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Court Finds Meal And Rest Period Rules Preempted For Some Employers

By Ryan Wheeler (Irvine)

California law mandates that employers provide employees who work more than five hours with a 30-minute meal break prior to the sixth hour of work, and a second 30-minute meal period for employees who work more than 10 hours. Employees are also entitled to a 10-minute rest period for every four hours, or major portion thereof, worked. A recent court ruling held that these regulations are preempted by a federal law which covers motor carriers. *Dilts v. Penske Logistics.*

The class of employees consisted of appliance delivery drivers and installers. Because Penske expected that its employees would take the meal periods to which they were entitled, it automatically deducted the meal periods from employees' wages. Penske asked the court to dismiss the employees' meal and rest period claims, asserting that California's meal and rest period laws are preempted by the Federal Aviation Administration Authorization Act of 1994 (FAAAA) as a matter of law.[1]

The Ruling

Judge Janis Sammartino first discussed whether or not the activities of the Penske employees fell within the scope of the FAAAA's regulated activity. Although the employees argued that driving and delivering were merely incidental job duties to their main function of installing goods, the court disagreed, reasoning that the scope of the FAAAA is broad. In order to be covered by the Act, an entity must be a motor carrier. A motor carrier is defined as a person providing commercial motor vehicle transportation for compensation. The term transportation includes "services related to that movement."

In this case, the employees, as drivers and installers, "operated commercial motor vehicles which transported property and conducted services related to that movement." Although the employees performed additional services, the court concluded that those additional services were not sufficient to exempt the employees from regulation under the FAAAA.

Next, the court considered whether California's meal and rest period laws fell within the preemptive scope of the FAAAA. The court noted that Congress enacted the FAAAA, in part, because deregulation was needed in order to stop the inefficiencies, increased costs, reduction of competition, inhibition of innovation and technology, and lack of market expansion caused by varying and non-uniform state regulation. Thus, Congress intended the FAAAA to preempt state laws that had indirect effects on carrier prices, routes or services.

Applying the undisputed facts of the case to its analysis, the court concluded that "[w]hile the laws do not strictly bind Penske's drivers to one particular route, they have the same effect by depriving them of the ability to take any route that does not offer adequate locations for stopping, or by forcing them to take shorter or fewer routes. In essence, the laws bind motor carriers to a smaller set of possible routes."

California's meal and rest period laws also had a significant impact on the services Penske offered, because scheduling off-duty meal periods would preclude drivers from completing an additional one to two deliveries per day. Therefore, because California's meal and rest periods

[1] The resolution of this issue is not impacted by substantive meal and rest period issues before the California Supreme Court in the *Brinker* litigation.

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Sue An Employee, But Pay For Attorneys' Fees?

Court weighs in on complicated indemnity statutes

By Jimmie Johnson and John Skousen (Irvine)

Employers defending wage claims in proceedings before the California Labor Commissioner are not permitted to file complaints or cross-claims against their employees, but that's not the case when a complaint is filed in civil court. Employers faced with complaints from employees seeking unpaid wages may have grounds to file cross-complaints based upon employee misconduct, or they may file a direct lawsuit An employer may be eager to file such complaints to help "settle the score" where the suing employee committed serious wrongs against the company.

The Indemnity Issue

But employers have a number of reasons to exercise caution with regard to such complaints. One chief concern involves indemnity, i.e., to what extent you could be required to indemnify the employee the costs incurred in defending the complaint or cross-complaint where the alleged actions of the employee arose during the course and scope of the employee's employment.

Part of the Labor Code provides that "[a]n employer shall *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, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful. (Emphasis added)."

And the California Corporations Code provides in part, "To the extent that *an agent* of a corporation has been successful on the merits in defense of any proceeding referred to in subdivision (b) or (c) or in defense of any claim, issue, or matter therein, the agent shall be indemnified against expenses actually and reasonably incurred by the agent in connection therewith. (Emphasis added)."

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The issue of indemnity recently was addressed by a California appeals court, which determined that neither the Labor Code section nor the Corporations Code section quoted above, authorize a court to award attorneys' fees to a prevailing employee defendant in a civil suit prosecuted by the employer when the employer is a limited liability company. *Nicholas Laboratories, LLC v. Chen.*

Resolving The Two Statutes

In *Nicholas Labs*, a limited liability company sued one of its employees for breach of contract, breach of the implied covenant of good faith and fair dealing, conversion, negligence, money had and received, unjust enrichment, and constructive trust. The employee filed a cross-complaint for an award of the attorneys' fees he incurred in defending against the employer's complaint. In his cross-complaint, the employee asserted that he was entitled to attorneys' fees pursuant to the Labor Code and Corporations Code sections, and the terms of his employment agreement.

On the eve of trial, the employer dismissed its complaint without prejudice in exchange for the employee agreeing to have the court decide his cross-complaint upon written evidentiary submissions.

After reviewing the matter, the trial court rejected each of the employee's rationales for attorneys' fees. With regard to the Labor Code, the trial court held that the statute does not apply to lawsuits filed by an employer against an employee. The trial court further held that a judicial determination on the merits was a necessary requirement for an award of attorneys' fees under the Corporations Code – which a dismissal without prejudice failed to satisfy.

On appeal, the Fourth District Court of Appeal concurred with the trial court's decision. In affirming the trial court's decision, the Fourth District Court of Appeal determined that the California Legislature intended the term "indemnify" in the Labor Code to pertain only to third party lawsuits against the employee.

On the question of the Corporations Code, the Court of Appeal did not reach the trial court's decision that the statutory provision required a judicial determination on the merits. Rather, the appellate court held that this law did not apply to limited liability companies, ruling that the term "corporation" within did not include limited liability companies, and that indemnity matters concerning limited liability companies were governed exclusively by the Beverly-Killea Limited Liability Company Act, a separate statute.

What Impact?

Of course, the favorable ruling in *Nicholas Labs* does not rule out all impediments to an employer filing a complaint or cross-complaint against an employee. Sometimes these counter-actions can be viewed as spurious or retaliatory, giving rise to potential actions for malicious prosecution or relief under California's anti-SLAPP statute, which provides for a special motion to strike a complaint where the complaint arises from activity exercising the rights of petition and free speech. The statute was first enacted in 1992.

An Anti-SLAPP motion will be denied if the opposing party, here the employer, demonstrates the probability that it will prevail on the claim. This requires a showing that the complaint is both legally sufficient and that sufficient evidentiary facts exist to sustain a favorable judgment if the evidence is credited. If a court grants the motion, it will dismiss the complaint (or cross-complaint) and award the moving party its attorneys' fees and court costs.

The Bottom Line

Despite these potential challenges, employers should still consider all legitimate options when defending a wage and hour lawsuit. Sometimes the existence of cross-claims can motivate employees to significantly discount their claims during mediation or informal settlement discussions.

If you are forced to defend a lawsuit filed by an employee against whom you have legitimate grievances, you should think carefully about whether to bring a cross-complaint or seek other relief. After considering all of the options, you will be in the best position to make sound strategy choices in defending your company during litigation.

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significantly impacted the routes or services of Penske's transportation, the court held that California's meal and rest periods were preempted by the FAAAA.

While this ruling does not affect all employers, it is highly significant for those in the transportation industry. Let us know if you'd like help in determining whether this ruling impacts employees in your operations.

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