

# RIGHETTI WYNNE

A PROFESSIONAL CORPORATION

## TULLY'S COFFEE COMPANY MANAGERS OVERTIME NEWSLETTER

### TULLY'S COFFEE COMPANY OVERTIME INVESTIGATION

Righetti Wynne is investigating Tully's Coffee Company on behalf of all current and former salaried Managers in California. We are investigating whether Tully's has misclassified its Managers as "exempt" employees instead of "non-exempt" employees under California law and thus deprived them of overtime compensation and other benefits.

### SALARIED EMPLOYEES ARE OFTEN ENTITLED TO OVERTIME

There is a common misconception that salaried employees (e.g., General 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, ringing up sales, stocking, cleaning, 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.

Many businesses have had class actions filed against them on behalf of salaried managers seeking back overtime wages. For example, businesses such as Aaron Brothers, Chief Auto, Chuck E. Cheese's, Denny's, Farmer's, Goodyear, KB Toys, Kragen's, Office Max, Pacific Sunwear, Pep Boys, Rite Aid, Starbucks, Sunglass Hut, Trak Auto, Tuneup Masters, U-Haul, Victoria's Secret, and Winston Tires have reached settlements compensating their managers for overtime for the past several years.

Being paid a salary or being called a "manager" is irrelevant under California law for determining whether or not an employee is entitled to overtime or not. Many corporations have been misclassifying their "working managers" as exempt from overtime when, in truth, those managers

should have been paid overtime pay for the past several years.

### ATTORNEYS AT RIGHETTI ♦ WYNNE ARE EXPERIENCED IN HANDLING OVERTIME CLASS ACTIONS

Matt Righetti of Righetti Wynne tried the only overtime class action to a liability determination in California history under California's quantitative exemption analysis standard. The case was brought on behalf of salaried center managers against U-Haul. The employees won the liability phase and the Court determined that U-Haul had misclassified all of its center managers thus making U-Haul liable for back overtime wages. As a result of the liability finding against it, U-Haul settled for over \$7 million.

### TEST TO DETERMINE POSSIBLE ENTITLEMENT TO OVERTIME COMPENSATION

If you worked in California and, if at any time in the last four years, you were not paid time and one-half (premium pay) for every hour worked in excess of 40 hours per week then you should take the following test:

- A. At any time in the last four years, were you paid a salary?
- B. At any time while being paid a salary, did you work more than 40 hours per week?
- C. At any time while being paid a salary, did you spend 50% or more of your work time engaged in non-management work such as: same kind of work as subordinates, helping customers, answering phones, stocking, cashiering, packing or unpacking shipments, loading or unloading trucks, cleaning and maintenance?

If you answered "YES" to all of the three questions above, you may be owed overtime compensation under California law.

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## FREQUENTLY ASKED QUESTIONS

### 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.

### HOW CAN I PROVE HOW MANY HOURS I 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. Under California law, the failure to pay overtime is an unfair business practice. Laws prosecuting actions for unfair business practices have a statute of limitations of four years.

### HOW DO I CALCULATE WHAT I AM OWED?

If you are or were 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.

You may also be entitled to interest on your back wages as well as penalties if you are a former employee.

## PUBLISHER INFORMATION

We are investigating a possible overtime class action against Tully’s Coffee Company 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 seeking factual information from former and current employees of Tully’s to determine if an action is warranted. Any contact you have with us is confidential:

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