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## APPELLATE COURT HOLDS THAT 'FUNDAMENTAL PUBLIC POLICY' PRECLUDES TERMINATING EMPLOYEE FOR MAKING FALSE OVERTIME CLAIM

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Under California law, employment is generally "at-will," meaning that either the employer or the employee can end the employment relationship at any time. However, employers cannot fire employees for reasons that violate public policy, including in retaliation for an employee's exercise of his or her "fundamental" rights. In a recent decision, *Barbosa v. IMPCO Technologies*, the California Court of Appeal held that this principle precluded an employer from terminating an employee who falsely claimed he worked sufficient hours to receive overtime pay, if the employee had a "good faith belief" that he had worked the hours.

Barbosa worked for IMPCO as a carburetor assembler. After talking with other employees, he came to believe that he had not been paid for two hours of overtime. He told his supervisor that the "clock was wrong," and that he and the other employees were entitled to overtime pay because they had worked more hours than their timesheets reflected. The supervisor trusted Barbosa and gave each of the employees the extra pay Barbosa claimed they were entitled to receive. Yet after reviewing records showing when Barbosa and the others entered and left the workplace, the company determined that they could not have worked the number of hours that Barbosa had claimed. The company fired Barbosa because it believed that "claiming you worked overtime when you didn't is stealing from the company."

Barbosa sued, alleging that the company had unlawfully fired him in retaliation for his "mistaken but good faith claim to overtime wages." The trial court threw out the lawsuit. It found that the company acted within its rights in firing Barbosa for submitting a false claim for overtime wages. The trial court believed that the employer was not obligated to determine whether Barbosa had acted in good faith when he claimed he had worked sufficient hours to receive overtime.

The appellate court disagreed and reinstated Barbosa's lawsuit. The appellate court noted that "[t]he duty to pay overtime wages is a well-established fundamental public policy affecting the broad public interest." The appellate court analogized to situations in which a "whistleblower" is fired in retaliation for reporting an employer's unlawful actions. In such a case, the employer is liable for wrongful termination, whether or not the employee's accusations were valid, so long as the employee made them in a good faith belief that they were true. The appellate court concluded that an employee's overtime claim likewise should be protected against retaliation, even if the employee's claim is mistaken.

**Conclusion.** The *Barbosa* decision illustrates the risks that termination decisions present for employers. It is doubtful that IMPCO intentionally fired Barbosa in "retaliation" for his exercise of a protected right, and the company probably never imagined that it was opening itself up to a lawsuit by firing him. The decision demonstrates that employers should approach even routine terminations with great care, mindful of the arguments that employees and their lawyers are likely to make if they decide to pursue litigation.