

EMPLOYEE CLASS ACTIONS: WAGE AND HOUR, DISCRIMINATION AND BACKGROUND CHECKS

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The Good, the Bad and the Ugly



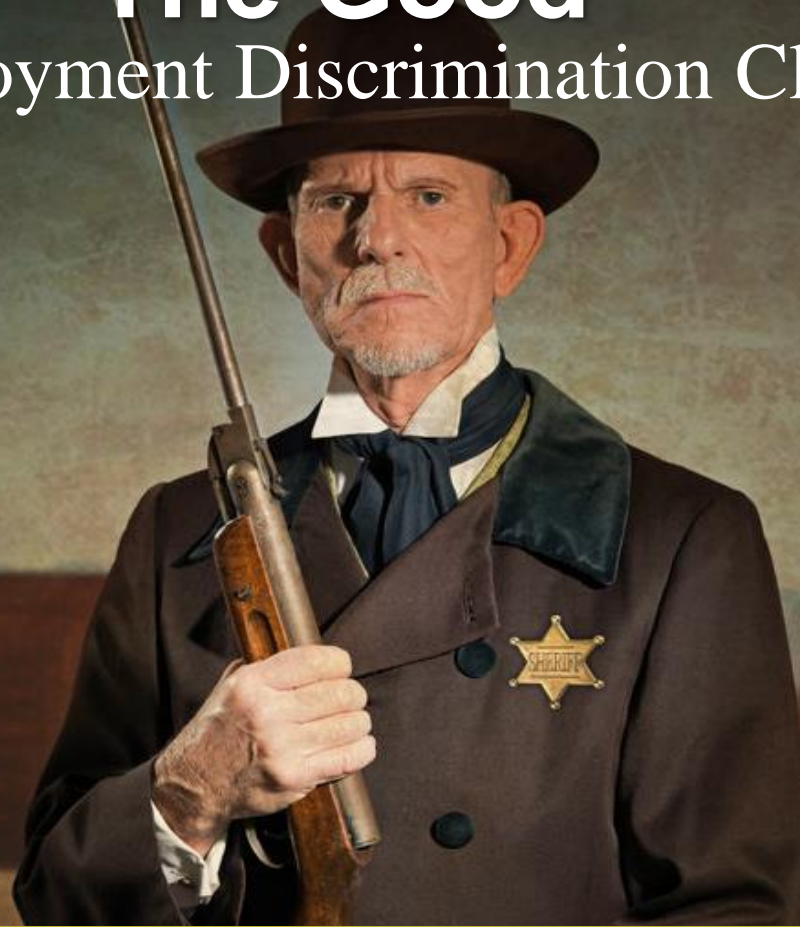
What is a “Class Action”?

It's the “Wild West”

- One person represents a group of people
- Driven and controlled by attorneys, not parties
- Expensive to defend and settle.

The Good

Employment Discrimination Claims



Dukes v. Wal-Mart Stores

- Individual determinations on promotions and salaries cannot be decided on a class basis
- Took 11 years to reach SCOTUS

A man with a mustache, wearing a dark, long coat and a pink patterned scarf, is pointing a handgun directly at the camera. He is standing in front of a blurred background that appears to be a Western-style building or street scene. The overall tone is dramatic and confrontational.

The Bad – Stats in FLSA Litigation

Tyson Foods, Inc. v. Bouaphakeo

- Employees can prove OT violations through statistics
- Employer cannot mount defense to claim of particular class members

The Ugly - FCRA



Fair Credit Reporting Act

- Technical violations of can be ruinous to an innocent employer who does not update forms and procedures.
- A small error can result in damages ranging from \$100 - \$1000 per person in the class, plus attorneys' fees and costs.

Solutions

- Review insurance policies. Can you insure against defense costs?
- Audit manuals, policies and procedures on a regular basis