THE ESSENTIALS - CALIFORNIA EMPLOYMENT LAW UPDATE

WELCOME TO THE ESSENTIALS—A SUMMARY OF NEW DEVELOPMENTS IN CALIFORNIA EMPLOYMENT LAW

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U.S. Labor, Employment, and Workplace Safety Alert

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MAGADIA V. WAL-MART ASSOCS., INC., NO. 19-16184 (9TH CIR. MAY 28, 2021)

In a class action and Private Attorneys General Act (PAGA) lawsuit alleging meal-break and wage-statement violations under the California Labor Code, the 9th Circuit reversed the lower court's ruling against Wal-Mart, holding that: (1) plaintiff lacked standing to bring the PAGA claim because she did not personally suffer a meal-break violation injury and because PAGA does not allow an uninjured plaintiff to bring a claim; (2) with respect to the wage-statement claim, while California Labor Code § 226(a)(9) requires employers to list the "corresponding number of hours worked at each hourly rate *in effect* during the pay period," an overtime adjustment that must be retroactively calculated is not "an hourly rate 'in effect'" for purposes of § 226(a)(9); and (3) that Wal-Mart complied with § 226(a)(6) when it did not list pay-period dates on "Statements of Final Pay" to employees terminated in the middle of the pay period because those required pay-period dates were in the final wage statements given at the end of the *next* semimonthly pay period. The panel vacated the district court's judgment and award of damages on the meal-break claim with instructions to remand it to state court, and it reversed the judgment and award of damages on the § 226(a) claim with instructions to enter judgment for Wal-Mart.

GENERAL ATOMICS V. SUPERIOR CT. OF SAN DIEGO CNTY., D078211 (CAL. CT. APP, FOURTH APPELLATE DISTRICT, DIVISION ONE, MAY 28, 2021)

In a putative class and PAGA action alleging violations of California Labor Code § 226(a) by allegedly failing to list the correct rate of pay for overtime wages, the California Court of Appeal reversed the trial court's denial of General Atomics' motion for summary judgment, holding that by listing the overtime rate as a 0.5x premium of the employees' regular rate of pay, the wage statements plainly provided the overtime rate of pay and were compliant with 226(a).

Section 226(a) requires an employer to provide its employees, "an accurate itemized statement in writing" showing, among other things, "all applicable hourly rates in effect during the pay period." The General Atomics wage statements "identif[ied] the standard or contractual hourly rates, with the total number of hours worked at each rate" and then separately identified the 0.5x overtime premium with the total number of overtime hours worked at that rate, which "result[ed] in the correct total pay." Thus, the court held that "[i]n context, the 0.5x overtime rate is the 'applicable hourly rate' for those hours," and the rates were "plainly shown" in compliance with

§ 229(a). The court concluded that “given the complexities of determining overtime compensation in various contexts, the format adopted by General Atomics adequately conveys the information required by statute” and “allows employees to readily determine whether their wages were correctly calculated” by using simple math, thus satisfying the requirements of § 226. Accordingly, the court granted General Atomics' petition for writ of mandate.

CAL. TRUCKING ASS'N V. BONTA, NO. 20-55106 (9TH CIR. APRIL 28, 2021), PETITION FOR REHEARING EN BANC DENIED ON 21 JUNE 2021

The California Trucking Association (CTA) challenged California Assembly Bill 5 (AB-5)[1] on the ground that Prong “B” of the A-B-C Test is preempted by the Federal Aviation Administration Authorization Act's (FAAAA) prohibition against laws that relate to the “price, route, or service of any motor carrier. . . with respect to the transportation of property.” While the lower court agreed and enjoined the enforcement of AB-5 against motor carriers,[2] the 9th Circuit voided the injunction and held that AB-5 is a “generally applicable” labor law to which motor carriers are subject because AB-5 affects the carrier's relationship with its workforce rather than its consumers. The court reasoned that AB-5's potential increase on motor carriers' costs of doing business would represent only an indirect, remote, or tenuous relation to prices, routes, and services offered. The court thus distinguished AB-5 from laws that “compel[] a motor vehicle carrier to a certain result in its relationship with consumers” and “bind the carrier to a particular price, route, or service and interferes with the competitive market forces within the industry,” which may be preempted under the FAAAA. The decision contributed to a circuit split as to whether the FAAAA preempts the A-B-C Test, with the First Circuit striking Massachusetts' A-B-C Test on preemption grounds. On 21 June 2021, the 9th Circuit denied CTA's petition for a rehearing en banc by a vote of 2–1.

CAL/OSHA EMERGENCY TEMPORARY STANDARDS (17 JUNE 2021)

California's Occupational Safety and Health Standards Board (Cal/OSHA) revised its COVID-19 Prevention Emergency Temporary Standards to account for recent guidance from the California Department of Public Health (CDPH) issued in connection with rising vaccination rates. The revised standards took effect on 17 June 2021 and include the following:

- Fully vaccinated employees do not need to be offered testing or be excluded from work after close contact with an infected person unless they have COVID-19 symptoms.
- Fully vaccinated employees do not need to wear face coverings except for certain situations during outbreaks and in settings where CDPH requires all persons to wear them. Employers must document the vaccination status of fully vaccinated employees if they do not wear face coverings indoors.
- Employees are not required to wear face coverings when outdoors regardless of vaccination status except for certain employees during outbreaks.
- Employees are explicitly allowed to wear a face covering without fear of retaliation from employers.
- Physical distancing requirements have been eliminated except where an employer determines there is a hazard and for certain employees during major outbreaks.
- Employees who are not fully vaccinated may request respirators for voluntary use from their employers at no cost and without fear of retaliation from their employers.

- Employees who are not fully vaccinated and exhibit COVID-19 symptoms must be offered testing by their employer.
- Employer-provided housing and transportation are exempt from the regulations where all employees are fully vaccinated.
- Employers must review the interim guidance for Ventilation, Filtration, and Air Quality in Indoor Environments.
- Employers must evaluate ventilation systems to maximize outdoor air and increase filtration efficiency, as well as evaluate the use of additional air cleaning systems.

Please feel free to reach out to any of our California Labor, Employment, and Workplace Safety lawyers with any questions.

FOOTNOTES

[1] Pursuant to AB-5, which is codified at California Labor Code § 2775, California applies the "A-B-C Test" to determine independent contractor status of workers. A worker is presumed to be an employee and not an independent contractor unless the hiring entity can establish the following three elements: (A) the person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact; (B) the person performs work that is outside the usual course of the hiring entity's business; and (C) the person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed. There are numerous limited exceptions to the A-B-C Test.

[2] Please see our summary of the lower court's decision here.

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