



## California Appeals Court Holds Officers and Directors Are Not Personally Liable for Overtime Claims

In a significant victory for California officers and directors, a California Court of Appeal has held individuals are not liable to employees for unpaid overtime. In *Reynolds v. Bement*, Steven Reynolds, a former shop manager for Earl Scheib, Inc., filed a class action lawsuit against Scheib and its officers and directors alleging they intentionally misclassified a class of employees as exempt from overtime pay. The California Court of Appeals held that only the company, not the individual corporate agents, can be liable for unpaid overtime wages. The court rejected Reynolds' contention that Scheib's management are "employers" under the applicable California statutes. The Court reasoned that both the Wage Orders and the Labor Code distinguish between employers and their agents for the purpose of imposing liability for unpaid wages. The court noted, however, that individuals can be liable for civil penalties under the Labor Code. Significantly, though, the court refused to follow an earlier federal case and an opinion of the California Labor Commissioner, which both had determined individual managers could be liable for unlawfully withheld wages. Although an important victory for management, this may not be the final word on the issue, as the California Supreme Court or the Legislature could intervene. Regardless, employers should still carefully follow state and federal wage and hour laws to avoid liability for the company and potential individual civil penalties.

## No Duty To Accommodate A Non-Disabled Employee Regarded As Disabled

The Ninth Circuit Court of Appeals (which covers California) has held employers need not accommodate employees they merely "regard as" disabled if the employee is not actually disabled. In *Kaplan v. City of North Las Vegas*, Frederick Kaplan was a police officer for the City of North Las Vegas. After he was injured in a training exercise, Kaplan could no longer hold a gun or grasp objects with his right hand. When Kaplan's pain continued despite numerous therapy sessions, doctors attributed his slow recovery to rheumatoid arthritis, a diagnosis later determined to be incorrect. Based on this incorrect diagnosis, the City terminated Kaplan due to his inability to fulfill the duties of his job. Kaplan sued the city under the ADA, but the trial court granted the City's summary judgment motion, concluding Kaplan failed to show he was a qualified individual with a disability under the ADA. On appeal, the Ninth Circuit determined that Kaplan could not perform essential functions of his position at the time of termination, such as reliably restraining prisoners and detainees. The Court then found that Kaplan was not entitled to reasonable accommodation because he was only "regarded as" having a disability, not actually disabled. The Court declined to adopt a rule requiring accommodation for those not truly disabled, because it would compel employers to waste resources better spent assisting those actually disabled and in genuine need of accommodation. This case demonstrates the delicate intricacies of the

ADA and the variety of associated pitfalls facing employers when dealing with employees who may be protected by the ADA.

## Third Circuit Holds Courts May Sever Invalid Portions Of Arbitration Agreement

A federal appellate court has held that an arbitration agreement including provisions that violated federal law was nonetheless enforceable because federal judges have the power to sever offensive provisions of an arbitration agreement before sending the case to arbitration. In *Spinetti v. Service Corporation International*, when Maryann Spinetti joined Service Corporation, she signed an arbitration agreement requiring each party to pay its own costs and attorney's fees, regardless of the outcome of the arbitration. The agreement also required each party to pay one-half of the arbitrator's fees and of other administrative costs. After Spinetti was terminated, she filed a lawsuit claiming age and gender discrimination in violation of Title VII. The employer moved to dismiss the complaint and compel arbitration. The trial court found the attorney's fees and cost-sharing provisions violated federal policy mandating that the arbitration of statutory claims be accessible to potential litigants and adequate to protect their rights. However, the court severed the offending provisions from the arbitration agreement, rejecting Spinetti's argument that such provisions are so daunting and discouraging that the entire arbitration agreement should be voided. The court then compelled the parties to proceed to arbitration governed by the remaining provisions of the arbitration agreement. The Third Circuit Court of Appeals (which covers Pennsylvania, Delaware and New Jersey) agreed that the provisions in question offended established case law and federal statutes, but also affirmed the trial court's enforcement of the contract after severing those provisions. Such expensive legal wrangling can be avoided by ensuring that all arbitration provisions are enforceable under both state and federal law.

## Morbidly Obese Employee May State A Disability Claim

A federal district court in Connecticut has held that morbid obesity may qualify as a disability under federal law. In *Connor v. McDonald's Restaurant*, Joseph Connor, who weighed 420 pounds, applied for and was offered a cook's position at a local McDonald's. The manager informed Connor that he would call him after Connor's uniform arrived. However, the manager failed to contact Connor, despite Connor's repeated inquiries. Connor sued McDonald's for alleged violations of the ADA and state law. McDonald's moved to dismiss the case on the basis that Connor failed to state in his complaint that his obesity was linked to a physiological impairment. The court rejected McDonald's argument, finding Connor had alleged that McDonald's regarded him as morbidly obese and that morbid obesity can qualify as a disability under the ADA. This case highlights the importance of evaluating whether an employee may be protected under the ADA despite the fact that the employee does not suffer from what some may traditionally view as a disability.