



CALIFORNIA EMPLOYMENT LAW UPDATE

MAY 2010

California Supreme Court Expands the Definition of Employer for Purposes of Legal Liability

In *Martinez v. Combs*, the California Supreme Court expanded the definition of “employer” for purposes of liability for unpaid wages under the California Labor Code. The Court adopted three alternative definitions of employer, pursuant to which entities with some control over a worker could be found to be the employer, and thus legally responsible for any unpaid wages.

Background

In *Martinez*, strawberry farm workers brought a lawsuit for failure to pay minimum wage. In addition to filing suit against their employer, Isidro Munoz, Sr. (who was ultimately dismissed from the case after he filed for bankruptcy), they named as defendants produce merchants that contracted with Munoz to market and sell the strawberries. Plaintiffs claimed the produce merchants fell within the definition of “employer” under the Industrial Welfare Commission's (“IWC”) wage orders because they knew Munoz would need to hire workers to fulfill the contracts they had with him. In addition, plaintiffs argued that the produce merchants had control over the farm workers' wages because Munoz relied upon payments from the produce merchants to pay his workers.

In opposition, the produce merchants argued that the definition of employer found within the wage orders should be construed to incorporate the more narrow federal “economic reality” definition of employment developed in cases arising under the Fair Labor Standards Act, a standard that focuses on control over workers. Since the produce merchants did not control the workers, they argued they could not be held liable for any unpaid wages. The trial court granted summary judgment in favor of the produce merchants. The Court of Appeal affirmed, concluding that produce merchants were not the plaintiffs' employer under the federal “economic reality” test.

Supreme Court Decision

After a lengthy analysis, the California Supreme Court concluded that the definition of “employer” found in the IWC’s wage orders was more expansive than the federal law definition. To “employ” under the IWC’s definition consisted of the following three alternative definitions: 1) to exercise control over the wages, hours or working conditions, 2) to suffer or permit to work, or 3) to engage, thereby creating a common law employment relationship. The Court found that this definition reached situations where multiple entities controlled different aspects of the employment relationships, such as when an entity hires and pays workers, but places them with entities that actually supervise the work.

Applying each prong to the facts before it, the Court concluded that the produce merchants did not employ the plaintiffs. First, they did not exercise control over the farm workers. Munoz, not the produce merchants, hired, fired and trained them. He also determined their rate and manner of pay, set their hours and told them when and where to report to work. For these same reasons, the produce merchants did not “suffer or permit” plaintiffs to work. Although the produce merchants could have forced Munoz to lay off workers by not purchasing strawberries from him, that type of business relationship, standing alone, did not transform a purchaser into the employer of the supplier's employees. Finally, the Court determined that no common law employment relationship existed. Munoz's employees did not view the produce merchants as their employer or otherwise believe that they reported to anyone other than Munoz and his foremen.

Practical Implications for Employers

Although the California Supreme Court in *Martinez* found that the produce merchants did not employ the strawberry workers, in doing so, the Court established a definition for employer that will expand the protections provided by the California Labor Code. Companies that utilize the services of workers employed by other entities (“borrowing companies”) should carefully review their relationships and evaluate whether changes should be made in order to minimize potential exposure under California's employee-friendly wage and hour laws. This includes, by way of example, evaluating relationships with temporary employment agencies. Borrowing companies should consider the following:

- Do not directly supervise workers employed by other entities. If circumstances call for personnel action, such as disciplinary measures, borrowing companies should coordinate those efforts through the worker's actual employer.
- Ensure that companies that provide workers comply with all applicable wage and hour laws.
- Consider requiring companies that provide workers to indemnify the borrowing company for any employment claims brought against the borrowing company by their workers.

Rodney B. Sorensen is Managing Partner of the San Francisco office and a partner in the Employment Law Group of Payne & Fears LLP, where he represents employers in all types of employment-related litigation, including wrongful termination, discrimination, sexual harassment, unfair competition and wage and hour class actions in state and federal court proceedings, administrative hearings, mediation and arbitration. Mr. Sorensen can be reached at (415) 277-2255.

Leila S. Narvid is an associate in the San Francisco office of Payne & Fears LLP, where she focuses on the representation of employers in all aspects of labor and employment law, including discrimination, sexual harassment, wrongful termination, retaliation, disability and wage and hour violations. Ms. Narvid can be reached at (415) 277-2253.

If you would like further information, please contact your Payne & Fears LLP attorney.

The California Employment Law Update is published periodically by Payne & Fears LLP and should not be construed as legal advice or legal opinion on any specific fact or circumstance. The contents are intended for general information purposes only, and you are urged to consult counsel concerning your own situation and any specific legal questions you might have.

© 2010 Payne & Fears LLP. All Rights Reserved