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Employee Wage Statements Do Not Need Additional Calculation Of "Total Hours"

Under Labor Code section 226 ("section 226"), employers must provide accurate itemized wage statements to their employees. Such wage statements must contain certain specific information, including "total hours worked by the employee" and "all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee." Failing to furnish accurate wage statements could lead to the imposition of penalties.

A court of appeal recently analyzed this issue in *Morgan v. United Retail Incorporated* ("United Retail"), a class action lawsuit filed by non-exempt employees who alleged that United Retail violated section 226. United Retail provided a weekly itemized wage statement to each employee. Each wage statement listed the total number of regular hours and the total number of overtime hours worked by the employee, but did not list the sum of the regular and overtime hours worked in a separate line. Even though an employee could simply add together the hours without referring to any separate time records, the plaintiffs alleged that the wage statements did not show the total hours worked because the numbers were not totaled in a separate line.

The court of appeal affirmed the dismissal of this claim, and found that based on the "plain and commonsense meaning" of the statute, United Retail's wage statements did in fact comply with section 226 by showing total hours worked. Thus, a wage statement that separately lists the total number of regular hours and the total number of overtime hours does not need to include an additional line with the sum of those two figures.

Plaintiffs Suing For Hostile Work Environment Under FEHA Must Establish That They Are The "Subject Of" The Harassment

In *Thompson v. City of Monrovia*, Thompson (a Caucasian police officer) complained about the placement of a "Buckwheat" character on an African-American officer's screen saver; a statement that on Dr. Martin Luther King, Jr.'s birthday people should celebrate the birthday of James Earl Ray; and certain statements and gestures made at a briefing that disparaged African-Americans. The

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issue facing the court was whether or not an employee who observes and/or perceives “hostile work environment” harassment directed at fellow employees who are members of a particular protected class can bring a claim for harassment under California’s Fair Employment and Housing Act.

The court observed that Thompson based his claim of a racially hostile work environment on conduct that targeted his African-American colleague. The court held, however, that a plaintiff who is not within the protected class at issue may satisfy the “protected class” requirement if (s)he can produce evidence that (s)he was personally subjected to unwelcome racial comments as a result of his/her association with, or advocacy for, protected employees.

Notwithstanding the above, the court rejected Thompson’s hostile work environment claim “because he [did] not produce evidence that he was subjected to harassing comments or conduct because of his association with or advocacy on behalf of African-Americans.”

This case highlights the fact that harassment claims by persons who are not in the protected class at issue are difficult to prove and often fail. Claimants in these cases must typically show that they *personally* are the subject of harassment.

SAVE THE DATE

Pettit Kohn Ingrassia & Lutz PC’s
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Employment Law Symposium

November 17, 2010
The Dana on Mission Bay

Contact Cathy Johnson at (858) 755-8500 for more information.



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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, Robert Hudock, Tyler Theobald, Jenna Leyton, Andrea Kaplan, Vanessa Maync or Christine Mueller at (858) 755-8500 or Eric DeWames or Mark Bloom at (310) 649-5772.

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