PETTITKOHN
PETTIT KOHN INGRASSIA LUTZ & DOLIN

EMPLOYMENT LAW UPDATE

Relationship-Driven Results *December 4, 2023*

LEGISLATIVE

California

Minimum Wage Increases in California

On January 1, 2024, California's minimum wage will increase by fifty cents, bringing the minimum wage hourly rate from $15.50 to $16.00 per hour. In addition, many cities and counties in California have local minimum wages that apply to all employees and/or certain employment sectors and are typically higher than the state minimum wage. These cities and counties include, but are not limited to: Alameda, Belmont, Berkeley, Burlingame, Cupertino, Daly City, East Palo Alto, El Cerrito, Emeryville, Foster City, Fremont, Half Moon Bay, Los Altos, Los Angeles (city and county), Malibu, Menlo Park, Milpitas, Mountain View, Novato, Oakland, Palo Alto, Pasadena, Petaluma, San Carlos, San Diego, San Francisco, San Jose, San Leandro, San Mateo (city and county), Santa Clara, Santa Monica, Santa Rosa, Sonoma, South San Francisco, Sunnyvale, and West Hollywood. Many of these cities and counties will raise their minimum wage requirements on January 1, 2024 as well.

California employers should note that the salary test connected with the white collar exemptions hinges on the state's minimum wage. As a result, the minimum wage increase alters the salary requirement for the professional, administrative, and executive exemptions to $66,560 annually. Effective January 1, 2024, employees who are paid a salary that is less than this amount will not qualify for these exemptions, regardless of whether they are performing exempt duties.

California's minimum wage for employees working at national fast-food chains (limited-service restaurants consisting of 60 or more establishments including their franchised locations) goes to $20 per hour on April 1, 2024.

Wage Theft Notices

California employers will be required to revise their Wage Theft Notices, as of January 1, 2024. Since 2012, California Labor Code section 2810.5 has required employers to provide Wage Theft Notices containing specific information to all employees at the time of hire, and within seven days of any changes of the information unless the new information appears on the next timely wage statement.

AB 636 (which amends Labor Code section 2810.5) was signed into law and now requires employers to update Wage Theft Notices to information on "the existence of a federal or state emergency or disaster declaration applicable to the county or counties where the employee is to be employed, and that was issued within 30 days before the employee's first day of employment, that may affect their health and safety during their employment."

JUDICIAL

California

PAGA Statute of Limitations and Aggrieved Employee Standing

In *Arce v. The Ensign Group, Inc., et al.*, a California Court of Appeal reversed a Los Angeles Superior Court, finding that the employer did not meet the initial burden of establishing that the former employee lacked standing to bring her Private Attorneys General Act of 2004 ("PAGA") claims.

Plaintiff Cecilia Arce ("Plaintiff") worked overnight shifts for Defendants Southland Management LLC and The Ensign Group Inc. ("Defendants") as a certified nursing assistant ("CNA") for nine years.

Dates are very important in this case. Plaintiff worked her last shift on November 8, 2018. She received payment for her accrued vacation time on November 19, 2018, and received her final wage statement on November 21, 2018; neither of these wage statements contained premium wages for missed meal or rest breaks. Plaintiff's employment was terminated on November 23, 2018. Plaintiff submitted a PAGA notice to the California Labor and Workforce Development Agency ("LWDA") on November 15, 2019. She filed a class action complaint on November 19, 2019, and later filed the operative PAGA-only first amended complaint on March 6, 2020 for failure to pay all wages, provide meal and rest periods, timely pay wages due upon separation of employment, and maintain accurate payroll records, and for the unlawful deduction of wages.

Defendants moved for summary judgment and argued that Plaintiff did not suffer any Labor Code violations during the applicable PAGA period, and thus lacked standing to pursue PAGA claims. The trial court granted Defendants' motion and held that Plaintiff had not offered sufficient evidence that she had suffered a Labor Code violation at any point during her employment, and therefore, had not established a triable issue of material fact that she had standing to pursue PAGA claims. However, the Court of Appeal reversed the lower court's decision and held that Defendants did not meet their initial burden of establishing Plaintiff's lack of standing.

Under California law, a plaintiff is an "aggrieved employee" and has standing to bring a PAGA action if he or she (1) was employed by the alleged violator, and (2) suffered at least one Labor Code violation on which the PAGA claim is based. A PAGA action has a one-year statute of limitations, measured from the date of the last violation, which is tolled for 65 days from the date the PAGA notice is submitted.

Defendants argued that Plaintiff's PAGA claims were time-barred because her last day of work was November 8, 2018, and, thus, could not have missed a meal or rest break after November 15, 2018—one year before she submitted her PAGA notice to the LWDA. However, the court ruled that this was not sufficient to negate standing.

Plaintiff's last wage statement was issued on November 21, 2018. Plaintiff was entitled to premium pay for any meal or rest breaks that were not legally compliant. As all unpaid premiums are "wages" due upon termination, any unpaid premiums due to Plaintiff were required to have been paid in her November 21, 2018 wage statement. It was undisputed that Plaintiff's wage statement did not contain any premium payments. Every outstanding premium Defendants failed to pay as part of Plaintiff's final wage statement constituted its own Labor Code violation, each of which fell within the limitations period.

The Court of Appeal concluded that it was not enough for Defendants to show that Plaintiff had not been denied a meal or rest break during the year before she submitted her PAGA notice. They also needed to establish that she had been paid all outstanding meal and rest premiums—either before or after her discharge. They needed to provide evidence that either (1) Plaintiff had never suffered a Labor Code violation, and thus, no premiums were due upon her termination, or (2) they paid all premiums at the time of the violations, so no additional premiums were due upon her termination.

Further, the court emphasized that Defendants did not present any evidence to negate Plaintiff's claim that the facility was so chronically understaffed, and she was so persistently overworked, that it was effectively impossible for her to take her required breaks; thus, they did not meet their initial burden of production.

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, Christine Clark, Jessica O'Malley, Nicole Allen, Noah Diamant, Michelle Perez-Yanez, or John Solis at (858) 755-8500; or Lisa Mallinson, Andres Uriarte, Arsalan AlNasir, Greg Feldman, or Alysha Zapata at (310) 649-5772.