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### ITEMIZED WAGE STATEMENTS AS SET FORTH IN CALIFORNIA LABOR CODE SECTION 226

This Newsletter is prepared by Shook, Hardy & Bacon's National Employment Litigation & Policy Practice[sm]. Contributors to this issue: Kevin Smith and Bill Martucci.

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Under California law, employers are required to provide employees an itemized wage statement, setting forth information specified in Labor Code Section 226. Plaintiffs in California wage-and-hour actions have routinely added Section 226 claims alleging employer non-compliance. With the recent amendment of Section 226, now is a good time to look at the legal requirements for wage statements, as well as the potential risks for failure to meet those requirements.

*Required Content*

Section 226(a) sets out the required types of information that must be provided either semi-monthly or at the time of each payment of wages. Generally, they are:

- Gross wages earned;
- Total hours worked;
- All deductions;
- Net wages earned;
- The inclusive dates of the period for which the employee is paid;
- The name of the employee and the last four digits of his or her Social Security number (or employee identification number);
- The name and address of the legal entity that is the employer; and
- All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Under certain circumstances, requirements may vary slightly. For example, for certain overtime-exempt employees, the total hours need not be included. Piece-rate employees must receive information on the number of piece-rate units applicable to the pay period. And beginning in July 2013, temporary services employers must provide information regarding the rate of pay and total hours worked for each temporary services assignment.

*Consequences of Non-Compliance*

Section 226(e)(1) creates a cause of action that may be brought by an "employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a)." In the context of an employee receiving an itemized wage statement, this quoted language raises several questions. Most notably, what does it mean for an employee to "suffer injury" as a result of an employer's failure to provide an itemized wage statement?

In late 2012, the California Legislature amended Section 226 to address aspects of this question. First, under the amended provision, if an employer fails to provide a wage statement, an employee is "deemed to suffer injury." Second, where an employer provides a wage statement but fails to provide the information described above, the employee may also be "deemed to suffer injury." In particular, this will occur where the employee who received a statement "cannot promptly and easily determine from the wage statement alone" gross wages, net wages, deductions made, the employer's name and address, or the employee's name and identification number.

An employee suffering injury as a result of a "knowing and intentional" violation is entitled to recover actual damages or a prescribed penalty of $50 for an initial violation and $100 for subsequent violations. (The penalty is capped at $4,000.) The employee can also recover costs and reasonable attorney's fees.

The recent amendment also inserted language clarifying that an isolated and unintentional payroll error due to clerical or inadvertent mistake is not enough to constitute a "knowing and intentional" violation.

*Class Actions and Section 226*

Like several other claims under the California Labor Code, Section 226 claims are frequently asserted on a class basis. Because a plaintiff must have suffered an injury to bring a claim, courts have found in certain circumstances that class treatment is not warranted. As one example, in a recently upheld ruling in *Lights Plus Overtime Cases*, class certification was denied, in part, based on the requirement of showing injury to recover under Section 226. (This case is currently on appeal before the California Supreme Court, along with other post-*Brinker* wage-and-hour cases, with a focus on meal and rest period issues at the forefront.)

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