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Claim For Unpaid Meal Periods Is Subject To Three-Year Statute Of Limitations

Murphy v. Kenneth Cole Productions, Inc., 2007 WL 1111233 (Cal. S. Ct. 2007)

Former store manager John Paul Murphy sued Kenneth Cole Productions, Inc. (KCP), a small, upscale retail clothing store, for violations of the wage and hour law, asserting that he was improperly classified as an exempt employee. After resigning his employment, Murphy filed a complaint with the Labor Commissioner. The Labor Commissioner awarded Murphy unpaid overtime, interest and a waiting time penalty. After KCP appealed, Murphy (by then represented by the Hastings College of the Law Civil Justice Clinic) filed a "notice of claims," adding claims for unpaid meal and rest periods, pay-stub violations and interest and attorney's fees. The trial court awarded Murphy unpaid overtime, payments for missed meal and rest periods and pay stub violations, waiting time penalties and prejudgment interest plus attorney's fees. The Court of Appeal affirmed the lower court's judgment that Murphy was a non-exempt employee (and, thus, entitled to overtime) in that he spent "far less than half of his time engaged in managerial duties." However, the Court of Appeal reversed the judgment to the extent it included an award for missed meal and rest periods and for pay-stub violations since such claims were not raised before the Labor Commissioner. Further, the Court of Appeal held that the payment for a meal/rest period violation is a penalty not a wage and, therefore, is subject to a one-year statute of limitations. The California Supreme Court reversed the Court of Appeal, holding that the additional hour of pay provided for in Labor Code § 226.7 constitutes a wage or premium payment, which is subject to a three-year statute of limitations, and not a penalty. The Supreme Court further held that a trial court conducting a de novo trial can consider additional wage claims that were not presented to the Labor Commissioner. *Cf. On-Line Power, Inc. v. Mazur*, 2007 WL 1128874 (Cal. Ct. App. 2007) (salaried employee with employment contract was entitled to recover attorney's fees under Labor Code § 218.5).

Outside Sales Managers Could Not Proceed With Class Action For Unpaid Overtime

Walsh v. IKON Office Solutions, Inc., 56 Cal. Rptr. 3d 534 (Ct. App. 2007)

The trial court in this case initially granted the plaintiffs' motion to certify a subclass of account managers who had been treated as exempt employees under the outside salesperson exemption. However, almost a year later, a different judge granted IKON's motion to decertify the subclass on the ground that "common issues of law and fact do not predominate… as the circumstances of each class member's employment differs significantly from every other member of the class."

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Relying on *Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal. 4th 319 (2004) and other cases, the Court of Appeal gave "great deference to the trial court's certification order" and affirmed the order granting the employer's motion to decertify the class. Among other things, the Court evaluated the differences in the subclass members' work circumstances and how they approached their jobs. *Cf. Belaire-West Landscape, Inc. v. Superior Court*, 2007 WL 1039547 (Cal. Ct. App. 2007) (opt-out notice adequately protected privacy rights of current and former employees who were putative class members); *Savaglio v. Wal-Mart*, 2007 WL 1041403 (Cal. Ct. App. 2007) (employer in unpaid meal and rest break case waived its right to file motion to seal confidential documents when it publicly filed those documents with the Court of Appeal in connection with writ proceeding).

Sexual Harassment Claim Was Erroneously Dismissed On Summary Judgment

Myers v. Trendwest Resorts, Inc., 56 Cal. Rptr. 3d 501 (Ct. App. 2007)

Alissa Myers, a salesperson, alleged that her supervisor, Ayman Damlahki, had sexually harassed her with numerous unwanted and unwelcome sexual advances, comments, innuendoes of a sexual nature, and numerous non-consensual physical contacts with her body, all of which created an intimidating, oppressive, hostile and offensive work environment. The trial court granted summary judgment to Trendwest on these and related claims after concluding that Damlahki's alleged actions took place outside the workplace and were not work-related. The Court of Appeal reversed the grant of summary judgment, concluding that an employer is strictly liable for a supervisor's actions unless the harassment resulted "from a completely private relationship unconnected with the employment." Similarly, the Court concluded that Trendwest was not entitled to dismissal of a statutory claim for failure to take reasonable steps to prevent harassment nor was it entitled to summary adjudication of Myers's punitive damages claim. The appellate court affirmed dismissal of the common law claims Myers alleged for sexual battery, false imprisonment and intentional infliction of emotional distress on the ground that Damlahki's sexual conduct towards Myers was outside the scope of his employment as a matter of law. Finally, the Court reversed the trial court's award to Trendwest of $40,000 in attorney's fees. *Cf. Demps v. San Francisco Housing Authority*, 2007 WL 1040919 (Cal. Ct. App. 2007) (trial court's failure to rule on properly presented objections to evidence submitted in opposition to summary judgment motion results in their being impliedly overruled).

Fire Captain Who Lost His Leg Was Not Discriminated Against On Basis Of Disability

Malais v. Los Angeles City Fire Dep't, 2007 WL 1229335 (Cal. Ct. App. 2007)

Gregory Malais, a Captain II with the Los Angeles City Fire Department, sued the Department for disability discrimination in violation of the Fair Employment and Housing Act when he was given a special-duty assignment following the partial amputation of one of his legs. Captains on special-duty assignment receive the same pay and promotional opportunities as those who are on platoon duty (where Malais was before the amputation). The Department had refused to assign Malais to platoon duty because it believed there was an unacceptable risk to Malais, other firefighters and the public from his working platoon duty with a prosthetic leg. The Court of Appeal affirmed summary judgment in favor of the Department, concluding that Malais did not suffer an adverse employment action by being limited to special-duty assignments. *Cf. Frank v. County of Los Angeles*, 2007 WL 1082287 (Cal. Ct. App. 2007) (jury verdict in favor of minority officers of the Los Angeles County Police is reversed where plaintiffs failed to establish that pay disparity with white officers of the sheriff's department was the product of racial discrimination).

Company Could Proceed With Interference Claims Against Competitor That Hired Away Its Employees

CRST Van Expedited v. Werner Enterprises, 479 F.3d 1099 (9th Cir. 2007)

CRST sued Werner Enterprises, claiming Werner had interfered with the employment contracts CRST had with two of its truck drivers whom CRST had trained at its expense. The Ninth Circuit reversed the dismissal of CRST's contractual interference claim on the ground that CRST had properly alleged the necessary elements of such a claim – and that the additional element of an "independently wrongful act" did not have to be alleged because the employees were employed pursuant to a one-year employment contract and were not terminable at will when Werner hired them. Similarly, the Court concluded that CRST had properly alleged a violation of the Unfair Competition Law (California Business & Professions Code § 17200) and, additionally, intentional interference with prospective economic advantage. Finally, the Court affirmed an award of $8,750 in attorney's fees to Werner under the Uniform Trade Secrets Act on the ground that the trade secrets claim that CRST had initially filed and "informally withdrawn" had been brought in bad faith in violation of California Civil Code § 3426.4.

$1.2 Million Verdict In Favor Of Teacher Who "Blew The Whistle" On Coach Is Reversed

Carter v. Escondido Union High School, 148 Cal. App. 4th 922 (2007)

James T. Carter sued the Escondido Union High School District for wrongful termination in violation of public policy after the district declined to "reelect" Carter to his probationary teaching position because he informed the school's athletic director that the football coach had recommended a nutritional supplement to a student. A jury awarded Carter damages of approximately $1.2 million. However, the Court of Appeal reversed the judgment after

concluding that although "there may be sound policy reasons to bar football coaches from recommending weight gaining substances to high school students, there is currently no law that does so, any such prohibition must be enacted explicitly by the Legislature, not implicitly by the courts." *Cf. Rockwell Int'l Corp. v. U.S.*, 549 U.S. ____, 127 S. Ct. 1397 (2007) (former Rockwell engineer did not have "direct and independent knowledge of the information" on which allegations in qui tam suit under the False Claims Act had been made).

City Discriminated Against Employee Who Filed Workers' Compensation Claim

Andersen v. WCAB, 2007 WL 1153010 (Cal. Ct. App. 2007)

John Andersen, an employee of the City of Santa Barbara, sustained industrial injuries as a result of which he filed a workers' compensation claim. When the City required Andersen to use his accrued vacation benefits rather than sick leave to obtain medical care for these injuries, he alleged discrimination in violation of Labor Code § 132a. (The City permitted employees with non-industrial injuries to use sick leave instead of vacation benefits to attend medical appointments such as those to which Andersen went.) The Court of Appeal annulled the decision of the WCAB and held the City had discriminated against Andersen in violation of Labor Code § 132a. *Cf. McKinnon v. Otis Elevator Co.*, 2007 WL 1138854 (Cal. Ct. App. 2007) (employee's claim against third-party tortfeasor is not barred by settlement of employer's subrogation claim against third party).

Child Actor (But Not Child's Mother) Could Disaffirm Contract With Personal Manager

Berg v. Traylor, 148 Cal. App. 4th 809 (2007)

Meshiel Cooper Traylor and her minor son Craig Lamar Traylor appealed the judgment confirming an arbitration award in favor of Craig's former personal manager, Sharyn Berg, for unpaid commissions under an "Artist's Manager's Agreement" among Berg, Meshiel and Craig. Meshiel and Berg signed the agreement; Craig, who was 10 years old at the time, did not. Three months after Craig obtained a recurring role on "Malcolm in the Middle," Meshiel informed Berg that they no longer needed her management services and could not afford to pay her the 15% commission on Craig's earnings because they owed a "huge amount" of taxes. The arbitrator issued an award in Berg's favor, and the trial court entered a judgment consistent with the arbitrator's award. The Court of Appeal reversed the judgment as to Craig because he was a minor who could disaffirm the agreement with Berg as well as the arbitration award because he was never represented by an appointed guardian ad litem. However, the Court affirmed the judgment against Meshiel on the ground that she had independent obligations under the agreement.

Undocumented Workers Had Standing To Assert Violation Of Prevailing Wage Law

Reyes v. Van Elk, Ltd., 148 Cal. App. 4th 604 (2007)

Plaintiffs were employed by Van Elk on allegedly public works projects that were subject to California's prevailing wage law. Van Elk filed a motion for summary judgment on the ground that plaintiffs did not have standing to sue because they were undocumented workers. Plaintiffs' discovery responses affirmed that they were not born in the United States and that they had no social security numbers. Plaintiffs refused to answer questions regarding their citizenship, legal residency status, work visa information or documented worker status. Relying on *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137 (2002), the trial court determined that as undocumented workers, plaintiffs had no standing to assert their claims and that three California statutes making immigration status irrelevant to alleging such claims were preempted by federal law. The Court of Appeal reversed, holding there was no evidence plaintiffs had submitted false work authorization documents to a prospective employer in violation of federal law. Further, the Court held that the prevailing wage law and the California statutes were not preempted by the Immigration Reform and Control Act of 1986. *Cf. Detabali v. St. Luke's Hosp.*, 2007 WL 1112679 (9th Cir. 2007) (union employee's race and national origin discrimination claims were not preempted by federal labor law).

Terminating Sanctions Upheld Against Employee Who Failed To Respond To Discovery Requests

Parker v. Wolters Kluwer U.S., Inc., 2007 WL 969436 (Cal. Ct. App. 2007)

Leonard O. Parker sued his former employer (WKUS) and three of its employees for various employment-related torts and breaches of contract. WKUS served Parker (who was in pro per throughout the proceedings) with a set of form interrogatories and a set of special interrogatories. Parker served late and inadequate responses then refused to meet and confer with WKUS's counsel regarding same. In response to a motion to compel, the trial court order Parker to provide supplemental response, properly verified, within 10 days of its order and sanctioned Parker $2,200. Parker failed to provide the supplemental responses as ordered. In addition, Parker arrived late for his deposition, refused to be sworn or to testify and left, stating "This deposition is over." In response to WKUS's motion to compel, the trial court ordered Parker to appear for his deposition, which he did, accompanied by his young granddaughter who was "screaming and hollering" throughout the proceeding. After Parker failed to show up at a second court-ordered deposition, the trial court granted defendants' motion for terminating sanctions, struck his answer to the cross-complaint and entered his default. The Court of Appeal affirmed the order of monetary sanctions (for Parker's failure to respond to the interrogatories) and terminating sanctions in favor of WKUS. However, the Court reversed the terminating sanctions that had been granted in favor of the other defendants who had not propounded

discovery, who had not joined in the motions to compel Parker to answer the interrogatories or to attend his deposition and who had not suffered a detriment as a result of Parker's misuse of the discovery process. *Cf. Forrest v. California Dep't of Corrections*, 2007 WL 1202456 (Cal. Ct. App. 2007) (trial court properly dismissed discrimination lawsuit filed by vexatious litigant).

Employee Who Received Settlement For Defamation Claims Was Liable For Back Taxes

Polone v. CIR, 473 F.3d 1019 (9th Cir. 2007)

Gavin Polone sued his former employer, United Talent Agency, alleging, among other things, wrongful termination and defamation. In settlement of the defamation claim, Polone agreed to accept $4 million in four equal, six-month installments, beginning on May 3, 1996. Congress amended Section 104 of the Internal Revenue Code in August 1996 (after the first but before the second installment payment was received), resulting in the inclusion in taxable income of compensation for defamation claims such as Polone's. The Tax Court held that the pre-amendment Section 104 applied to Polone's receipt of the first installment, but not to any of the other installments, resulting in his owing taxes on $3 million. The Ninth Circuit affirmed. *Cf. Morrow v. Los Angeles Unified School Dist.*, 2007 WL 1168432 (Cal. Ct. App. 2007) (high school principal's invasion of privacy and defamation claims were properly dismissed under the anti-SLAPP statute).

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