



Big Win for Employers in Wage-Hour Litigation: Punitive Damages Ruled Improper

Insights
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On December 3, 2008, in a long-awaited decision, the California Court of Appeals for the Fourth Appellate District addressed the issue of punitive damages in the context of a wage-and-hour lawsuit. This case represents a victory for employers in an area where the laws and penalties in California tend to be draconian. *Brewer v. Premier Golf Properties*.

Background

The issue of whether punitive damages can be awarded against an employer based upon its violation of the California Labor Code regulating payment of wages has long been controversial. In 2005 employers were shocked when a jury handed down a punitive damages verdict of \$115 million in favor of about 116,000 current and former California Wal-Mart employees for alleged violations of the California Labor Code. *Savaglio v. Wal-Mart*.

There, the jury was permitted to consider the issue of punitive damages after Wal-Mart was found to have violated meal-period laws. That decision and award were appealed. Since that time, employee advocates have continued to seek punitive damages in addition to recovery of unpaid wages or other remedies provided by the Labor Code.

The Facts

Christine Brewer, a former waitress at a golf course restaurant, sued for age discrimination and various violations of the labor code. The jury found in favor of the restaurant on the age-discrimination claims, but sided with Brewer on the wage-and-hour violations. The jury awarded Brewer approximately \$26,000 for unpaid wages and various statutory penalties, such as missed meal and rest periods, improper pay stubs, and waiting time penalties. The jury also awarded an additional \$195,000 as punitive damages to punish the restaurant's "fraud, oppression or malice" toward Brewer. Premier Golf appealed.

The Appeals Court's Reasoning

On appeal, the appellate court identified two rules which dictate whether punitive damages are appropriate. First, under California law, punitive damages are not available on a breach of contract action, even if a party has violated its obligations maliciously or in bad faith. The court held that, although there was not an explicit breach of contract cause of action, the employer/employee

relationship is a contractual relationship, and any action to recover unpaid wages is in essence an action for a breached contract. Thus, the court concluded that punitive damages are inappropriate.

Second, where a statute creates new rights and obligations which do not exist at common law, the express statutory remedy is deemed to be the exclusive remedy. In other words, if a statute creates a new obligation, and explicitly states what the penalty is for violation of that obligation, punitive damages are not available because the legislature already determined the appropriate punishment for violating the law. Because minimum wage, meal and rest breaks, and pay stub laws created new obligations that do not exist at common law, the penalties or other relief provided for by the respective statutes are the exclusive remedy for violations of those statutes.

Thus, the court reasoned that punitive damages cannot be awarded for violations of these sections of the Labor Code. Following essentially the same rationale advocated by Wal-Mart in *Savaglio*, the court concluded that "punitive damages are not recoverable when liability is premised solely on the employer's violation of the Labor Code statutes that regulate meal and rest breaks, pay stubs, and minimum wage laws."

What's Next?

The *Brewer* decision is very good news for employers and should have a significant impact on wage and hour litigation. This decision is binding precedent on superior courts in the following counties: Orange, San Diego, Riverside, Imperial, San Bernardino, and Inyo. It remains to be seen whether other courts will follow the *Brewer* court's lead, but it is a well-reasoned opinion which should be persuasive.

Although this ruling does not affect an employer's ultimate liability for violating the Labor Code (including exposure for attorneys' fees incurred by employees), it suggests that employers need not fear exposure to punitive damages in ordinary wage-and-hour litigation. Moreover, in cases where the statutory liability is small, the lack of punitive damages may create a financial disincentive for certain plaintiff's attorneys to file lawsuits unless such claims can be brought as a collective or class action.

To be sure, wage-hour litigation continues to be costly, and employers should remain vigilant in their adherence to the California Labor Code. We suggest conducting frequent internal audits to assure that your company is in compliance with both state and federal wage-hour laws.

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