take this (ruling) as a warning not to abuse the system of classifying employees as exempt," he said.

The company's lawyer was unavailable for comment.

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