

Recent Employer Lessons On Facing Calif. Labor Hearings

By **Tyler Bernstein** (September 1, 2022)

An employee in California has two primary options to pursue a claim for the enforcement of minimum wage and overtime pay rights.

The employee may seek judicial relief by filing an ordinary civil action. Or, the employee can initiate an administrative action with the Division of Labor Standards Enforcement, or DLSE.

The purpose of the administrative hearing procedure is to avoid recourse to costly and time-consuming judicial proceedings in all but the most complex wage claims. As a result, employers are most commonly called upon to defend their wage and hour practices in matters before the DLSE.



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This is most likely attributable to myriad factors, including employees' access to DLSE offices statewide, employees' awareness of that agency and its mandate, the ability to prosecute a case before the agency without legal representation and the relative speed of the proceedings compared to formal litigation.

On June 28, in *Elsie Seviour-Iloff v. LaPaille*, the Court of Appeal of the State of California, First Appellate District set forth multiple important holdings expanding the potential relief available to employees pursuing administrative relief for wage claims with the DLSE and increasing the availability of recourse against nonentity employers.

With DLSE proceedings the most common forum that employers find themselves in defending their pay practices, employers are wise to take note of the important lessons LaPaille teaches.

Background

Bridgeville Properties Inc. owned property in Humboldt County, California, which included eight rental units, a post office and its own water system. During the relevant time period, Cynthia LaPaille served as BPI's chief executive officer and chief financial officer.

Between 2009 and 2016, plaintiffs Elsie Seviour-Iloff and Laurance Iloff performed various tasks and odd jobs for BPI in exchange for free rent, but no other compensation. BPI eventually terminated the plaintiffs for suspected misconduct.

On Jan. 31, 2017, the plaintiffs each filed DLSE form 1, titled "Initial Report or Claim," with the labor commissioner. The initial report or claim form identified the employer, set forth wage information and identified hours worked. Both plaintiffs alleged being owed \$132,880.

Nearly five months later, on May 17, 2017, the plaintiffs each executed a complaint, which set forth the claimed regular and overtime wages contained in the initial report or claim forms, but also included a request for liquidated damages and waiting time penalties.

The labor commissioner concluded the plaintiffs were entitled to recover regular wages, overtime wages, liquidated damages, interest and waiting time penalties, and that LaPaille was personally liable for those amounts.

LaPaille and BPI appealed to the Humboldt County Superior Court. Following a five-day trial, the trial court concluded the plaintiffs were entitled to minimum wages and interest, statutory damages for BPI's failure to provide a wage statement, waiting time penalties and travel expense reimbursements.

But, it declined to award liquidated damages for the minimum wage violations and concluded LaPaille was not personally liable. The plaintiffs then appealed.

The Court of Appeal's Decision Expands Scope of Relief Available at Labor Commissioner Hearings

The plaintiffs raised several arguments to the trial court's judgment that resulted in important rulings for employers from the court of appeal.

Statute of Limitations

First, the plaintiffs argued that the trial court erred by calculating the statute of limitations for their unpaid wage claims from the date they filed the complaints, rather than the date they filed their initial report or claim forms, with the labor commissioner.

The court of appeal agreed that the filing of the initial report or claim form initiates the Berman hearing procedure, the process by which employees seek administrative relief by filing a wage claim with the labor commissioner pursuant to a special statutory scheme set forth in Section 98.8 of the California Labor Code.

The court explained that, because the plaintiffs used a form provided to them by the DLSE to initiate a wage claim, the initial report or claim form contained substantially all the information required to be included based upon the applicable Code of Regulations.

Further, as a matter of public policy, the court noted a contrary finding that the DLSE initial report or claim did not halt the statute of limitations from running would undermine the accessible and more streamlined nature of the administrative forum for wage disputes.

Individual Liability

The court of appeal next examined whether Section 558.1 of the Labor Code granted the trial court discretion to decide whether to impose individual liability on LaPaille. Section 558.1 provides:

(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages ... may be held liable as the employer for such violation.

Before examining the trial court's discretion, the court of appeal first determined that a private right of action to sue exists under Section 558.1.

According to the court, this was because there is no exclusive enforcement scheme by an administrative agency for unpaid wages that would displace the need for a private right of action.

While the labor commissioner is empowered to enforce California's labor laws, so, too, may private employees seek to recover unpaid wages directly in court. It would make little sense, the court commented, for the Legislature to authorize the labor commissioner to

enforce actions against individuals but bar such recovery for employees simply because they may opt to pursue a civil action.

Moreover, the court discussed the legislative concern underlying Section 558.1 as an intent to provide various provisions to discourage employers from defaulting on wage claim judgments against them and to provide updated and improved collection methods.

The court of appeal concluded that Section 558.1 achieves this legislative goal by allowing employees to hold certain individuals liable for wage violations and empowering the labor commissioner to assist employees in collecting on the resulting judgments, including against liable individuals. Accordingly, the court held that Section 558.1 is not solely limited to enforcement by the labor commissioner.

The court then analyzed whether Section 558.1 provides courts with discretion as to whether to impose such individual liability, rather than providing employees with discretion as to whether to bring such claims.

The court concluded that the statute only grants discretion to the party prosecuting the action. The court reasoned that the statute's permissive language reflected a legislative recognition that the party prosecuting the wage violation may not need to pursue such liability if the employee is able to collect on the judgment for unpaid wages from the employer.

The court held that Section 558.1 does not grant judicial discretion in imposing liability if the individual is, in fact, someone who "violates, or causes to be violated" minimum wage laws.

Good Faith Defense to Liquidated Damages

The court of appeal affirmed that the trial court has considerable discretion to determine whether an employer has established the good faith defense to liquidated damages.

Section 1194.2 of the Labor Code provides for liquidated damages where an employer has failed to pay the minimum wage. The California Supreme Court commented in *Martinez v. Combs* in 2010 that the liquidated damages allowed in Section 1194.2 are in effect a penalty equal and in addition to the amount of unpaid minimum wages.[1]

As the court noted, Section 1194.2 simply allows a court to exercise discretion in awarding liquidated damages if the employer demonstrates good faith and that the employer had reasonable grounds for believing it was not violating any Labor Code provision.

It further noted that unlike Section 203, which allows employers to avoid waiting time penalties if they demonstrate a good faith dispute, Section 1194.2 does not require a showing of a dispute between the parties.

Rather, it simply allows a court to exercise discretion in awarding liquidated damages if the employer demonstrates to the court that the act or omission was in good faith and the employer had reasonable grounds for believing it was not violation of any Labor Code provision.

Under the unique facts in *LaPaille*, which involved a barter situation that the plaintiffs themselves proposed, the court of appeal affirmed the trial court's finding that the employer acted in good faith and did not err in declining to award, in addition to the wages owed plus

interest, the additional penalty of liquidated damages.

Calculation of Waiting Time Penalties

As to waiting time penalties owed on unpaid wages, the court of appeal held that the trial court failed to include the value of the plaintiffs' housing when calculating the daily rate of pay.

The court relied upon the broad statutory definition of wages in Section 200(a), as well as prior California Supreme Court and court of appeal decisions finding that the term "wages" include room and board.

The court ultimately held that the value of the rent should have been incorporated into the calculation of the plaintiffs' daily wages for purposes of calculating the amount of penalties under Section 203.

Key Takeaway for Employers

The court of appeal made important rulings that potentially could affect employers going forward, including as to the scope of relief available to employees pursuing employers for unpaid wages, in Berman hearings and beyond.

Just as much as the specific holdings, LaPaille should serve as a reminder to employers to consistently and routinely review employment practices, policies and arrangements to ensure overall compliance with applicable state and federal laws.

As LaPaille shows, even work relationships put in place at the request of an employee can prove problematic with respect to wage and hour compliance, resulting in potentially substantial damages and penalties.

At the same time, LaPaille strengthened the good faith defense to liquidated damages, reinforcing that genuine and meaningful efforts to comply with applicable wage and hour provisions are beneficial to employers in helping to avoid litigation and minimizing potential damages should litigation occur.

That preventative and proactive approach to wage and hour practices and compliance is all the more important now given that following LaPaille, the already accessible DLSE administrative forum may be even more accessible and employee-friendly.

The LaPaille court rejected the employer's effort to rely upon technical procedural defenses related to what constitutes an initial claim filing and embraced an even more liberal pleading standard than before. Like always, an ounce of prevention is worth a pound of cure.

In addition, employers must take immediate note upon notice of an employee filing the DLSE form 1, the initial report or claim. The LaPaille decision demonstrates that the relevant limitations period extends back from the date the initial report or claim is filed.

In effect, using that date resulted in the plaintiffs in LaPaille being able to seek almost six months' worth of additional unpaid wages than if the limitations period had been calculated from the date of the complaint being filed. When quantifying potential exposure at issue in a DLSE proceeding, it is critical to understand the applicable limitations period.

LaPaille also upped the stakes of employee wage and hour proceedings, whether

administrative or civil, in a major way. The court authorized private suits directly against individuals who violate, or cause to be violated, minimum or overtime wage statutes, among others.

Enabling employees to seek direct recourse against individuals for wage and hour violations only expands the potential pool of liable actors. It also increases the incentives for employers and managers to utilize their best practices and procedures to ensure maximum wage and hour compliance, as personal liability may hang in the balance.

Administrative proceedings for unpaid or underpaid wages before the DLSE are here to stay. And, following LaPaille, they are likely to become an even more prevalent and popular forum for employees seeking redress against their employers.

Employers must not be lulled into a false sense of security by the informal and accessible nature of DLSE proceedings. Now, more than ever, those proceedings represent a viable path for employees to quickly, informally and effectively recover potential substantial amounts of unpaid wages, penalties and interest, against both entity and possibly individual employers.

Employers must be prepared to deploy all available defenses and arguments to zealously defend against both liability and damages.

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[1] Martinez v. Combs, 49 Cal. 4th 35 (2010)