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**LOAN UNDERWRITERS ENTITLED TO OVERTIME PAY –  
ADMINISTRATIVE EXEMPTION DOES NOT APPLY**

The influential Second Circuit Court of Appeals has decided that underwriters at J.P. Morgan Chase responsible for approving loans following strict guidelines set out in Chase's Credit Guide, do not fall within the administrative exemption from overtime pay. (*Whalen v. J.P. Morgan Chase, No. 08-4092-cv. Nov. 20, 2009.*)

This is the latest in a series of decisions addressing the Fair Labor Standards Act's "white collar exemption" as it applies to workers in the financial industry, and one of the first federal appeals court rulings interpreting the new Department of Labor regulations on the subject that were issued in 2004. This decision addresses the first prong of the administrative exemption test: does the worker perform work directly related to management policies or general business operations of the employer? Such activities are deemed "administrative," as distinct from "production" or "sales." Quickly dismissing any argument that the underwriters were engaged in sales, the Second Circuit discussed at length the difference between administrative work and production work, reaching the conclusion that the underwriters were production workers, and therefore not eligible for the exemption. This finding was based on the fact that: (i) their incentive compensation was based on their rate of production, or the number of loan applications they processed; (ii) they played no role in advising customers on how to select amongst various loan packages, or in setting lending policy.

Because Chase had failed to show the underwriters met the first prong, the court did not address other parts of the administrative exemption test: whether they customarily and regularly exercise discretion and independent judgment, or whether they were paid on a salaried basis.

**Practice Pointers:**

- Those whose duties primarily comprise determining whether a customer meets credit requirements pursuant to the Bank's guidelines should be paid on an hourly basis and paid overtime for hours worked in excess of 40 per week
- To qualify for the administrative exemption, loan officers should be involved not only in collecting and analyzing information regarding the customer's income, assets, investments or debts, but also in determining which financial products best meet the customer's needs and financial circumstances, advising the customer regarding the advantages and disadvantages of different financial products, and marketing, servicing or promoting the products.

**For more information about this or other employment compliance issues, please call us, or visit our website.**