

Class action lawsuit centers on golf pros' hours

By WILL ASTOR

A court ruling limiting claims by the lead plaintiff in an employment class action filed against Dick's Sporting Goods Inc. in Rochester still would allow plaintiffs in other states to sign on to the action, the plaintiff's attorney said.

Filed by Dolin, Thomas & Solomon LLP in November in U.S. District Court in Rochester on behalf of former Dick's worker Daniel Parks and others similarly situated, the lawsuit seeks overtime pay for individuals working for the sporting goods chain as PGA golf professionals. Dick's had misclassified such workers as exempt salaried employees rather than as non-exempt workers paid by the hour, the suit claims.

In a court brief seeking to prevent Dolin, Thomas from using employee lists obtained in discovery to send opt-in notices

to potential plaintiffs in the golf pros case, Dick's attorney Daniel Moore of Harris Beach PLLC argued that such notice, before U.S. District Judge Charles Siragusa ruled on whether the case is certifiable as a class action, would be premature.

Siragusa agreed, stating in a June 15 written decision that Parks, who had worked for Dick's only in Rochester, could not at this time represent the interests of Dick's golf pros in states other than New York.

Moore could not be reached for comment. The ruling would not slow plans to seek class action certification for the complaint, Dolin, Thomas partner Patrick Solomon said. If Siragusa grants such certification, he added, other potential plaintiffs could be notified of their right to join the action.

More than 150 workers in the Dick's chain in all would be similarly situated to

Parks, Parks' November complaint states. In the complaint, Parks claimed to have been required to work more than 40 hours a week and to have not been paid overtime for hours over 40.

Federal law names two classes of workers: exempt and non-exempt. Exempt employees can be salaried, receiving a set amount weekly regardless of how many hours they work each week. Non-exempt employees must be paid overtime for any hours worked over 40 in a given week. Laws passed by individual states more or less mirror the federal law.

Under FLSA and state laws, inside sales personnel—a group into which Dick's golf pros clearly fall—must be classed as non-exempt, Solomon said.

The federal Fair Labor Standards Act provides for current and former workers to claim benefits not paid within the three

years prior to a suit's filing. New York labor laws allow claims stretching back to the previous six years. Parks claims violations of federal and New York labor laws. Other golf pros in the state also could claim violations under New York law and thus collect up to six years' benefits.

The Pittsburgh-based Dick's reports having 268 stores in 34 states.

The Parks complaint is one of two class actions against Dick's alleging overtime violations under FLSA and New York labor law that Dolin, Thomas is pressing. The Parks action is not related to the previously filed overtime suit against the chain, Solomon said.

The earlier suit alleges Dick's improperly docked sales clerks' pay, automatically subtracting time for lunch periods and breaks even when employees worked through the pre-scheduled lunch and break periods. Dolin, Thomas is seeking information from Dick's in discovery in the earlier action, Solomon said.

The June ruling in the golf pro-related suit could preclude workers in states other than New York from claiming violations under their states' labor laws but would still allow them to claim FLSA violations, Solomon said. And since most of those states' labor provisions allow for retroactive claims three or less years prior to an action's filing, the decision virtually would have no effect on awards most golf pros might win.

If the suit is successful, workers who sign on to the complaint could each get awards equal to double the overtime due them. In cases where employers have not kept track of workers' hours, courts typically take workers' reasonable accounting of hours they have worked as fact, Solomon said.

wastor@rbj.net / 585-546-8303