

Abercrombie, Workers Ink \$9.6M Deal Over Call-In Scheduling

By [Danielle Nichole Smith](#)

Law360 (July 17, 2018, 9:10 PM EDT) -- A proposed class of an estimated 61,500 current and former Abercrombie & Fitch employees have urged a California federal judge to grant preliminary approval to a \$9.6 million agreement with the company to settle claims that its "call-in" scheduling policy flouted state labor laws.

The workers said in their motion for preliminary approval Monday that the settlement would provide "significant monetary relief" to the proposed class, which consists of nonexempt hourly Abercrombie employees in California who were scheduled for at least one call-in shift during the class period. The workers had accused Abercrombie & Fitch Trading Co. and Abercrombie & Fitch Stores Inc. in October 2015 of violating a California labor law requiring that employees be paid for at least two hours when they were required to report to work but not put to work when they did.

In their second amended complaint, the employees argued that those who had to call into Abercrombie an hour before their shift — but weren't asked to come in and work — qualified for the so-called reporting pay. However, the workers acknowledged in their motion Monday that there was no settled law in California for the issue, though they maintained confidence that the court would have found that call-in scheduling triggered the obligation.

"The relief offered by the settlement is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage and hour cases, and the dearth of appellate authority on the primary reporting pay claim in the case," the workers said.

Under the proposed settlement agreement, the average recovery for class members would be about \$130, after attorneys' fees and other costs were deducted from the fund, according to the workers. The settlement fund would be nonreversionary, and any extra money would be given to the unclaimed funds division of the state of California, they said.

The counsel requested \$2.8 million in fees, representing 30 percent of the total settlement amount, and expenses up to \$75,000, according to the workers. The two named plaintiffs, Samantha Jones and Robert Grob, would each receive an incentive award of \$10,000 under the settlement, the workers said.

Additionally, \$37,500 would be paid to the California Labor and Workforce Development Agency for the workers' Private Attorneys General Act claims, and administrative costs were estimated to be \$136,500, the workers said.

They said that the settlement should be approved because it was fair and had been the result of good faith negotiations by the two sides. Though the fund only represented about 24 percent of the total potential reporting time liability, according to the workers' calculations, the settlement was reasonable considering the litigation risks in the case, they argued.

Abercrombie had argued in mediation that the workers didn't have a private right under California's Unfair Competition Law or PAGA to bring their reporting pay claims, the workers said. And the company argued that the class claims were inappropriate because the call-in scheduling was implemented at a store manager level, creating variability, according to the workers.

"Abercrombie & Fitch Trading Co. and Abercrombie & Fitch Stores Inc. ("Abercrombie") has agreed to settle a class action lawsuit, originally filed in 2014, arising from prior use of call-in scheduling," a company spokesperson told Law360 on Tuesday. "Abercrombie strongly contests the allegations in the lawsuit, however it believes it is in the best interests of the company and all its stakeholders, including its employees, to settle this matter."

The case began with a complaint that was filed in California state court in July 2014, that was removed to federal court the following October after having undergone an amendment. The workers asked the court to let them revise their claims again in October 2015 and that the court stay the case for an appeal at the Ninth Circuit over the same issues. The parties attended mediation and reached their settlement during that stay.

Counsel for the workers declined to comment Tuesday.

The workers are represented by Michael D. Singer of Cohelan Khoury & Singer, Marc H. Phelps of the Phelps Law Group and Roger Carter of the Carter Law Firm.

The Abercrombie defendants are represented by Mark D. Kemple of Greenberg Traurig LLP.

The case is *Samantha Jones v. Abercrombie & Fitch Trading Co.*, case number 3:14-cv-04631, in the U.S. District Court for the Northern District of California.