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# Wage Advance Products Draw First Consumer Class Action Lawsuits

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The legal uncertainties that surround wage advance products continue to boil and bubble. We've previously written about legal issues these products raise, the New York Department of Financial Services ("NYDFS") investigation into a number of providers and the California legislature's efforts to create a framework to regulate this space. Into this legal stew we can now add a heaping cup of consumer class action.

A class action lawsuit has been filed in federal court in California against wage advance provider Earnin alleging the company engaged in unfair and deceptive trade practices and is operating in violation of state and federal lending laws. The lawsuit, captioned "*Stark v. Activehours, Inc., d/b/a Earnin*," asserts the company is actually an unlicensed lender: "Earnin seeks to skirt applicable financial, banking, and payday lending regulations through a linguistic trick: calling a payment to use its service a 'tip' instead of a cost of borrowing. Semantics aside, Earnin is in the business of loaning money."

Earnin is a direct-to-consumer provider which allows consumers to "cash-out" a portion of the wages they have earned but not yet received. When the consumer is ultimately paid by the employer via direct deposit, Earnin debits the amount of the advance, plus any authorized "tip," from the consumer's bank account. Plaintiffs contend that Earnin is, in fact, providing a loan under federal and state law. The complaint alleges that Earnin's wage advances are a form of closed-end credit subject to the federal Truth in Lending Act ("TILA") and California's payday lending regulations.

Earnin claims it provides the wage advance service without "loans, fees, or hidden costs." While Earnin does not assess fees, it does collect voluntary "tips" from consumers who use the service. Plaintiffs allege that the tips are not actually voluntary because the amount of the wage advance offered to a consumer along with other features of the service are tied to the user tipping a certain amount. According to the complaint, this makes the "tip" a finance charge which must be properly disclosed under TILA.

Plaintiffs also contend that Earnin's statements that it is not a loan and that it doesn't charge fees are false and constitute unfair and deceptive business practices. The complaint alleges that Earnin collects a significant amount of information about the consumer, his or her bank accounts and even tracks their location. Because it has access to its customers' bank account information, Earnin knows when a consumer does not have sufficient funds to repay an advance, but the service tries to recover it anyway, causing the consumer to incur expensive overdraft fees.

This is actually the second class action lawsuit filed against Earnin. Similar claims were raised in *Perks v. Activehours*, which was filed in the same court in September. The multistate investigation led by NYDFS continues, and it seems likely that we'll see enforcement actions in one or more states in the next few months.



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