

in this issue:

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The California Supreme Court will consider two significant wage and hour issues: the statute of limitations that applies to meal and rest period violations, and how employers reimburse employees for work-related expenses.

California Edition

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California Supreme Court to Decide Issues Concerning Meal and Rest Periods and Reimbursement of Expenses

By Paul Lynd

Underscoring the increasing prominence of wage and hour issues, the California Supreme Court has agreed to decide two major questions. In one case, the Court will decide the statute of limitations applicable to claims for meal and rest period violations. The second case will determine how employers must reimburse employees for expenses.

The meal and rest period issue has bounced around for several years. Effective January 1, 2001, California Labor Code section 226.7(b) provides that an employer “shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each day that a meal or rest period is not provided” in accordance with an Industrial Welfare Commission wage order. The issue before the Court is whether the “one additional hour of pay” constitutes a “penalty” or “wages.” The difference is significant in terms of employer liability. If it is a “penalty” claims under the statute are subject to a one-year statute of limitations. If it is considered “wages,” claims would be subject to a three- or four-year statute of limitations, plus waiting time penalties under Labor Code section 203, interest, and attorney’s fees.

Murphy v. Kenneth Cole Productions, Inc. is the first case to reach the Supreme Court concerning Labor Code section 226.7. In that case, the First District Court of

Appeal held that the statute creates a penalty, subject to a one-year statute of limitations. The issue has led to conflicting decisions. In January, the Fourth District Court of Appeal ruled in *National Steel and Shipbuilding Co. v. Superior Court* that the amount afforded by Labor Code section 226.7 is wages and subject to a three-year statute of limitations. The following week, in *Mills v. Superior Court*, the Second District Court of Appeal held that the statute provides for a penalty.

Petitions for review in *National Steel* and *Mills* are pending before the California Supreme Court. Most likely, because the same issue presented by those cases is pending before the Court in *Murphy*, the Supreme Court will issue “grant and hold” orders in those cases pending its decision in *Murphy*. Such an order defers briefing, but “depublishes” the decisions in those cases so that they cannot be cited in the meantime. While *Murphy* is pending, it also cannot be cited in lower courts. Given its calendar, the Supreme Court is not expected to decide *Murphy* for at least a year.

Separately, in a precedent decision last year in *Hartwig v. Orchard Commercial, Inc.*, the Labor Commissioner interpreted Labor Code section 226.7 as providing a “penalty.” Thus, in cases filed with the Labor Commissioner, that agency has allowed recovery for meal and rest

period violations only within one year of the filing of a claim.

In *Murphy*, the Supreme Court also agreed to decide a second lingering issue. Labor Code section 98.2 authorizes a party to appeal a wage claim decision issued by the Labor Commissioner to Superior Court for a trial de novo. An unresolved question has been whether the employee may add claims in court or is limited to the claims he or she raised before the Labor Commissioner. The Court of Appeal in *Murphy* held that an employee cannot add claims in court.

In a second case, the Supreme Court has agreed to decide how employers must indemnify employees for expenses. Labor Code section 2802(a) requires an employer to “indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.” This statute, which has existed in some form for decades, has been the subject of few court interpretations. The issue before the Supreme Court in *Gattuso v. Harte-Hanks Shoppers, Inc.* is the proper method for reimbursement. The employer indemnified employees for automobile expenses by paying higher salary and commission rates designed to cover those expenses. The plaintiff challenged that method, contending (as the Labor Commissioner has opined over the years) that the statute requires either reimbursement of the actual costs or payment of a reasonable rate, such as the Internal Revenue Service mileage rate. The Second District Court of Appeal, however, held that those methods are not exclusive and that the employer’s payment of higher wages was permissible, as long as it in fact reimbursed employees for expenses incurred.

Littler Mendelson will offer a webinar presentation on these legal developments and their implications for employers soon.

Paul R. Lynd is an associate in Littler Mendelson’s San Francisco office. If you would like further information, please contact your Littler attorney at 1.888.Littler, info@littler.com, or Mr. Lynd at plynd@littler.com.
