

APRIL 2007 EMPLOYMENT LAW UPDATE

I.

LEGISLATIVE/ADMINISTRATIVE UPDATE

Limits on Punitive Damages Sought

The California Chamber of Commerce is sponsoring SB 423 (Harman), which would limit punitive damages awards in civil lawsuits to three times the amount of the compensatory damages by the jury. Currently, there is no general statutory limit to how much can be awarded in punitive damages. Both California and federal courts, however, have taken the position that in most cases, punitive damages awards should be limited to no more than nine times the amount of compensatory damages awarded. Exceptions exist for especially "egregious" behavior and where public policy demands otherwise.

Healthcare Tax Proposed

AB 8 (Núñez) would impose a tax on California's small businesses that do not provide healthcare coverage for their employees. AB 8 would also allow a government agency to compete with the private sector in providing and marketing healthcare coverage for California employers. AB 8 does not yet specify the level of taxation.

Bill to Simplify Workplace Posters Rejected

AB 613 (Tran) failed to pass the Assembly Labor and Employment Committee by a vote of three-to-five. AB 613 would have established a working group of employee and employer representatives overseen by California's Division of Labor Standards Enforcement to ensure state-mandated workplace posters use simple, plain language. All of the group's recommendations would have been transmitted to the Legislature for consideration and possible action. Similar legislation failed to pass the committee in 2006 as well.

II.

JUDICIAL UPDATE

California Supreme Court Holds That Additional Pay for Failure to Provide Appropriate Meal or Rest Breaks is Considered "Wages"

On April 16, 2007, the California Supreme Court issued a widely anticipated ruling in *Murphy v. Kenneth Cole Productions, Inc.* At issue was whether the one additional hour of pay mandated by Labor Code section 226.7 when a non-exempt employee does not take the appropriate meal or rest breaks during a day constitutes a "wage" subject to a three-year statute of limitations, or a "penalty" subject to a one-year statute of limitations. The Court's decision has enormous implications for California employers, and will likely lead to even more class action lawsuits, as there is now additional incentive to assert such claims based upon the increased potential damages.

John Paul Murphy ("Murphy") worked as a store manager in a Kenneth Cole Productions ("KCP") retail clothing store from June 2000 until June 19, 2002. Murphy regularly worked nine to ten hour days, during which he was only able to take an uninterrupted, duty-free meal period approximately once every two weeks. Murphy rarely, if ever, had the opportunity to take a rest period. He resigned from KCP on June 19, 2002, and filed a claim with California's Labor Commissioner, alleging claims for unpaid overtime and waiting time penalties. He did not know, however, that he could make a claim for rest and meal period and itemized pay statement violations. The Labor Commissioner issued a decision in Murphy's favor, finding that KCP failed to establish that Murphy was an exempt employee, and awarded Murphy unpaid overtime, interest, and waiting time penalties. KCP file a notice to appeal the case in the San Francisco Superior Court. In the superior court action, Murphy added claims for violations of California law regarding meal and rest periods and itemized pay statements. The trial court applied the three-year statute of limitations set forth in Code of Civil Procedure section 338 and awarded payments associated with meal and rest period violations dating back to October 2000.

The case was appealed and made its way to the California Supreme Court, which held that Labor Code section 226.7's additional hour of pay constitutes "wages." The Court emphasized its policy that "statutes governing conditions of employment are to be construed broadly in favor of protecting employees."

A second issue was also presented to the Court. Specifically, when Murphy filed his wage claim with the Labor Commissioner, he only asserted claims for unpaid overtime and waiting time penalties. It was not until after KCP filed a notice for de novo review in civil court that the meal and rest period and itemized pay statement issues were added. The Court held that the de novo review provided for in Labor Code section 98.2 may include additional related wage claims that were not initially asserted with the Labor Commissioner. The Court determined that permitting trial courts to exercise jurisdiction over the entire wage dispute, "including related wage claims not raised in front of the Labor Commissioner," is consistent with the trial courts'

broad discretion in adjudicating claims at trial. The Supreme Court warned employers that “a party who appeals a Labor Commissioner award does so at its own peril.”

Under California law, all non-exempt employees must take a ten minute, paid rest break for each four hours worked, generally to occur in the middle of each four hour block of time. In addition, all non-exempt employees must take an uninterrupted meal period of at least 30 minutes for every five hours of work, subject to limited exceptions. If these breaks are not taken, employees will be able to assert a claim for Labor Code section 226.7 wages for a four-year time period prior to filing a civil complaint by including a civil claim under California Business and Professions Code section 17200.

Moreover, employees who are not paid all Labor Code section 226.7 remuneration on a timely basis can assert claims under Labor Code section 203, which provides for a penalty of up to 30 days of wages due to improper payment of wages upon termination. Finally, employees may seek penalties for an employer’s failure to provide properly itemized wage statements if Labor Code section 226.7 pay is not included on pay stubs.

Clearly, *Murphy* serves as a strong reminder for employers to consistently and conscientiously ensure that their non-exempt employees are provided – and take – the appropriate meal and rest breaks.

This is Pettit Kohn Ingrassia & Lutz PC’s monthly employment update publication. If you would like more information regarding our firm, please contact Tom Ingrassia, Jennifer Lutz, Hilary Vrem or Cara Patton at (858) 755-8500 or Eric DeWames at (310) 417-1136.