

TARGET CORPORATION EXECUTIVE TEAM LEADER OVERTIME NEWSLETTER

July 2004

A CLASS ACTION LAWSUIT AGAINST TARGET CORPORATION HAS BEEN FILED FOR OVERTIME VIOLATIONS.

Two former employees of Target have filed a putative class action lawsuit against Target for overtime violations. The Complaint was filed in the Los Angeles County Superior Court. The plaintiffs are represented by the law firms of Stewart, Estes & Donnell and Righetti♦Wynne. The lawsuit is brought on behalf of certain ETLs who worked for Target in California within the last four years in the following positions:

1. ETL – Hard Lines,
2. ETL – Soft Lines,
3. ETL – Logistics,
4. ETL – Replenishment, and
5. ETL – Food Avenue.

The lawsuit alleges that Target has misclassified these salaried store employees as “exempt” employees instead of “non-exempt” employees under California law and thus deprived them of overtime compensation and other benefits.

CONTINUING INVESTIGATION.

The attorneys prosecuting this case are continuing their investigative efforts. We welcome any information you may be willing to provide about your work experience at Target. We are interested in the hours that you work and the activities you perform.

Additionally, we are interested in discussing this matter with former employees of Target who you may be in contact with who held one or more of the positions identified above.

SALARIED EMPLOYEES MAY BE ENTITLED TO OVERTIME.

There is a common misconception that salaried employees (e.g., Assistant Store Managers or ETLs) cannot receive overtime. Many employees are often told they are “exempt” from overtime because they are salaried and/or because they have the title “manager.” This is not necessarily true. California law states that, regardless of your title and regardless of whether you are paid a salary, you may be entitled to overtime if you spend 50% or more of your working hours engaged in non-managerial activities such as production, customer

service, answering customer questions, ringing up sales, stocking, cleaning, performing routine clerical work, and generally doing the same kind of work that hourly employees do. If you spend most of your time engaged in such activities, you might be entitled to overtime even though you are paid a salary and have an “ETL” title.

ATTORNEYS AT STEWART, ESTES & DONNELL AND RIGHETTI ♦ WYNNE ARE EXPERIENCED IN HANDLING OVERTIME CLASS ACTIONS

Righetti♦Wynne has tried the only overtime executive exemption class action to a liability determination in California history under California’s quantitative exemption analysis standard. The case was brought on behalf of salaried center managers against U-Haul. The employees won the liability phase and the Court determined that U-Haul had misclassified all of its center managers thus making U-Haul liable for back overtime wages. As a result of the liability finding against it, U-Haul settled for over \$7 million.

Reid Estes and Peter Klett of Stewart, Estes & Donnell recently successfully prosecuted a case resulting in the highest recovery to date under California’s overtime laws challenging the “outside salesperson” exemption. On October 17, 2001 a judge in Los Angeles approved a settlement requiring Coca-Cola to pay over \$20 million to its route salesmen to compensate them for overtime.

ENTITLEMENT TO OVERTIME TEST.

- A.** Are you paid a salary?
B. Do you work more than 40 hours per week?
C. Do you spend 50% or more of your work time engaged in non-management work such as: same kind of work as subordinates, production, customer service, cleaning and maintenance, and routine clerical functions?

If you answered “YES” to all of the three questions above, you may be owed overtime compensation under California law.

FREQUENTLY ASKED QUESTIONS.

IF TARGET ASKS ME TO SIGN A STATEMENT, DO I HAVE TO?

No. No one, especially your employer, can involuntarily force you to sign a statement.

Employers in this type of case frequently solicit declarations from their current employees in an effort to stop the case from going forward as a class action and to defeat the claims for back wages. Be aware that employers in this type of case have interests that are antagonistic to yours. Anything you testify to may be used against you. So, if you sign anything, make sure that every fact is the truth.

WHAT IS A CLASS ACTION?

Class actions are lawsuits brought by one (or a few) individual(s) on behalf of all people who are similarly situated. One person, who is called the “class representative,” can sue on behalf of a group of employees of one company who are all subject to the same illegal policy or practice. The other employees can then share in the benefits of any settlement or judgment achieved by the class representative. Class actions avoid repetitious litigation by determining the claim once as opposed to many times. Class actions help individual employees by providing strength in numbers and protection by attorneys skilled and knowledgeable in this area of the law.

DO I HAVE TO PAY ATTORNEY FEES?

No. In class actions such as these, the individual class representatives and class members are not responsible for costs or attorney fees. The attorneys get paid only if there is a recovery on behalf of the class. All fees and costs are taken out of the common fund generated by the settlement or judgment of the case. In class actions, the judge determines the amount of fees the attorneys will recover and must also approve the costs.

WHAT IF THERE ARE NO RECORDS OF MY ACTUAL HOURS WORKED?

All that is needed is your best recollection. In the typical situation where the employer has not kept any accurate records of when its salaried employees work, the law provides that the next best evidence is what the employee said he or she worked. The employer then must disprove this evidence and that is very difficult when the employee’s testimony is true and the employer has no records.

CAN I GET FIRED FOR BRINGING OR PARTICIPATING IN A CLASS ACTION?

It is against the law for an employer to take any retaliatory action against an employee in response to an employee exercising a legal right such as

seeking overtime pay. Such conduct by an employer can subject the employer to further legal action including claims for punitive damages.

HOW FAR BACK DOES MY CLAIM GO?

Four years from the date the complaint is filed.

HOW DO I CALCULATE WHAT I AM OWED?

If you are paid on a salaried basis, here is the formula for calculating what you may be owed under California law:

1. Divide your gross weekly salary by 40 to get your regular rate.
2. Multiply your regular rate times 1.5 to get your overtime rate (premium rate).
3. Multiply your overtime rate by the number of hours you work over 40 in a week.
4. Multiply your weekly overtime number by the number of weeks you have worked as a salaried manager going back 4 years.

PUBLISHER INFORMATION

We are prosecuting an overtime class action against Target on behalf of certain current and former ETLs in California. We are responsible for this Newsletter. All of the information in this Newsletter is our opinion based on information gathered to date. We are continuing to seek factual information from former and current employees of Target to assist us in our prosecution. Any contact you have with us is confidential:

Edward J. Wynne, Esq.
JEB Pickett, Esq.
Righetti ♦ Wynne
456 Montgomery Street, Ste. 1400
San Francisco, CA 94104
Tel:(800) 447-5549 ♦ Fax: (415) 397-9005
Email: ewynne@righettilaw.com
Visit our website at www.righettilaw.com

Peter F. Klett
Stewart, Estes & Donnell
424 Church Street, Ste. 1401
Nashville, TN 37219-2392
Tel. (800) 229-6538 ♦ Fax. (615) 256-8386
Email: klett@sedlaw.com
Visit our website at www.sedlaw.com