CLIENT ALERTS & INSIGHTS

California Update: State and Federal Courts Weigh in on PAGA Meal-Break Standing, Pay Statement Contents

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In the past few weeks, federal and state decisions in California regarding various employment-related claims in California, but particularly addressing California's demanding pay statement requirements, provided helpful and favorable guidance to employers navigating the web of employment statutes and regulations in the state.

Ninth Circuit Decision Provides Multiple Wins to Wal-Mart

On May 28, 2021, the Ninth Circuit handed down its opinion in Magadia v. Wal-Mart Assocs., Inc. The plaintiff, a former Wal-Mart employee, brought a class action against Wal-Mart, raising three claims under the California Labor Code: one claim for meal-break violations, another for failure to provide a pay statement identifying pay-period dates at the time of termination, and a third for failure to include overtime adjustments for a quarterly bonus in wage statements.

The Court's decision addressed several important developments for California wage/hour matters:

1. An employee must suffer injury in order to have standing to bring a claim for meal-break violations under California's Private Attorney General Act ("PAGA").
2. Final pay statements are not deficient simply because they are not furnished at the time of termination.
3. Pay statements generally are not deficient because they do not contain calculations related to certain overtime adjustments stemming from a quarterly bonus.

Regarding his meal-break claim, plaintiff did not contend that he was injured by the violation, but asserted that he nevertheless had standing to bring the claim on behalf of fellow employees who were injured. The Court found this argument unavailing, holding that a plaintiff "lacks standing to bring a PAGA claim for . . . meal-break violations [where] he himself did not suffer injury."

Plaintiff was provided his final paycheck at the time of his termination, as is required under California Labor Code Section 201, and was also provided a "Statement of Final Pay." However, the Statement of Final Pay did not include a summary of the workdays covered by the pay, which employers are required to furnish "semimonthly or at the time of each wage payment" under Labor Code Section 226(a)(6). Those dates were provided to plaintiff in Wal-Mart's regularly-scheduled semimonthly disbursement of wage statements several days later. Plaintiff claimed a violation of Section 226(a)(6), arguing that he was entitled to a breakdown of the dates covered contemporaneous with his final

paycheck. The Court disagreed. Citing the text of the statute, which requires an employer to provide a pay statement "semimonthly *or* at the time of . . . payment", the Court found that, in providing the plaintiff his pay statement consistent with its semimonthly schedule, Wal-Mart did not violate the statute.

Finally, Wal-Mart provided employees quarterly performance bonuses, which, under California law, constitute wages for which Wal-Mart's was required to provide an "overtime adjustment." In plaintiff's case, that adjustment constituted an approximate $0.20 per hour differential. Plaintiff alleged that Wal-Mart's failure to include the calculations underlying the retroactive overtime adjustment on his pay statement constituted a failure to meet the Labor Code's requirement that pay statements include an employee's "hourly rate in effect during the pay period." The Court found otherwise, reasoning that the differential was never a pay rate "in effect during" the two-week pay period reflected on plaintiff's pay statement, but was instead simply "a fictional hourly rate calculated . . . in order to comply with the Labor Code section on overtime."

California Court of Appeals Upholds Method of Listing Overtime on Employer's Pay Statement

In a similar vein, on June 1, 2021, the California Court of Appeal for the Fourth Appellate District held in General Atomics v. Tracy Green that a government contractor's wage statement did not violate the state's Labor Code simply because it aggregated straight time and overtime hours into a single listing paid at the employee's straight time rate while also listing all overtime hours at half the straight time rate. In other words, rather than listing 40 hour regular hours at the regular rate and 10 overtime hours at time-and-a-half, the contractor would list 50 hours at the regular rate and 10 hours at half-time to account for the overtime premium, since the "time" in "time-and-a-half" was already included in the 50 hours that were listed. Mathematically, the total wages and the number of overtime hours remain the same. According to the Court, distinguishing between straight time and overtime compensation on pay statements in this way properly provides a worker his or her "applicable hourly rate[s]" as is required under the California's Labor Code.

Key Takeaways for California Employers

These recent decisions demonstrate state and federal courts' developing willingness to accept employers' efforts at complying with the demanding requirements of California's employee-friendly Labor Code. Employers should ensure that the wage statements they issue California employees meet the state's rigorous requirements, specifically California Labor Code 226, but need not alter their wage statement distribution schedule for employees who quit or are discharged.

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