

OVERTIME NEWSLETTER FOR GAP, INC. SALARIED STORE EMPLOYEES UPDATE

March 2004

A CLASS ACTION LAWSUIT AGAINST THE GAP FOR OVERTIME VIOLATIONS HAS BEEN FILED.

Two former employees of Gap, Inc. have filed a putative class action lawsuit against Gap, Inc. for overtime violations. The Complaint was filed in the Los Angeles County Superior Court. The lawsuit is brought on behalf of all current and former salaried retail store employees who worked for the Gap in California in single store units (i.e., "boxes") with less than \$7,000,000 in average annual sales within the last four years. **Contact us if you are unsure if the action covers you.**

The lawsuit alleges that Gap, Inc. 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. The case is limited to the Gap stores and does not cover employees assigned to Banana Republic, Old Navy or Gap Outlet while they were working at those concepts.

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 the Gap. We are interested in the hours that you work and the activities you perform.

SALARIED EMPLOYEES MAY BE ENTITLED TO OVERTIME.

There is a common misconception that salaried employees (e.g., Store Managers and Associate Managers) 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 often not true. California law states that, regardless of your title and regardless of whether you are salaried or hourly, you are 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, running returns, stocking, folding,

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 may be entitled to overtime even though you are paid a salary and have a "manager" title.

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.

HASN'T THE GAP ALREADY BEEN SUED FOR THIS BEFORE?

Yes. A few times. However, the Gap has not received a judgment on the merits in its favor nor – do we contend – has it stopped its illegal practices. In one case (Nelson-Rupp v. the Gap), lawyers at Righetti Wynne successfully objected to a class action settlement the Gap had improperly sought to get approved that would have had the effect of extinguishing salaried managers' rights to overtime compensation even though the case only alleged, in its final form, entitlement to penalties for the late payment of final paychecks. In other cases against the Gap, no case was certified as a class action. Therefore, judgment was entered and not decision on the merits of the claim was made. We believe that the salaried store employees that we have brought this action on the behalf of are entitled to have their day in court and have the question of their entitlement to back wages determined on the merits.

IF THE GAP 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 can 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, e.g., if you work 50 hour per week, then you work 10 overtime hours per 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 Gap, Inc. on behalf of current and former salaried store employees 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 Gap to assist us in our prosecution. Any contact you have with us is confidential:

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

Edward J. Wynne
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