



Wage Statement Litigation Continues To Clog California Courts

Insights

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Most employers do not spend much time reviewing pay statements—often a single piece of paper provided to employees each pay period containing the hours worked, amounts paid, and similar information usually accompanying the employee’s paycheck. These paystubs are generally a mere formality provided by employers each payday.

In California, however, these pay statements come with numerous specific—and significant—requirements which employees and plaintiffs’ attorneys alike invoke to create class actions seeking substantial penalties. In most cases, these cases are sparked by simple technical violations which do not actually cause any “harm” to employees, but certainly come back to sting the offending employer. This article provides a brief summary of these technical requirements so California employers can do a quick checkup to insulate themselves from potential litigation.

Nine Seemingly Simple Rules To Follow

To begin, paystubs must be provided whether or not the employee receives a paper check. In other words, even if an employee receives their wages via direct deposit, you must still provide them with a written pay statement or “pay stub.” Many employers now provide electronic paystubs or rely upon third-party payroll companies to provide the paystubs so that they do not have an additional task to complete each payday.

The California Labor Code outlines nine specific items which must be included on a paystub:

- gross wages earned;
- total hours worked by the employee (with limited exemptions);
- the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
- all deductions made;
- net wages earned;
- the inclusive dates of the pay period;
- name of the employee and last four digits of an employee’s social security number or an employee identification number;
- the name and address of the legal entity that is the employer; and

- all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

In addition, employers must list the amount of sick pay available on the pay statement.

Failing To Follow The Simple Rules Can Have Massive Consequences

These requirements appear fairly simple, and you should have no difficulty complying with the technical components outlined. However, one error on a paystub that is replicated for every employee can result in hundred, if not thousands, of inaccurate paystubs. And that's where potential penalties come into play. The Labor Code authorizes an employee suffering "injury" as a result of a knowing and intentional failure by an employer to comply with the requirements to recover **the greater of** actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000 per employee **plus** costs and reasonable attorneys' fees.

Let's look at a hypothetical: imagine an employer has 50 employees paid via direct deposit. The business provides employees a paper paystub each semi-monthly payday; at the top of the paystub is the employer's name. The paystub also include the employee's name and last four digits of their social security number. All of the employee's hours, including overtime, are itemized on the document, showing the hours worked under the regular pay rate as well as the overtime pay rate. Lastly, deductions for taxes and medical benefits are itemized and the gross and net wages after deductions are clearly stated.

However, assume that the paystub does not include the employer's address. That's how easy these violations can occur. If the employer does nothing to fix the error for a period of 12 months after becoming aware of the error (establishing a "knowing" violation), liability could be in the range of \$117,500 **plus** costs and attorneys' fees if a lawsuit is filed to recover these penalties. And worse, other penalties—including additional costs and attorneys' fees—may result if an employee brings an action under the Private Attorney General Act.

Conclusion

It is important that you review your wage statement practices now to take ownership of the issue. While many employers outsource this obligation to third-party payroll companies, doing so does not completely resolve the issue or effectively remove the risk. Third parties are often not considered the "employer" within the meaning of the Labor Code or applicable Wage Order, and therefore may not be liable for any resulting problems. Thus, the best defense to wage statement claims is consistent monitoring of your practices and periodic review to ensure full compliance.

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