



A Typo In Your Paystubs Could Cost You Millions

Insights

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Imagine being sued by every single one of the employees who worked for you over the past four years because your paystubs have an extra comma in your company's name. Or because the zip code is missing from your company's address. Or perhaps because the paystub includes the pay period end date but not the beginning date.

Unfortunately, this isn't fiction. Such hyper-technical errors are the focus of the new "claim du jour" in California, often seeking millions of dollars in damages. These cases are particularly offensive because employees are generally not harmed by these minor errors. Instead, these cases seem to only penalize good employers for innocent mistakes. Regardless of the offensive nature of these claims, the recent spike in class actions has reinforced the need for you to pay close attention to Labor Code section 226(a).

What You Need to Know – The Labor Code's Requirements

Labor Code section 226(a) requires you to furnish your employees with "an accurate itemized statement in writing," that includes the following nine categories of information: (1) gross wages earned; (2) total hours worked, except for exempt employees who are paid on a salary basis; (3) the number of piece-rate units earned and the applicable piece rate, if the employee is paid on a piece-rate basis; (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid (not just the ending date); (7) the employee's name and identification number, or the last four digits of the employee's Social Security number; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each rate by the employee.

Additionally, California's new Paid Sick Leave Law requires you to provide employees with their available amount of paid sick leave either on their paystub or in a separate writing at the time the wages are paid.

Consequences Of Non-Compliance – The Penalties

If Section 226 is violated, an employee is entitled to recover \$50 for the initial violation, and the employer must pay \$100 per employee for each subsequent violation, up to a maximum of \$4,000 per employee, plus any attorneys' fees and costs. These penalties can have devastatingly expensive consequences.

For example, a concrete company that paid its approximately 250 workers on a weekly basis recently faced potential liability of one million dollars for violations for the remainder of the year. The initial violations only cost the company \$12,500, but the subsequent violations increased the total by an additional \$987,500.

In addition, Section 226.3 states that the Labor Commissioner can impose additional “civil penalties” of \$250 per employee per violation (i.e., per pay period) as an initial citation and \$1,000 per employee per violation for any subsequent citations. An employee may also file an action to recover civil penalties for these violations under the Private Attorney General Act (PAGA). Because of these additional avenues of relief, the concrete company faced liability of several million dollars in alleged penalties and attorneys’ fees when all was said and done.

No Harm, No Foul? Not Under This Law

What makes these cases particularly troubling is that employees do not need to show they were actually “harmed” by your errors to win their cases. Under Section 226(e), employees can recover these penalties only if they suffer an “injury.” However, courts in California have stated that an employee will be found to have “suffered an injury” if you simply fail to provide accurate and complete information as required by Section 226.

New Law Provides Partial Opportunity To “Cure” (AB 1506)

In response to the spike in Section 226 class actions, Governor Brown signed Assembly Bill 1506 into law, providing employers with partial relief. Most notably, AB 1506 provides an employer with the “right to cure” two common paystub violations: (1) failure to include the inclusive dates of the pay period; and (2) failure to include the correct and full name and legal address of the employer.

Significantly, you only have 33 days to cure these violations upon receiving notice of the violation. However, by curing these violations in a timely fashion, you are able to avoid PAGA penalties. It is important to note that a violation will only be deemed to have been corrected if you provide compliant paystubs to all employees for all pay periods over the prior three-year period. This can be quite burdensome, but it may spare you a significant amount of legal liability.

Also, and perhaps most importantly, AB 1506 does not provide a cure provision for the underlying Section 226 penalties. In other words, employees are still permitted to bring these hyper-technical class actions against unwitting employers even with the “cure” legislation in place. As a result, it is critical that you take proactive steps to minimize your risk now.

Preventive Steps To Minimize Your Company’s Exposure

It is imperative that you audit your company’s paystubs to ensure compliance with the nine categories of information required in Section 226, and seek guidance from counsel to ensure that your compliance meets such a hyper-technical standard. Additionally, you should strongly consider implementing enforceable arbitration agreements with your employees, which could be one of the greatest tools to help protect your company from being subjected to a costly class action lawsuit.

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For more information, contact the authors at DMoore@fisherphillips.com 858.597.9600 or CCook@fisherphillips.com 949.798.2166.

Related People



Collin D. Cook
Partner
415.490.9032
Email



Danielle H. Moore
Executive Partner, Management Committee
858.597.9600
Email

Service Focus

Wage and Hour

