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## Morgan Stanley Workers Win Cert. In OT Collective Action

By **Helen Christophi**

Law360, Los Angeles (February 07, 2013, 7:36 PM ET) -- A New York federal judge on Thursday conditionally certified a Fair Labor Standards Act collective action accusing Morgan Stanley & Co. LLC of shorting its client services associates on overtime pay, finding the plaintiffs had adequately claimed they were subject to an unlawful overtime policy.

U.S. District Judge Richard J. Sullivan ruled the plaintiffs, current and former client services associates employed by Morgan Stanley throughout most of the U.S., had sufficiently alleged they were subject to an unofficial overtime policy that stiffed them on overtime pay despite the existence of a formal policy compensating them for work performed beyond the standard 40 hours per week.

"Plaintiffs argue and provide evidence indicating that Morgan Stanley's formal policy was obviated by a de facto policy — known to managers or supervisors at 13 of Morgan Stanley's branches — of requiring overtime work without attendant compensation," the order said. "Such allegations are sufficient at the conditional certification stage."

The workers won conditional certification of all persons who worked as CSAs for Morgan Stanley, except in California, in the last three years, according to the ruling.

Philips Amador, Sylvester Cetina and JoAnn Sunkett, together with five opt-in plaintiffs, filed suit in 2011, accusing the financial services giant of willfully refusing to pay its CSAs overtime wages, in violation of the FLSA. Morgan Stanley employs CSAs at its branch locations in the U.S. to assist its financial advisers, and they are eligible for overtime pay under the FLSA, according to the ruling.

Morgan Stanley promulgated a formal overtime policy stating that it would pay overtime for work performed over 40 hours per week, but the plaintiffs say the company also maintained an informal "off-the-clock" overtime policy of barring CSAs from recording their overtime hours and preventing them from being compensated for those hours if they were logged.

The plaintiffs claim the company's branch managers and supervisors told CSAs not to accurately record their hours, removed or told CSAs to remove overtime hours worked from their time sheets, and pressured them to not report their overtime hours.

In opposing conditional certification, Morgan Stanley argued that it had an official overtime policy that required CSAs to accurately record all their time worked, including overtime, and that any violations of that policy were the result of "a few rogue managers disobey[ing] the company's directives," the opinion said.

The firm pointed to its records showing it had paid millions of dollars in overtime to its CSAs since January 2010 as further evidence that it didn't have a covert policy of not paying

overtime wages.

But Judge Sullivan rejected that contention, ruling that the plaintiffs had argued and provided evidence they were, in fact, subject to a de facto overtime policy that prohibited them from logging their overtime hours and being compensated for them.

"[Morgan Stanley's] argument is beside the point," the judge said. "The question for the court is not whether defendants paid any overtime to some of the plaintiffs, but whether they paid all overtime or had a policy of limiting the amount of overtime pay — through the explicit or implicit actions of their managers and supervisors — that CSAs were entitled to receive."

In addition to granting conditional certification, Judge Sullivan ordered Morgan Stanley to hand over to plaintiffs within 21 days a list of the names, email addresses, work locations and dates of employment of all persons it employed as CSAs in the last three years, except those in California.

Representatives for the plaintiffs and Morgan Stanley weren't immediately available for comment Thursday.

The plaintiffs are represented by Seth Richard Lesser, Fran L. Rudich and Michael John Palitz of Klafter Olsen & Lesser LLP and Gregg I. Shavitz and Susan Hilary Stern of Shavitz Law Group.

Morgan Stanley is represented by Thomas Anton Linthorst, Christopher Kenneth Ramsey and Stephanie Rosel Reiss of Morgan Lewis & Bockius LLP.

The case is Philips Amador et al. v. Morgan Stanley & Co. LLC et al., case number 1:11-cv-04326, in the U.S. District Court for the Southern District of New York.

--Editing by Elizabeth Bowen.

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