THE CALIFORNIA SUPREME COURT AFFIRMS THE RIGHT OF EMPLOYEES TO OBTAIN BROAD DISCOVERY IN WAGE CASES

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While our office does not practice in the area of employment law, and almost always refers these cases out to counsel who do, a recent case from the Supreme Court will be of substantial interest to our clients with larger workforces.

As anyone who has been involved in a lawsuit knows, the process of demanding and exchanging written documentation, as well as the obligation to respond to written questions known as interrogatories, is often the most time consuming and costly in the litigation. In the typical civil action, the courts have held that the right to broad discovery exists, in the effort to obtaining admissible evidence to support or defend the claims. Counsel often try to limit the breadth of discovery, not necessarily to hide things, but rather, because of the cost and intrusiveness into the exercise.

There is a growing trend for suits to be filed concerning multiple employees – while these suits formerly were "common" with larger employers, we are seeing these filed against those employing as few as 25-30 workers. These suits are brought in the name of a single employee, but on behalf of all other similarly situated employees under a law called the Private Attorney General Act; these claims, commonly called "PAGA Claims," are a goldmine for Plaintiff's lawyers because they are acting as a deputized private attorney general, enforcing the employment laws, and as a result, the state gets 75% of any penalties that are realized and the Plaintiff's attorney and the Plaintiffs get to keep the rest. Now, some of these suits have merit and employees are genuinely underpaid under the law. Other of these cases simply penalize employers for not dotting the "i's" or crossing the "t's" where there was no injury to the employee, such as an immaterial omission from the pay stub provided to the employee.

These claims tend to follow the same pattern: they allege that the employer did not give the employee their proper break or meal periods, that they did not pay for overtime that had been worked, that they did not pay the proper hourly rate for overtime that was worked, or as mentioned, that the pay stub attached to a pay check did not include all of the statutory requirements. Some of these violations can result in fines that are substantial per violation, even if the employee did not actually suffer any harm such as in the case of missing information on a pay stub.

Once filed, the lawyer prosecuting the case usually seeks information on all employees, so they can "fish" for evidence of further penalties. In some cases, courts have limited the breadth of discovery unless there was proof of widespread violations of the law. It is the breadth of this "fishing expedition" that was explored by the California Supreme Court in its recent ruling in *Williams v. Superior Court.*

In *Williams*, an employee of the Marshall's retail chain accused the store of understaffing and compelling employees to work during meal and rest periods without compensation. The case was filed as a PAGA Claim. Written discovery was served asking for the names and contact information of all 16,500 employees of the Marshall's store chain. The Defendants refused to hand over the information, arguing that the Plaintiff first had to show that the claims had any merit and that asking for the information across the state was overly burdensome and an invasion of the other workers' privacy.

The trial court agreed and limited the contact information to the specific store where the employee worked, ruling that if it turned out that there was substantial evidence of the violations, additional discovery could be allowed. The Plaintiff's lawyer challenged this ruling. The Court of Appeal also ruled for the department store chain, holding that the Plaintiff must set forth specific facts showing good cause for the discovery sought. The matter was then filed in the California Supreme Court who agreed to hear the case.

In a huge win for Plaintiffs' lawyers (in reality, the lawyers are the ones who actually see most of the money recovered), the Supreme Court reversed that ruling and held that there is no language in the statutes that require a Plaintiff to supply proof before they are entitled to obtain wide and broad discovery. While the court, in a vague reference, indicated that cases should be managed by the courts and that discovery should not get out of hand (such as if the lawyers sought to take the depositions of all 16,500 employees), the discovery that can be allowed is broad.

This means if you become involved in a claim such as this, you could be required to hand over all of the information on all of your employees and essentially give the employment lawyers the keys to your file cabinet. In fact, even the privacy interests of the other employees is not absolutely clear here because while the Court held that employees do not have an expectation that their contact information will be kept from a fellow employees seeking relief under the employment laws, the Court did hold that a court require a notice to be given to the employees before the release of the information and that the court can impose a protective order prohibiting the disclosure of the information to persons outside of the lawsuit. Thus, a lawyer can file suit based upon the complaints of a single employee, and then obtain the employer's records to see if there are further violations.

Circling back to why we chose to highlight this case – while our office does not typically handle cases concerning employment litigation – we have clients who have had to face these types of claims in the past. Every employer is urged to have their policies and practices reviewed by a competent employment lawyer to make sure that they are doing everything correctly.

Bruce Rudman has been practicing construction law for 21 years. He has garnered a great reputation in the construction field not only as a litigator, but on licensing issues with the CSLB, particularly disciplinary proceedings. Abdulaziz, Grossbart & Rudman provides this information as a service to its friends & clients and it does not establish an attorney-client relationship with the reader. This document is of a general nature and is not a substitute for legal advice. Since laws change frequently, contact an attorney before using this information. Bruce Rudman can be reached at Abdulaziz, Grossbart & Rudman: (818) 760-2000 or by E-Mail at bdr@agrlaw.com, or at www.agrlaw.com

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