



Employers Who Win Meal and Rest-Period Claims Can Recover Fees and Costs

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Employees and their attorneys have good reason to be more cautious in filing certain wage claims against employers. If they lose, they could be ordered to pay an employer's defense costs and attorneys' fees. California Labor Code § 218.5 permits prevailing employers to recover their fees and costs for any "action brought for the nonpayment of wages...."

This statute cannot be read in isolation. There is an anti-chilling statute, for example, which operates against prevailing employers recovering their fees and costs in defending *minimum wage* and *overtime* claims. Outside of this limitation, employers have sought and succeeded in recovering their fees and costs after prevailing on unpaid meal or rest period claims or other claims seeking unpaid wages.

A recent appeals court decision makes clear that in "hybrid" lawsuits containing claims subject to Section 218.5 and claims not subject to Section 218.5, employers are entitled to recover their fees and costs for all claims subject to Section 218.5. *Kirby v. Immoos Fire Protection, Inc.*

In *Kirby*, the employees filed seven causes of action which were dismissed after the company successfully defeated class certification. The trial court then awarded Immoos fire Protection almost \$50,000 in attorneys' fees for defending three causes of action (rest period, unfair business practices, and unpaid business expenses). On appeal, the appellate court reversed, holding that Immoos could recover fees only for the *rest period* cause of action and ordered the trial court to determine reasonable fees for that cause of action only.

The *Kirby* case affirms that an employer that prevails on a rest-period or meal-period claim in a mixed-claim lawsuit (containing minimum wage and overtime claims which provide fees only to prevailing employees) is entitled to recover its costs and fees against employees under Labor Code Section 218.5. In practical terms, it seems likely that defendant-employers who prevail on a meal or rest-period claim, but lose on an overtime or minimum-wage claim, may seek an offset against attorneys' fees owed by defendants on those successful claims by the amount of fees defendants incurred on the meal or rest period claims.

Practical Advice

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At the early stages of a dispute, defense counsel should remind plaintiff attorneys of the existence of Section 218.5 to prevent unnecessary vexatious litigation of questionable meal and rest-period claims; these are frequently made in class-action litigation. If these claims are not dismissed early, employees' counsel and their clients could face serious financial consequences – even if they prevail on minimum wage or overtime claims – because they may be faced with attorneys' fees awardable to defendants that could far exceed the amount of unpaid rest or meal premiums sought. Note that Section 218.5 does not extend to proceedings before the California Labor Commissioner at the administrative stage. Therefore, if employers prevail in a hearing before the California Labor Commissioner, they cannot recover any fees under Section 218.5.

The *Kirby* decision gives employers additional reassurance that at least some of their attorneys' fees and costs incurred in defending certain wage claims can be recovered. It is also evident that other categories of wage claims also may be included within the scope of Section 218.5, such as claims for unpaid commissions, reporting time pay, or vacation pay.

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