

# WYNNE LAW FIRM

CHASE BUSINESS BANKER OVERTIME NEWSLETTER - MAY 2010

## **CLASS ACTION FILED AGAINST CHASE ON BEHALF OF BUSINESS BANKERS**

Wynne Law Firm has filed a putative class action against JPMorgan Chase Bank, N.A. (“Chase”) on behalf of current and former salaried Business Bankers (“BB’s”) seeking overtime compensation in the Superior Court of Orange County, California. The action seeks to cover BB’s in California who worked between September 25, 2008 to the present. The action seeks to recover earned and unpaid overtime compensation based on the allegation that Chase has misclassified its BB’s as exempt when they should be classified as nonexempt and paid overtime compensation.

The complaint alleges that on or about September 25, 2008, JPMorgan Chase & Co. purchased the deposits, assets and certain liabilities of Washington Mutual Bank’s banking operations from the Federal Deposit Insurance Corporation. Washington Mutual Bank had branch locations in California. After the purchase, JPMorgan Chase & Co. began operating the former Washington Mutual bank branches in California under the name “Chase.”

If you are a current or former BB of Chase who worked in California at any time during the period of September 25, 2008 to the present, we would like to speak to you about your experience at Chase. Any communications with Wynne Law Firm are strictly confidential.

## **WYNNE LAW FIRM PREVAILED AT TRIAL ON BEHALF OF BBOS EMPLOYED BY US BANK.**

Wynne Law Firm recently tried an overtime class action against US Bank on behalf of current and former Business Banking Officers of US Bank who worked in California. On May 20, 2009, the Alameda County Superior Court rendered its Judgment against US Bank in the approximate amount of \$15,000,000. The Court found that US Bank had misclassified its BBOs as exempt as opposed to nonexempt and therefore owes them overtime compensation. US Bank had claimed that the BBOs were classified as exempt under the “outside salesman” exemption. The Court rejected that defense. The case is currently on appeal. The Judgment including the Statement of Decision for

Phase I (the liability phase) and Phase II (the damages phase) can be view at the Wynne Law Firm website under the drop down memo for “case inquires” for the *Duran v. US Bank* case at [www.wynnelawfirm.com](http://www.wynnelawfirm.com).

## **WYNNE LAW FIRM HAS RECOVERED A SETTLEMENT FOR BBOS EMPLOYED AT CITIGROUP.**

In January 2008, Wynne Law Firm filed a class action complaint against Citibank on behalf of its Business Banking Officers. The case was filed in the United States District Court for the Northern District of California. Similar to the US Bank case, plaintiff alleged she was misclassified as exempt and entitled to overtime under California and federal law. The case was conditionally certified as a collective action under the FLSA on February 18, 2009. The parties thereafter reached a settlement wherein Citibank agreed to make available \$3,500,000 to the BBOs which the District Court has granted preliminary approval of on March 17, 2010.

## **SALARIED EMPLOYEES MAY BE ENTITLED TO OVERTIME.**

There is a common misconception that salaried employees cannot receive overtime. Many employees are often told they are “exempt” from overtime because they are salaried and/or because they are “management.” This is not always correct.

It is a general rule that employees are entitled to overtime compensation. Employees who are “exempt” from this rule are not entitled to overtime compensation. The laws that govern the payment of wages are designed to protect employees. Thus, exemptions – or reasons for not paying overtime – are narrowly construed against the employer. Based on our experience, we believe that Chase may try to claim the following exemptions for not paying overtime compensation to the BB’s:

### **Outside Sales Exemption**

The outside sales exemption, under California law is designed for employees who are primarily engaged (over 50% of their time) in making sales away from the employer’s place or places of business. Generally, this means that the employee spends most of his/her time at the customer's place

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of business. However, if an employee spends most of his/her time *inside* the employer's place or places of business, the employer will not be able to claim the outside salesperson and overtime compensation will be owed for all overtime hours worked.

### **Administrative Exemption**

The administrative exemption, under California law is designed for employees who perform office or non-manual work that directly relates to the management or the general business operations of the employer or employer's customers. The phrase "directly related to management policies or general business operations of his employer or his employer's customers" describes those types of activities relating to the administrative operations of a business, as distinguished from "production" or, in a retail or service establishment, "sales" work. Thus, employees who do not "administer" but who "sell" an employer's goods or services are nonexempt under the administrative exemption and are thus owed overtime compensation.

### **Commission Sales Exemption**

The commission sales exemption under California law is designed for employees who are principally engaged in selling (over 50% of the working hours) and receive more than 50% of their total compensation from commissions. In order to constitute commissions, the compensation received must be based on a percentage of the sale price of the product or service. Thus, incentive pay plans or bonus plans may not qualify as a commission pay plan under this exemption. Moreover, even if the plan is a legitimate commission pay plan, if the employee does not earn *more than half* of their total compensation from commissions, the exemption will not apply and the employee will be owed overtime compensation.

### **FREQUENTLY ASKED QUESTIONS**

#### **IF CHASE OR ITS ATTORNEYS ASKS ME TO SIGN A STATEMENT, DO I HAVE TO?**

No. No one, especially your employer or its attorneys, can involuntarily force you to sign a statement. We have found in these types of cases that employers frequently request signed statements from their current employees in an effort to stop the case from going forward as a class action and/or to defeat the claims for back wages. Be aware of who

you are talking to and that employers in this type of case may 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 and that you understand every word in the statement. If you are approached to be interviewed, you may want to ask these types of questions:

- Who do you represent?
- Do you represent me or my interests?
- Do I have to talk to you?
- What are my rights?
- Is this a confidential conversation?
- How are you going to use this statement?

These are just some examples of the types of questions you may consider asking anyone who approaches you for a statement.

#### **WHAT IS A CLASS ACTION?**

Class actions are lawsuits brought by one or a few individuals on behalf of all people who are similarly situated. One person can sue on behalf of a group of employees of a company who are all subject to the same alleged 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 help individual employees by providing strength in numbers and protection by attorneys skilled and knowledgeable in this area of the law.

#### **PUBLISHER INFORMATION**

We are prosecuting a case against Chase on behalf of current and former BB's. We are responsible for this Newsletter. We are seeking factual information from former and current employees of Chase to assist us in our prosecution. All of the information in this Newsletter is our opinion based on information gathered to date.

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