

[Prevailing Defendant Entitled to Fee Award Unrelated To Claims Seeking Unpaid Wages](#)

Posted on September 1, 2010 by [David J. McMahon](#)

In [Kirby v. Immoos Fire Protection Inc.](#), 2010 DJDAR 11569 (2010) the [Third Appellate District](#) of the [California Court of Appeal](#) decided an appeal challenging an award of attorneys fees to an employer who successfully defended against allegations of labor violations by two employees.

Anthony Kirby and Rich Leech (hereinafter “Plaintiffs”) filed suit against [Immoos Fire Protection Inc.](#) The complaint alleged six causes of action for violations of various labor laws as well as unfair competition ([Business & Professions Code §17200](#)).

The trial court rejected the Plaintiffs’ motion for class action certification. The Plaintiffs then dismissed with prejudice their complaint as to all causes of action. The trial court awarded the Defendant attorney fees of \$49,846.05 for its defense of three of the six causes of action, including Labor Code violations and the §17200 claims. The Plaintiffs appealed the decision awarding the Defendant attorneys fees.

The Court of Appeal noted that [Labor Code § 218.5](#) provides for fee shifting in favor of the party that prevails on a claim for unpaid wages. The court noted, however, that § 218.5 does not allow employers to recover fees in any action for minimum or overtime wages.

The Plaintiffs’ complaint included causes of action involving failure to pay minimum wages as well as other, non-wage claims. The court rejected the Plaintiffs’ argument that a prevailing Defendant may not recover fees in a case that includes a claim for unpaid minimum or overtime wages. The court noted that attorney fees may still be awarded for unrelated claims subject to the fee-shifting provisions of § 218.5.

The Court of Appeal concluded that the trial court’s award of attorney fees for Immoos non-wage related defense was proper. However, attorney fees awarded on two other causes of action was overruled as the award was miscalculated.