

WYNNE LAW FIRM

US BANK BBO OVERTIME NEWSLETTER MAY 2010

US BANK'S ATTEMPT TO LITIGATE CASE IN FEDERAL COURT FAILS

On May 28, 2009, the *Trahan v. US Bank* class action complaint was filed in Alameda County. US Bank removed the action to federal court. Defendants often remove cases into federal court because they think they have a better shot at winning. We then brought a motion to remand the case back to Alameda County which the District Court granted on November 30, 2009.

US Bank did not like the Judge's decision so it petitioned the court of appeal for federal courts, the Ninth Circuit Court of Appeals, if it could appeal the district court's ruling. The Ninth Circuit granted the request and allowed US Bank to appeal. Both parties then briefed the issue of whether this case belongs in federal court or state court. On May 18, 2010, the Ninth Circuit decided that Plaintiff and the District Court were correct and confirmed that this case belongs in state court.

UPDATE ON JUDGMENT ENTERED AGAINST US BANK FOR NEARLY \$15 MILLION.

On May 20, 2009, a judgment against US Bank in the approximate amount of \$15 Million was entered in favor of a certified class action of BBOs who are owed earned and unpaid overtime compensation. The case, *Duran v. US Bank N.A.* (Alameda County Superior Court Case 2001-035537) is a certified class action brought on behalf of current and former BBOs who were employed by US Bank in California at any time between December 26, 1997 and September 26, 2005.

US Bank claimed that the BBOs were exempt from overtime because they were "outside salesmen." The Court rejected this defense in the liability phase. After a second damages phase of trial, the Court found that US Bank owes BBOs approx. \$15 Million in back overtime wages and prejudgment interest. This amount will continue to accrue interest at 10% per annum until paid. Plaintiffs were also awarded costs against US Bank in the amount of over \$280,000.

Plaintiffs have also filed a motion for attorney fees in the approximate amount of \$30,000,000. This motion has been argued and is under submission with the court.

US Bank has appealed the judgment and the award of costs. US Bank has stated it will also appeal the award of attorneys' fees as well. We are very confident that all of US Bank's appeals will be denied.

A copy of the Judgment and Statement of Decision for Phase I (liability) and Phase II (damages) can be viewed and downloaded at www.wynnelawfirm.com. The Statement of Decision for Phase I is instructive for understanding the facts involved in that case and explaining why US Bank owes the BBOs back wages.

BBOS AT US BANK TODAY

Even though US Bank lost the trial, it is our understanding that US Bank has not reclassified the BBOs from salaried-exempt to hourly-nonexempt status. Even though the Court made a judicial finding that US Bank had violated the law, it is our understanding that US Bank continues to classify its BBOs as salaried-exempt and does not pay overtime compensation for overtime hours worked. We are seeking information about your experience at US Bank as a BBO.

US BANK'S LATEST SCHEMES TO AVOID PAYING OVERTIME COMPENSATION

Thanks to the many of you who keep us posted on US Bank's attempts to avoid paying overtime to BBOs, we understand that US Bank has introduced two schemes it apparently thinks will shield it from paying the wages we believe are owed. First, US Bank has modified the job description to state that BBOs must be outside most of their time. Second, US Bank has required BBOs to report that they spend most of their time outside. We believe that neither of the initiatives have any merit and will not protect US Bank from paying BBOs overtime compensation.

SECOND PUTATIVE OVERTIME CLASS ACTION FILED AGAINST US BANK ON BEHALF OF BBOS.

Because US Bank has failed to reclassify its BBOs as nonexempt, Wynne Law Firm is representing another plaintiff in a second putative class action against US Bank. We are seeking to recover overtime compensation for all BBOs at US Bank in California who started after September 26, 2007 to the present. Even though the case was filed a year

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ago, the case remains in the preliminary stage due to US Bank's failed attempt to litigate in federal court.

THE COMPLAINT ALLEGES THAT BBOs WERE NOT PAID ALL THEIR WAGES UNDER CALIFORNIA LAW

The *Trahan v. US Bank* complaint alleges that BBOs who started after September 26, 2007 in California were misclassified as exempt and therefore owed overtime compensation. It is our opinion that US Bank will similarly claim that BBOs are not owed overtime because they are exempt under the "outside sales exemption." We believe this claim has no merit.

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. (Think: traveling salesman.) Generally, this means that the employee spends most of his/her time at the customer's place 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 sales exemption and overtime compensation will be owed for all overtime hours worked.

YOU DO NOT HAVE TO SIGN ANY STATEMENTS YOU DON'T WANT TO

No one, especially your employer or its attorneys, can 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. **IMPORTANT:** This happened in the *Duran* case. There is evidence in that case that attorneys from the law firm of Carlton, DiSante and Freudenberger, who *only* represent the Bank, obtained statements from BBOs in a misleading manner and the attorneys later sought to use those very same statements against those BBOs in a failed effort to prevent the case from going forward as a class action and to prevent the BBOs from recovering their past due 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 and my interests?
- Do I have interests that are not the same as my employer's?
- Do I have to talk to you?
- What are my rights?
- Is this a confidential conversation?
- How are you going to use this statement?
- What facts determine whether I am entitled to overtime compensation?
- Can I have my own attorney present for any interview?
- Is there a pending case that concerns my legal rights?

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

ACTUAL RECORDS OF HOURS WORKED ARE NOT NEEDED TO PROVE OVERTIME HOURS

All that is needed is your best recollection. In the typical situation where the employer has not kept any accurate records of when its employees work, the law provides that the next best evidence is what the employees said they worked.

PUBLISHER INFORMATION

We are prosecuting this case against US Bank N.A. on behalf of current and former BBOs. We are responsible for this Newsletter. We are seeking factual information from former and current employees of US Bank 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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