

First Wednesday

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A Monthly Discussion of Employment Law Issues and Other Hot Topics for Management

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I SHALL BE RELEASED . . . FULLY

When employers settle claims made by an ex-employee, they expect to get, in exchange, a full release of claims signed by that employee. I am often asked by employers to write an “airtight release because we never want to hear from this person again.” So, I prepare the usual release of all claims, including known and unknown, suspected and unsuspected, asserted and unasserted claims, with appropriate waivers. But is the so-called “usual release” that every lawyer has in his or her toolbox good enough to settle claims for unpaid wages? The answer is, not quite.

Some employers have learned the hard way that claims for unpaid wages cannot be settled so easily. This is partly because of the long-standing, heightened public policy protecting an employee’s right to receive payment of all wages due. In fact, it can be a criminal violation to condition the signing of a document on an employee’s release of wages that are due.

Labor Code section 206.5 states:

“(a) An employer shall not require the execution of a release of a claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made. A release required or executed in violation of the provisions of this section shall be null and void as between the employer and the employee. Violation of this section by the employer is a misdemeanor.”

In addition, Labor Code section 1194 states:

“(a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

Since many employees in this troubled economy are bringing unpaid wage claims, including commissions, bonus, overtime, vacation and severance pay disputes, the obvious question is, how can the employer safely, and finally, settle these claims? Fortunately, California's Court of Appeal has recently decided two cases that provide some answers. The first case is *Chindarah v. Pick Up Stix, Inc.* (2009) 171 Cal.App.4th 796, and the second is *Watkins v. Wachovia Corporation* (2009) 172 Cal.App.4th 1576.

The Court in each case essentially held that California labor law did not prevent the employee's signed release of a claim for unpaid wages where there existed a bona fide dispute over whether any wages were owed.

CHINDARAH V. PICK UP STIX

In the *Chindarah* case, Pick Up Stix ran a restaurant known as "Stix." A group of former Stix employees sued the company on behalf of a class of current and former managers and cooks. The employees sought unpaid overtime, penalties and interest, alleging that Stix misclassified their jobs as "exempt" to avoid paying overtime. Eventually, over 200 employees signed settlement agreements in which they acknowledged they spent more than half their time in managerial duties, and released Stix from all claims for unpaid overtime and other Labor Code violations. As part of the settlement, they agreed not to participate in the class action on their released claims. The original plaintiffs then amended their claims to allege that the settlement agreements violated the Labor Code. Some of the employees who had signed settlement agreements attempted to rejoin the proposed class action as plaintiffs. (At this point, the employer is wondering why it didn't secure an "airtight" release from Chindarah and the other settling plaintiffs who reneged and seemingly had a second bite at the apple.)

Ultimately, the case went to the Court of Appeal on the issue of whether the settlement agreements could be enforced against Chindarah and others who signed them. The court held that Chindarah's release of the wage claim was valid as a matter of law, over Chindarah's argument that any release for less than the full amount owed would automatically violate Labor Code sections 206.5 and 1194 quoted above.

The court held that sections 206.5 and 1194 did not apply in cases of a bona fide dispute regarding the employees' proper classification as exempt or nonexempt. A bona fide dispute is one in which each side has a reasonable

factual basis for taking a position contrary to the other side's position. Therefore, any overtime wages allegedly owed as a result of misclassification were not "due" when the releases were signed, within the meaning of Labor Code section 206.5.

The court explained that a valid release of wage claims must follow: (1) the complete payment of conceded wages due; and (2) a bona fide dispute regarding any other wages the employee claims are due. Thus, to best apply the *Chindarah* decision to settlements of wage disputes, employers should include in the release some very specific recitals addressing points (1) and (2) within the facts and context of the allegations made in the case. Where possible, the release should also state that each side was represented by able employment counsel, capable of advising the client about the issues surrounding the bona fide dispute and the reasons for settlement.

WATKINS V. WACHOVIA

The *Watkins* case followed the *Chindarah* case and is significant because the complaining employee signed the company's release without having been involved in litigation. The Court of Appeal ultimately approved a pre-litigation settlement of overtime claims. When she was terminated, the employee signed the company's severance agreement, which included a release of all claims, specifically including wage claims, in exchange for enhanced severance benefits. She later sued, claiming the release was unenforceable under Labor Code section 206.5. Wachovia relied upon the recent *Chindarah* precedent and the Court of Appeal agreed with Wachovia. The court held that a valid settlement and release is characterized by:

- (1) a bona fide dispute regarding whether or not wages are owed;
- (2) the employer's payment of all the undisputed wages without regard to whether the employee signs a release; and
- (3) the employee's receiving something of value in exchange for releasing the right to sue for additional wages.

So, the employer can draft a valid, complete severance and release agreement but cannot withhold wages indisputably due in order to coerce a settlement of the disputed amount.

In summary, these new cases are helpful and provide specific drafting guidance for employers and their counsel

when resolving claims for unpaid wages. As a cautionary note, the dispute in each case involved claims for overtime pay caused by misclassification of non-exempt employees as having exempt status. Neither case was reviewed by the California Supreme Court. So, they represent “good law” but might be limited to overtime disputes. However, the cases are well-reasoned so that, hopefully, they will be broadly applied and extended by the courts to wage disputes of all kinds.

There are many other issues involving the proper drafting of an “airtight” release, such as the issues surrounding valid age discrimination waivers and federal wage claims under the Fair Labor Standards Act. Care should be taken to craft the final release so that the employer gets the full and final release that it bargained and paid for.

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