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EMPLOYMENT LAW UPDATE

Relationship-Driven Results *May 2022*

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JUDICIAL

California

California Supreme Court Rules in *Naranjo v. Spectrum Security Services, Inc.* That Break Premiums Constitute "Wages" For Purposes of Reporting and Statutory Deadlines

Plaintiff Gustavo Naranjo ("Naranjo") filed a putative class action on behalf of employees of Spectrum Security Services, Inc. ("Spectrum"), alleging that Spectrum had violated state meal break requirements under the Labor Code and applicable Industrial Welfare Commission ("IWC") wage order. The complaint sought an additional hour of pay – commonly referred to as a "premium pay" – for each day on which Spectrum failed to provide employees a legally compliant meal break. The Court of Appeal affirmed the trial court's determination that Spectrum had violated meal break laws during the relevant time period, but reversed the court's holding that a failure to pay meal break premiums could support claims under the wage statement and timely payment statutes. The California Supreme Court granted review to consider whether wage statement and timely payment statutes apply to missed-break premium pay.

There existed no dispute whether the employees in question were entitled to premium pay for missed breaks, and Spectrum neither paid that premium pay nor referenced it on employee wage statements. The primary point at issue was therefore the relationship between the premium pay provision of California Labor Code section 226.7(c) and the corresponding provisions of the Labor Code governing the reporting and timely payment of wages upon discharge or resignation.

While the Court of Appeal deemed the premium pay not for work performed but rather a statutory remedy for a legal violation, the California Supreme Court noted that the Labor Code defines wages broadly, to encompass "amounts for labor performed… of every description." (Cal. Lab. Code section 200(a).) An employee who remains on duty during a meal break is considered to still provide the employer services, and in that respect, the Court considered missed-break premium pay comparable to other forms of payment for working under conditions of hardship.

In explaining the basis for its decision, the Supreme Court compared missed-break premiums to overtime premium pay, reporting-time pay, and split-

shift pay, as the "additional hour of pay" provided by Labor Code section 226.7 was argued to be understood as a wage to compensate employees for work performed during a break period, much as overtime pay is considered wages to compensate employees for work performed in excess of the number of hours deemed appropriate for a workday. The Court noted that its reasoning was consistent with *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, which unambiguously pronounced that section 226.7 premium pay was designed to compensate employees for work.

Following its preliminary analysis, the Court held that missed-break premium pay constituted wages subject to the Labor Code's timely payment and wage statement reporting requirements, and thus supports the imposition of waiting time and wage statement penalties. The Court did note, however, that an employee must still meet the relevant conditions for imposition of penalties, and that existence of penalties in the subject case was yet to be determined.

The *Naranjo* decision makes it more important than ever to establish and enforce compliant policies and practices regarding meal and rest breaks, as well as the issuance of final paychecks upon employee separation. Employers must not only ensure that employees are provided the opportunity to take lawful meal and rest breaks, but also enact and implement policies for the provision of premium pay, as necessary, to avoid the prospect of even more painful future litigation.

California Employees May Avoid Dismissal of Out-of-State Litigation, According to the California Court of Appeal in *LGCY Power, LLC v. The Superior Court of Fresno County*

In *LGCY Power, LLC v. The Superior Court of Fresno County*, the Fifth Appellate District Court of California affirmed the Fresno County Superior Court's finding that California Labor Code § 925: (1) creates an exception to California's compulsory cross-complaint statute; and (2) exempts California from applying another state's compulsory cross-complaint statute in pending cases that were first filed in another state.

Plaintiff LGCY Power ("LGCY"), a Utah company that sells solar energy systems, filed suit in Utah state court against seven former employees for breaching their employment agreements and starting a competing solar energy company in Utah. One of the former employees, Jed Sewell ("Sewell"), is a California resident who lived and worked in California throughout his employment. Sewell occasionally visited Utah for business meetings but had never made a sale for LGCY in Utah. While most of the other former employees filed a joint cross-complaint against LGCY in the Utah proceeding, Sewell filed an entirely new complaint, alleging the same claims, in Fresno County Superior Court.

LGCY demurred to Sewell's complaint, arguing that the complaint was "barred by both California and Utah's cross-complaint statutes, which both require that a defendant bring any related causes of action he or she has against the plaintiff in a cross complaint." The Fresno County Superior Court overruled the demurrer. LGCY appealed the trial court's decision to the Fifth Appellate District Court, which affirmed the lower court's ruling.

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To justify its ruling, the appellate court noted that, while the purpose of California's cross-complaint statute is to consolidate pleadings involving the same dispute and/or same parties and avoid wasting judicial resources, Labor Code § 925 necessarily creates an exception to that rule because its intention is, without exception, "that all cases and controversies that fall within [its] purview be litigated in California." Labor Code § 925 does not explicitly mention California's compulsory cross-complaint statute, but it makes forum selection clauses in employment agreements voidable by an employee who lives and works in California if a clause: (1) requires the employee litigate his/her employment dispute arising in California in an out-of-state forum; or (2) bars the employee from enjoying "the substantive protections of California law with respect to a controversy arising in California."

The appellate court took the employee protections of § 925 a step further by finding that the statute (and the trial court's decision regarding the same) is not violative of the U.S. Constitution's Full Faith and Credit Clause ("the Clause"), which provides that "full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state." The court reasoned that, because the Clause doesn't force a state to apply the statute of another state that directly contradict its own, and instead only compels a state to honor *final judgments* in other states, the trial court was not bound to honor Utah's compulsory cross-complaint rule.

While the factual circumstances of *LGCY Power* present a relatively narrow subset of applicability, employers whose employees perform work both in and out of California should take note. Should an out-of-state employee so choose, he/she can proceed with litigation in multiple states, causing a proverbial "race-to-judgment," in which the first case decided may be controlling. As always, employers should be wary of the implications of filing suit against (current or former) employees, and should proceed cautiously, especially when other jurisdictions/law may be involved.

This is Pettit Kohn Ingrassia Lutz & Dolin PC's employment update publication. If you would like more information regarding our firm, please contact Tom Ingrassia, Jennifer Lutz, Ryan Nell, Shannon Finley, Rio Schwarting, Brian Jun, Christine Dixon, Jessica O'Malley, or Rayne Brown at (858) 755-8500; or Grant Waterkotte, Tristan Mullis, Andrew Chung, or Rachel Albert at (310) 649-5772.

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