The Ongoing Pay Statement War: Employers Continue To Battle The Dark Side Of The Force

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California leads the nation in micromanaging pay statements, including (but not limited to) exposing an employer's officers or agents who intentionally violate the law to criminal prosecution and fines up to $1,000. The California legislature, as well as state and federal courts charged with interpreting the law, continue to address the fairness of these draconian measures and what the law actually requires.

One thing is certain: plaintiffs' lawyers, with the zeal of Darth Vader, are engaged in an all-out battle to push the law to its extreme limits, harvesting attorneys' fees from employers in the process. In many cases, employers are at the mercy of the courts, and will remain in this unfortunate position until the California legislature further mitigates the impact of the law for employers striving in good faith to comply.

While the outcome in each of these cases was positive for employers, three recent decisions by California federal courts illustrate the myriad ways in which advocates for employees may seek to challenge employer wage statements, or "pay stubs," under California law.

Recent Case Highlights A Potential Risk
In one case, *Oman v. Delta Air Lines, Inc.*, decided January 6, 2017 by the U.S. District Court for the Northern District of California, the federal court considered a claim by Delta flight attendants that they did not receive timely, complete wage statements for the portion of their working time spent in California. The court found that Delta pays its flight attendants using a formula-based compensation system that calculates flight attendants' compensation for all rotations flown each month.

Flight attendants received detailed information about the calculation of their pay through a computer system and a "Monthly Activity Pay Statement" reflecting each flight number, departure day, departure and arrival airports, actual versus scheduled flight times, hours worked, and wage amounts. Although flight attendants were paid twice per month, the attendants' flexibility to modify their schedules for the month meant their exact schedule was not always known at the end of each pay period. To account for the uncertainty, the airline credited them a certain assumed amount and resolved the matter with a "true up" statement during the following pay period.

The plaintiffs, who were flight attendants based in various states, spent the vast majority of their working time outside of California, with time spent in the state resulting mainly from brief stopover

flights. Notably, the court found that plaintiffs' working time in California was too negligible for the California Labor Code to apply at all. However, significant for other employers, the court also found that had the California Labor Code actually applied to the flight attendants' work, Delta's "Monthly Activity Pay Statements" would not have complied with state law despite the detailed information provided.

The court looked to California Labor Code section 226(a), which lists nine specific categories of information that need to be listed on each wage statement: (1) gross wages earned; (2) total hours worked by the employee (with exceptions for certain exempt employees); (3) the number of piece-rate units earned and any applicable rates if the employee is paid on a piece-rate basis; (4) all deductions, provided that deductions made on written orders of the employee may be aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and only the last four digits of his or her social security number or an employee identification 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 by the employee at each hourly rate. Certain additional requirements apply for temporary services employers and farm labor contractors.

Because the information on Delta's monthly pay statements did not precisely correspond to each of the above categories, and because the information was based on certain assumptions, with more precise calculations performed in later pay periods, the court noted the data summarized in the wage statements violated Section 226. The court concluded the information was not correct for each semi-monthly pay period, even though the statements showed how the pay was calculated.

The *Oman* case clearly illustrates that even when employers fully compensate employees under the pay agreements, and provide detailed pay calculations in regular pay stubs, they nonetheless can be sued and might be found liable in California courts based on hyper-technical interpretations of Section 226.

Other Cases Offer Similar Lessons

In another case, *Vidrio v. United Airlines, Inc.*, decided on March 15, 2017, the U.S. District Court for the Central District of California addressed a class action lawsuit including a demand for Private Attorneys General Act (PAGA) penalties. The claim was filed by United Airlines flight attendants based on their allegation they received "illegal wage statements" in violation of Section 226. It was undisputed that class members spent more than 80 percent of their working time outside of California, and that United Airlines' headquarters was in Chicago. The federal court, concurring with the result reached in *Oman*, rejected the claims, noting that class members were not principally working in California and that United's operations in California amounted to less than 20 percent of its overall business.

Finally, in another recent positive case for employers decided January 10, 2017, the same federal court considered a worker's argument that pay listed on his pay statement under the heading

vacation pay/nonexempt salaried vacation or float overtime" was confusing and compounded potentially separate pay items (vacation pay and "float overtime") under a single heading. The court ultimately held that the item did not violate Section 226 because it included matters not specifically required by the law. In other words, even if the summary in question was confusing, there was no remedy because the information was not required at all.

What Should Employers Do?

Plaintiffs' attorneys, who are often emboldened by minor technical flaws found on employer pay statements, are eager to clog the courts and alternative dispute forums with Section 226 claims in order to recover their litigation fees. Regardless of whether employees were actually deceived or misled by the information on the statements, trial court attorneys are eager to exploit seemingly mundane formatting issues.

While the cases above resulted in decisions favorable to employers, the companies were nonetheless required to engage in protracted litigation to emerge victorious. You should not assume you are immune from litigation just because your wage statements include extremely detailed information, even if they go beyond the requirements of the statute.

In order to put yourself in the best position to avoid or defend a legal claim, you should take proactive steps now to address some common issues. All employers, but especially those that pay employees based on "piece rates," commissions, bonuses, or any other non-hourly or hybrid method of compensation, should seek legal counsel and carefully review the format and content of their wage statements to ensure strict compliance with Section 226 for each pay period. Failure to comply could result in statutory penalties of up to $100 per pay period, per employee, up to a maximum of $4,000 per worker, plus additional civil penalties and other damages.

If you add information to pay statements not required by Section 226(a) – such as vacation pay balances – you should steer clear of any challenges to the accuracy of that information. This will help you avoid legal challenges based on other theories, such as breach of contract or detrimental reliance.

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