In a Common Sense Decision, Appellate Court Clarifies Deadline for Employers to Issue Wage Statements under Labor Code Section 226

June 29, 2018 – Dorsey Work Watch
by Nisha Verma and Jessica Linehan

It's a situation any Human Resources professional might find themselves in – circumstances require you to effectuate a termination in short order and you have to scramble to calculate the employees' correct final pay and prepare a paycheck. But what if the wage statement is not ready? ***Does the law require employers to provide a wage statement to a terminated employee simultaneously with their final paycheck?*** Thanks to a recent decision from the California Court of Appeal, you have a little breathing room.

In *Canales v. Wells Fargo Bank*, 23 Cal. App. 5th 1262 (2018), Wells Fargo had a practice of paying certain terminated employees final wages via cashier's checks – which were prepared in the bank branch – and then mailing the wage statements to the employees from another location, either that same day, or the following day. The plaintiff complained that the wage statements should have been provided simultaneously with the paychecks, and that Wells Fargo's practice of mailing them constituted a violation of California Labor Code section 226, which provides:

"…[e]very employer should ***semimonthly or at the time of each payment of wages***, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or ***separately when wages are paid by personal check or cash***, an accurate itemized statement in writing…"

Wells Fargo responded that it was in compliance with the statute because:

1) The statute does not require simultaneous delivery of wage statements and specifically allows employers the option to provide wage statements "semimonthly;" and

2) It was permitted to mail the wage statements, because the statute provides that wage statements can be delivered "separately" in the case of a cashier's check, which is analogous to cash.

The court agreed, holding, "…if an employer furnishes an employee's wage statement

Related People

- Nisha Verma

Related Capabilities

- Labor & Employment

before or by the semimonthly deadline, the employer is in compliance." The court explained that it interpreted the phrase '"semimonthly or at the time of each payment of wages' as representing the ***outermost deadlines*** by which an employer is required to furnish the wage statement." The court provided the following example:

[S]uppose an employer furnishes wage statements on the first and 15th of each month. The employer discharges an employee on the second of the month. Per the statute's plain language, if an employer pays the final wages by personal check or cash, it has the option of furnishing the discharged employee with the wage statement.

We find it illogical to conclude an employer violated section 226 by furnishing a wage statement before the semimonthly date has been reached. If the employer furnishes the wage statement to the discharged employee of the fifth of the month, the employer has complied with the requirement that it furnish the wage statement to the employee "semimonthly" because the employee would have ostensibly been furnished with the wage statement by the semimonthly date.

The court also rejected the plaintiff's reliance on the California DLSE (Division of Labor Standards Enforcement) Enforcement Policies and Interpretations Manual, which provides, "[a] California employer must furnish a statement showing the following information to each employee at the time of payment of wages (or at least semi-monthly, *whichever occurs first*)," holding that the Manual is not entitled to deference as an agency regulation because it was not promulgated in accordance with the Administrative Procedure Act. The court also did not find the agency's interpretation persuasive, finding that the term "whichever occurs first" appears nowhere in the statute, and simply does not make sense given that the statute specifically provides employers a choice of two separate timeframes to issue wage statements:

1) "semimonthly" ***or***

2)"at the time of each payment of wages."

The *Canales* decision is certainly one where common sense prevailed. Keep it in mind next time next time you have the final pay, but not the wage statement, ready at the time of termination.