

Investor's Business Daily Loses Wage and Hour Class Action Appeal

Investor's Business Daily, a national financial newspaper, loses major class action appeal related to overtime claims and chargebacks of its telemarketers.

Los Angeles, CA (PRWEB) March 30, 2006 -- Investor's Business Daily ("IBD") lost a major wage and hour class action appeal yesterday, *Harris et al. v. Investor's Business Daily, Inc.* Division 4 Case Number B178428, to a certified class of nearly 500 telemarketing employees. The case had been pending for nearly half a decade in the Los Angeles Court system, and the prior judgment granted to IBD has now been reversed. Although the case had many causes of actions, the main issues were regarding failure to pay overtime, and the illegal deduction of wages from employee paychecks called "chargeback's." The chargebacks were taken from employees' paychecks after a customer cancelled a subscription for which the employee had received a "commission".

According to the Court of Appeals decision in the Investors Business Daily case, it all turns on the language in the employment agreement and whether the employees had a separate signed agreement consenting to the chargeback practice. In a prior case involving the Los Angeles Times that held the practice of chargebacks to be lawful *Los Angeles Times v. Steinhebel*, the LA Times clearly labeled its payments to the employees an "advance", which is a loan and not a wage, the cancellation period was for only four weeks, a short period of time, and the LA Times had a separate signed agreement from its employees consenting to the practice. Whereas, in this case, wherein the court held that IBD failed to establish that its chargeback policy was lawful, IBD only started calling its payments an "advance" after the claim against them was made, the chargeback "cancellation" period was sixteen weeks (a substantially longer period of time than the L.A. Times case), there was no separate signed agreement with the employees consenting to the practice, and the employer received revenue from the papers delivery before the subscription was cancelled. As the Court of Appeals wrote:

Unlike the employees in *Steinhebel and Hudgins [v. Neiman Marcus Group, Inc. (1995) 34 Cal.App.4th 1109]*, appellants did not expressly agree to the chargeback policy in writing. Even if they knew about the policy, IBD's materials suggested that the points were earned at the time of the sale, not at some designated point in the future. IBD's position differs from that of *Neiman Marcus*, in that IBD retained the payment received for the portion of time during which the customer received the newspaper, while *Neiman Marcus* retained nothing after the merchandise was returned.

Mark Thierman, who argued both cases (*Steinhebel* and *Harris*) before the California Court of Appeals in Los Angeles said he was grateful for the second decision, but hoped that the result means more than telling employers how to avoid the labor code's prohibition against deductions from wages, Labor Code Section 221. "Labor Code Section 221 says nothing about the money being 'earned' at the time of payment because employees are paid on a cash basis not an accrual basis, and the only way an employer can ever take back money once paid to an employee in that employee's paycheck is to comply with the provisions of Labor Code 300, which was not done in either case" Thierman said. Eric Epstein, co-counsel in the case, also stated he was relieved by the opinion. "At least we are headed back in the right direction on this issue" said Epstein, who added that he was particularly pleased that the court found that the language used by *Investors Business Daily* in its employment documents "meant something", and IBD could not avoid liability by simply changing its language after the claim was made. Toby Harris, who brought the suit as an employee of *Investors Business Daily* has also sued the company for wrongful discharge and alleges IBD terminated him for complaining about the company's chargeback policy and other unlawful employment practices said that: "It's not surprising that most Corporations will go to any extent to protect these type of policies, including firing



employees, multi million-dollar protracted litigation, even driving the employees into half a million dollars in debt, simply because, these type of policies make them millions of dollars, while taking advantage of the average American employee. The Court of Appeals has issued the correct opinion here."

A portion of the case had been remanded back to trial court for further argument based on the direction of the higher court which states,"The case is remanded to the superior court for proceedings consistent with this opinion." The opinion clearly does not favor IBD's chargeback policy, nor the defense of it's policy.

IBD has not yet made any public comment on the opinion.

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