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Labor & Employment Alert

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Seviour-Iloff v. LaPaille provides guidance on numerous California wage & hour issues, including personal liability

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The California Court of Appeal answers many technical questions, including the difference between "acting in good faith" and "good faith dispute" and how to calculate waiting time penalties.

What's the Impact?

- The opinion explains the interaction between some of California's scariest statutes—those that provide for personal liability of employer agents working under a limited liability structure
- *LaPaille* "clarifies" the extremely low bar for filing a complaint with the Labor Commissioner and explains how to calculate waiting time penalties and what's required to establish certain defenses
- Employers may be vulnerable to wage and hour claims in the absence of experienced counsel who understand this extremely nuanced decision

Knowledge is power in a state like California, whose wage and hour laws are nearly "strict liability" (i.e., they can result in personal liability, notwithstanding a corporate (limited liability)

structure). So when a case like *Seviour-Iloff v. LaPaille*[1] comes along, which clearly articulates rules and standards on a variety of topics, it behooves employers to make a close study of the rules and rationale because just about every California employer will encounter a situation where, if litigation arises, *LaPaille* will be binding precedent.

The California Court of Appeal recently answered a number of technical but important questions about California wage and hour law, including:

- Does an employee have to file a special form to bring a claim to the Labor Commissioner?
- Does Labor Code Section 558.1 provide a private right of action for imposing personal liability on a "person acting on behalf of an employer" who violates the Labor Code?
- Does the trial court have discretion in determining whether to impose individual liability under section 558.1, provided the underlying facts support a finding that a "person [was] acting on behalf of an employer?"
- Is section 558.1, which came into effect on January 1, 2016, retroactive?
- Is "acting in good faith" the same as the "good faith dispute" for the purposes of contesting an award of waiting time penalties?
- Is there a private right of action to seek administrative penalties for an employer's failure to provide paid sick leave under Labor Code section 248.5?
- Should the value of in-kind benefits, such as housing, be included when calculating waiting time penalties pursuant to section 203?

Seviour-Iloff v. LaPaille

Defendant Cynthia LaPailles served as the chief executive officer and chief financial officer of BPI, a corporation with property in unincorporated Humboldt County, California, which included eight rental units, a post office, and a water system.

Plaintiff Laurance Iloff *proposed* an agreement where (1) he would manage BPI's water system and (2) plaintiff Elsie Sevior-Iloff would serve as BPI's town manager in lieu of paying their monthly $650 rent.

Between 2009 and 2016, the plaintiffs' performed various tasks for BPI until they were terminated on suspicion that plaintiff Laurance was not performing his maintenance jobs, was stealing equipment and supplies from BPI, and was using BPI's water rights for a private venture.

It was undisputed that BPI did not pay the plaintiffs for any work they performed due to the free-rent arrangement proposed by plaintiff Laurance.

[1] Calif. Ct. App., No. A163503 (June 28, 2022)

The Labor Commissioner hearing and trial court decision

In late-January 2017, the plaintiffs each filed a DSLE form 1 "Initial Report or Claim." Roughly three months later, in mid-May 2017, each filed a DLSE form 530 "Complaint."

The Labor Commissioner held a hearing and concluded (1) that there was an oral agreement for free rent in lieu of payment between the plaintiffs and defendants, (2) plaintiff Laurance worked four (4) hours per day and plaintiff Else worked ten (10) hours per day under the agreement, and (3) that the plaintiffs recover regular wages, overtime wages, liquidated damages, interest, and waiting time penalties, and (4) defendant LaPailles was personally liable for the same.

Defendant LaPaille appealed. The trial court found that the plaintiffs Laurance and Elsie were entitled to roughly one-fifth the amount of unpaid minimum wages calculated by the Labor Commissioner, interests on those unpaid wages, as well as wage-statement penalties, waiting time penalties, and travel expenses. Importantly, though, the trial court concluded that (1) BPI's failure to pay plaintiffs was in good faith (i.e., it had reasonable grounds to believe it was not violating the Labor Code). Accordingly, the court declined to award liquidated damages pursuant to section 1194.2 or hold defendant LaPaille personally liable for the unpaid wages.

The plaintiffs, unhappy with the outcome, appealed.

Q&A: The Appellate Court Decision

The Court of Appeal affirmed in part and reversed in part. Along the way, the court clarified some important rules and standards:

Must a plaintiff file a specific form or document with the Labor Commissioner in order to halt the statute of limitations (SOL) on their claims?

- No. A plaintiff may file *any of the following* to halt the statute of limitations: (1) DLSE form 530 "Complaint," (2) DLSE form 1 "Initial Report or Claim," (3) a "Form or Complaint" located at 8 CCR 13501.5 (CCR Model Complaint), or (4) any other document "in writing and substantially in the [form]" of the CCR Model Complaint.
- Plaintiffs' argued that the SOL should have been tolled from the earlier filing of the DLSE form 1 "Initial Report or Claim." Defendant argued that the SOL should have been tolled from the filing of the later DLSE form 530 "Complaint." The Court, citing the requirement that a complaint need only be "in writing and substantially in the [form]" of the CCR Model Complaint, as well as the public policy behind the Berman hearing procedure as "provid[ing] 'an accessible, informal, and affordable" avenue for employees to seek resolution" declined to adopt a rule that would create a lead to "[h]ighly technical requirements, such as requiring a claimant to [file on particular form over another] ... runs counter to the goal of an accessible forum." As such, the Court of Appeal reversed the trial court, ordering it to recalculate the SOL from the plaintiffs' filing of the DLSE form 1 "Initial Report or Claim." (*See LaPaille* at 5)

What standard of review did the Court of Appeal apply in determining whether a trial court erred in not awarding equitable relief under the Unfair Competition Law?

- Abuse of discretion standard. (*See La Paille* at 10 ["While plaintiffs believe the court should have focused on other factors, we will not replace the trial court's assessment of the equities with our own."])

Does Labor Code Section 558.1 provide a private right of action for imposing personal liability on a "person acting on behalf of an employer" who violates the Labor Code?

- Yes. (*See La Paille* at 13 ["As relevant to this dispute, the statutory language achieved these goals by (1) allowing employees to hold certain individuals liable for wage violations[] and (2) empowering the Labor Commissioner to assist employees in collecting on the resulting judgments, including against liable individuals. Accordingly, section 558.1 must be interpreted as allowing for a private right of action."].)

Does the trial court have discretion in determining whether to impose individual liability under section 558.1, provided the underlying facts support a finding that a "person [was] acting on behalf of an employer"?

- No. (*See La Paille* at 17 ["[W]e conclude the Legislature's use of the term "may" does not grant judicial discretion in imposing liability. Rather, we interpret the term as reflecting a recognition by the Legislature that the party prosecuting the wage violation may not need to pursue such liability in the event the employer satisfies any outstanding judgment."].)

Is section 558.1, which came into effect on January 1, 2016, retroactive?

- No. (*See La Paille* at 17 ["We agree with the parties that section 558.1 is not retroactive."].) However, an individual may still be personally liable for underpaid wages going back to January 1, 2012, the effective date of Section 1197.1, which also provides for personal liability for unpaid wages. (*See La Paille* at 20 ["Here, individual liability for underpaid wages existed prior to the enactment of Senate Bill 588. Senate Bill 588 did not impact an individual's rights or duties but rather allowed an employee to enforce such liability rather than relying on the Labor Commissioner to do so. Accordingly, to the extent LaPaille is liable for underpaid wages pursuant to section 588.1 [sic], that liability extends back to the enactment of section 1197.1."].)

Is the defense of "acting in good faith" to avoid (or reduce) an award of liquidated damages under section 1194.2 the same as the "good faith dispute" defense to an award of waiting time penalties under section 203?

- No. As explained by the Court:

> While both sections 1194.2 and 203 provide for a good faith defense, section 203 allows employers to avoid waiting time penalties if they demonstrate a "good faith dispute." (Cal. Code Regs. tit. 8, § 13520.) Courts have concluded a good

faith dispute arises when "an employer presents a defense, based in law or fact which, if successful, would preclude any recovery on the part of the employee." (*Id.*, subd. (a).) The fact that a defense ultimately fails "will not preclude a finding that a good faith dispute did exist." (*Id.*) Under section 1194.2, however, there is no required showing of a dispute between the parties. Rather, it simply allows a court to exercise discretion in awarding liquidated damages if the employer "demonstrates to the satisfaction of the court . . . that the act or omission . . . was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of any provision of the Labor Code . . . . (§ 1194.2, subd. (b).)

This means that trial courts have "considerable latitude to exercise ... discretion and require[d] only that the employer demonstrate good faith and reasonableness 'to the satisfaction of the court.'" (*LaPaille* at 24.) The Court of Appeal declared that it would not "replace the trial court's assessment," focused, in part, "on the lack of expectation or understanding by all parties that wages were required to be paid[,]" and that "Laurance proposed the work-for-free-rent arrangement, and both parties believed plaintiffs were independent contractors[,]" in declining to exercise its discretion to award liquidated damages under section 1194.2. (*Id.*)

Is there a private right of action to seek administrative penalties for an employer's failure to provide paid sick leave under Labor Code section 248.5?

- No. (*See LaPaille* at 26 ["[W]e conclude there is no private right of action to seek administrative penalties under section 248.5."].)

Should the value of in-kind benefits, such as housing, be included when calculating waiting time penalties pursuant to section 203?

- Yes. (*See La Paille* at 26-27 ["The Labor Code defines wages as 'all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.' (§ 200, subd. (a).) 'The term "wages" has been held to include money as well as other value given, including room, board[,] and clothes.'" (Citing *Department of Industrial Relations v. UI Video Stores, Inc.* (1997) 55 Cal.App.4th 1084, 1091.)

Key takeaways

There is much to unpack in *LaPaille*, which is a mixed bag for employers. The favorable rules are (1) a clear proclamation that there is no private right of action for the failure to provide sick leave and (2) a flexible standard for proving a "good faith" defense to liquidated damages claims under section 1197.1. The unfavorable rules are (a) a very flexible standard for what a plaintiff must file with the Labor Commissioner to halt the statute of limitations on wage claims, (b) a clear holding that a private right of action exists to hold "an employer or other person acting on behalf

of an employer" personally liable for unpaid wages under section 558.1, and that such unpaid wage claims can go as far back as January 1, 2012, and (c) clarification that practically all compensation paid to an employee should be included when calculating waiting time penalties, which increases the exposure and/or liability on such claims.

Next Steps

The sheer volume of technical details covered in this decision is enough to make one's head spin—and it would be all too easy to get lost in the weeds. Nixon Peabody's lawyers have extensive experience with the subtle nuances of California law like those presented in *LaPaille,* as well as with big-picture changes created by cases like *Viking River Cruises*. If you are an employer in California, it is important to have experienced counsel that understands both the big and small elements.

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