

Labor and Employment E-news

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Financial Services Employees Entitled to Overtime under the Fair Labor Standards Act

On November 2, 2009, the Second Circuit held that an underwriter employed by J.P. Morgan Chase was a non-exempt employee entitled to overtime under the Fair Labor Standards Act.

In *Davis v. J.P. Morgan Chase & Co.*, No. 08-4092-CV, (2nd Cir. 2009), the Second Circuit addressed whether "underwriters tasked with approving loans, in accordance with detailed guidelines provided by their employer, are administrative employees exempt from the overtime requirements of the Fair Labor Standards Act." In this case, the Plaintiff evaluated loan applications using specific criteria detailed in Chase's "Credit Guide," and approved the applications if the loans met the Guide's criteria. Chase categorized Plaintiff as an exempt administrative employee. Accordingly, he did not earn overtime even though he regularly worked over forty hours in a workweek.

In analyzing this case, the Court turned to the FLSA's regulation detailing the difference between production work and administrative work. Specifically, the Court noted that exempt administrative employees must perform work directly related to "management policies" or "general business operations." In other words, an exempt administrative employee's work consists of "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." See 29 C.F.R. § 541.205(a).

Applying this regulation to the Plaintiff's work, the Court reasoned that the Plaintiff's work did not relate to setting "management policies" nor to "general business operations," such as human resources or marketing, but, rather related to "the 'production' of loans -- the fundamental service provided by the bank." The Court also noted that within Chase, departments were informally categorized as "operations" or "production," with underwriters categorized as "production." The Court also pointed out that Chase's underwriters were paid "production incentives" for the number of loans approved. Therefore, their work could be quantified. Thus, the Court held that the Plaintiff was a non-exempt employee entitled to overtime because he performed "production" work as opposed to "administrative" work.

This opinion is similar to a number of cases from other circuits that now are holding that underwriters, loan officers, and employees involved in extending credit are non-exempt employees. Similarly, a number of recent settlements highlight the importance of financial services companies correctly classifying their employees:

- 48.5 million awarded to 945 Farmers Insurance Exchange claims adjusters, who were misclassified as exempt administrative employees;
- \$12.9 million awarded to Wells Fargo business analysts and business consultants who were misclassified as exempt administrative employees;
- \$89 million awarded to UBS financial advisers who were misclassified as exempt administrative employees.

In short, it is now more important than ever for financial service companies to correctly classify their employees under the FLSA. If you need help in classifying your workforce, or have any questions regarding the FLSA, please contact your Butzel Long attorney.

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