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Courts look to the 'central purpose' of Labor Code Section 226 rather than focusing on technicalities

By David W. Moreshead

The California Labor Code is often considered a thorn in the side of employers. The Labor Code contains specific, and sometimes onerous, requirements on a wide range of topics. One of the Labor Code's most technical provisions specifies nine categories of information that employers must include on an employee's wage statement. Cal. Lab. Code Section 226(a). An employer's failure to comply with these ambiguous and technical requirements — even where an error is advertent or reasonable — may expose the employer to hundreds of thousands, if not millions, of dollars in liability. But two recent appellate court decisions, published on the same day, should bring employers some comfort. These decisions suggest that courts are increasingly inclined to take a measured approach to applying the Labor Code's wage statement requirements.

General Atomics v. Superior Court, 2021 DJDAR 5297 (4th App. Dist., May 28, 2021)

Plaintiff Tracy Green brought a putative class action and sought civil penalties pursuant to the Private Attorneys General Act alleging that General Atomics failed to provide her with legally compliant wage statements under Labor Code Section 226(a). Green did not contend that General Atomics actually calculated or paid its overtime incorrectly; she challenged only how that overtime pay was displayed on wage statements. After the trial court denied General Atomics' motion for summary adjudication, General Atomics petitioned for a writ of mandate. A 4th District California Court of Appeal panel consisting of Presiding Justice Judith L. Haller and Justices Ronald L. Styn and Joan K. Orion unanimously granted the writ, reversed the trial court, and ordered judgment in favor of General Atomics.

Section 662(a) requires that wage statements accurately display, among other things, "all applicable hourly rates in effect during the pay period." General Atomics' wage statements displayed on one line the total number of hours that an employee worked and the employee's standard hourly rate for those hours. On a separate line, General Atomics identified the employee's total number of overtime hours and identified the additional 0.5x premium it paid for those hours.

Green contended that General Atomics' wage statements impermissibly failed to display "all applicable hourly rates," because overtime hours were included more than once and the overtime premium rate failed to incorporate the underlying standard hourly rate. According to Green, California's wage statement law requires that an employer separate overtime hours from regular hours worked and display the total hourly rate paid for each.

The Court of Appeal disagreed. It held that, "[w]hile other formats may also be acceptable," General Atomics' wage statement complies with the Labor Code because it "allows employees to readily determine whether their wages were correctly calculated, which is the central purpose of section 226."

As the court explained, the "applicable hourly rate" for overtime hours is not always a simple matter. California law requires that overtime hours be paid at a 0.5x premium of an employee's "regular rate," which is the "weighted average" of the employee's compensation during a pay period and may include certain incentive or nondiscretionary bonus payments. If an employee earns two different hourly rates during a pay period, then the employee is entitled to an overtime premium based on a weighted average of the two rates.

Applying Green's proposed approach, the employee's wage statement would display an overtime rate that is not equivalent to 1.5x either the employee's underlying hourly rates or the employee's regular rate (which is $18 per hour in this example). This approach, the court explained, would therefore make it more difficult for employees to understand what they were paid — which contravenes the purpose of Section 226.

The court concluded that because overtime is a 0.5x premium of the employee's regular rate, that 0.5x premium is the "applicable hourly rate" for overtime hours, and, by displaying that rate, General Atomics' wage statements "do not run afoul of the statute."

Magadia v. Wal-Mart Associates, Inc., 2021 DJDAR 5191 (9th Cir. May 28, 2021)

Plaintiff Roderick Magadia alleged that Walmart failed to comply with California's wage statement laws in two distinct ways. Following a bench trial, Judge Lucy H. Koh of the Northern District of California found for Magadia and ordered Walmart to pay a staggering $102 million in damages and PAGA penalties. A 9th U.S. Circuit Court of Appeals panel consisting of Judges Consuelo M. Callahan, Patrick J. Bumatay and s (sitting by designation) reversed, holding that Walmart's wage statements did not violate Section 226.

Walmart pays a quarterly bonus, called a "MyShare" bonus, to its high-performing employees. Because these bonuses affect employees' regular rate, when Walmart pays the MyShare bonus, it also pays an overtime adjustment for the overtime hours the employee worked during that quarter, i.e., the preceding six pay periods. This overtime adjustment appears on the

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wage statement as a lump sum payment with no corresponding hourly rate or hours worked.

Magadia contended, and the district court found, that Walmart violated California's wage statement requirements by failing to include the applicable "hourly rates" and "hours worked" for the MyShare overtime adjustments. The Court of Appeals disagreed because the MyShare overtime adjustment "is no ordinary overtime pay with a corresponding hourly rate"; instead, it is an "artificial, after-the-fact" adjustment to compensation calculated based on overtime hours and pay rates from the six preceding pay periods. Thus, the court held, the overtime adjustment was never "an hourly rate in effect" during a pertinent pay period and was not an "applicable hourly rate" that must be displayed on a wage statement.

In addition, when Walmart discharges its employees, it provides an employee a final paycheck along with a "Statement of Final Pay" that does not include the dates of the period for which the employee is being paid. Walmart later issues the terminated employee a final wage statement in the typical course of its semimonthly pay cycle, however, that includes the dates of the pertinent pay period. According to Magadia, failing to include the dates of the period being paid on the Statement of Final Pay ran contrary to California law. But again, the Court of Appeals held otherwise. Labor Code Section 226(a) (6) provides that employers may provide a wage statement that displays the dates of the pay period either (1) at the time of payment, or (2) semimonthly — the choice is left to the employer. Walmart chose to issue terminated employees' wage statements semimonthly — not at the time of final payment — which, the court held, satisfied the statute's requirements.

Key Takeaways

General Atomics and Magadia indicate that courts are hesitant to apply California's wage statement requirements in a purely mechanical way that may unwittingly subject employers to significant liability. These cases are a positive development in the law for employers and may encourage additional courts to focus not on trivial wage statement technicalities, but instead on whether a wage statement permits employees to understand how their wages were calculated — the "central purpose" of Labor Code Section 226. ■

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