FENWICK & WEST LLP

Employment Law Alert

California Supreme Court Rules That Officers And Directors Are Not Personally Liable In Overtime Cases

August 12, 2005 | Shawna M. Swanson | Editor | 415.875-2487
Mary Wang | Contributor | 650.335.7154

In an important victory for California officers, directors and managers, on August 11, 2005, the California Supreme Court held such individuals are not personally liable to employees for unpaid overtime. In *Reynolds v. Bement*, plaintiff filed a class action lawsuit against his former company and its officers and directors alleging that they intentionally misclassified him and other employees as exempt from overtime pay in violation of the California Labor Code. The trial court and Court of Appeals had held that the individual corporate agents were not personally liable for unpaid overtime wages and dismissed them from the case. The California Supreme Court affirmed, finding that the individual defendants were not "employers" under the Labor Code.

The Labor Code provides employees with a private right of action to recover unpaid overtime wages against their employer. However, the relevant provisions of the Labor Code do not define who is an "employer." Plaintiffs argued that the Court should adopt the definition of "employer" in wage orders set forth by the Industrial Welfare Commission (IWC), which defines the term to include an individual who "exercises control over the wages, hours, or working conditions of any person." In administrative proceedings, the Labor Commissioner applies this definition of "employer" when deciding whom to prosecute for violations of wage and hour laws. The Court, however, rejected the IWC's definition of "employer," concluding that the California Legislature did not demonstrate an intent to adopt the IWC's definition to expose corporate agents to personal civil liability in court under the Labor Code. The Court therefore held that plaintiffs may not sue the individual defendants for unpaid wages.

While the Reynolds decision is a significant victory for management, employers should be mindful that, although the process is cumbersome, an employee can enlist the help of the Labor Commissioner's office to seek civil penalties pursuant to the Labor Code's private attorney general provision (sometimes referred to as the "sue your boss law" or "bounty hunter law"). These penalties can, in some circumstances, be assessed against the individuals who made the decision to deny wages.

Further, employees may pursue individual corporate agents for wage claims under federal law, since the Fair Labor Standards Act (FLSA), unlike the California Labor Code, defines "employer" to include individuals. (In a concurring opinion, Judge Carlos Moreno urged the California Legislature to adopt the FLSA's definition of "employer"). The FLSA, however, presents certain disadvantages to employees: a case brought under the FLSA is subject to removal to federal court, and the FLSA's substantive law generally is not as favorable to employees as California wage and hour law. Therefore, plaintiffs will now face a difficult choice in determining whether to proceed under state or federal law.

Although the *Reynolds* case is a positive development for employers and their corporate agents, employers should carefully comply with state and federal wage and hour laws to avoid liability for the company and the potential individual civil liability that remains (at least in the administrative arena) even after this decision.

©2005 Fenwick & West LLP. All rights reserved.

THIS FENWICK EMPLOYMENT BRIEF IS INTENDED BY FENWICK & WEST LLP TO SUMMARIZE RECENT DEVELOPMENTS IN EMPLOYMENT AND LABOR LAW. IT IS NOT INTENDED, AND SHOULD NOT BE REGARDED, AS LEGAL ADVICE. READERS WHO HAVE PARTICULAR QUESTIONS ABOUT EMPLOYMENT AND LABOR LAW ISSUES SHOULD SEEK ADVICE OF COUNSEL.