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Labor and Employment Alert: California Court of Appeal Redefines Wage Statement Penalties

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CLIENT ALERT | 5.31.2018

California law requires that employees receive an itemized wage statement containing statutorily prescribed information. Wage statements that lack the required information or that are inaccurate subject the employer to penalties and potential liability under the state's Private Attorney Generals Act. But does a wage statement that was correct when it was issued become incorrect – and so violate the Labor Code – when it's later determined that the employer was improperly calculating and paying overtime? According to the Court of Appeal in a recently published decision of first impression, the answer is, no.

In *Maldonado v. Epsilon Plastics*, the plaintiffs brought a successful wage-hour class action for failure to properly pay overtime. Basically, the plaintiffs worked on a 12-hour/day schedule, under which they were paid for 10 hours at the regular rate of pay and two hours of overtime (instead of the standard eight regular hours and four overtime hours). This alternative workweek schedule (10/2 AWS) would have been permissible had been adopted in accordance with the rules set forth in the applicable wage order. The trial court found the 10/2 AWS was invalid and so the employees were entitled to two additional hours of overtime.

The plaintiffs then argued that their wage statements did not properly include "all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee" as the Labor Code requires. (Note, the wage statements were not inaccurate in any other way.) While hourly rates were included on the pay stub, the plaintiffs argued the rates were incorrect because, in hindsight, they legally worked eight hours at the regular time rate and four hours at the overtime rate, but the paystub indicated they worked 10 hours at the regular rate and two hours at the overtime rate under the invalidated alternative work schedule. The trial court agreed.

The Court of Appeals, however, reversed this part of the trial court's judgment. "Inaccurate wage statements alone do not justify penalties; the plaintiffs must establish injury flowing from the inaccuracy." The

Court noted the company “takes the commonsense position that the pay stubs were accurate in that they correctly reflected the hours worked and the pay received.” The Court rejected the plaintiffs’ argument that “any failure to pay overtime at the appropriate rate *also* generates a wage statement injury justifying the imposition of wage statement penalties – an apparent unintentional double recovery.”

Instead, the Court discussed the difference “when a wage statement fails to include wages ‘earned’” and “when the wage statement fails to include hours ‘worked at’ a particular rate.” “Wage statements should include the hours *worked* at each rate and the wages *earned*. In a perfect world, the first numbers will calculate out to the second. But when there is a wage and hour violation, the hours worked will differ from what was truly earned. But only the absence of the *hours worked* will give rise to an inference of injury; the absence of accurate *wages earned* will be remedied by the violated wage and hour law itself.”

Here, the Court explained, the company was operating under the 10/2 AWS; paid its employees pursuant to the 10/2 AWS as if it were valid; and its wage statements accurately reflected the pay under the 10/2 AWS. “That the 10/2 AWS ultimately turned out to be invalid mandates that the employees receive unpaid overtime, interest, and attorney’s fee. It does not mandate that they also receive penalties for the wage statements which accurately reflected their compensation under the rates at which they had worked at the time.”

This is an important decision for employers. Typically, plaintiffs in wage-hour actions tack on the same claims the *Maldonado* plaintiffs did, arguing their unpaid overtime, miscalculated bonuses, or missed meal and rest breaks necessarily mean that their wage statements were also inaccurate. For now, this Court’s reasoning may provide a defense against those claims. Contact your Vorys lawyer if you have questions about California wage-hour law.