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The California Supreme Court holds that the end of a short-term assignment is a "discharge" requiring the immediate payment of final wages.

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California Edition *A Littler Mendelson California-specific Newsletter*

California Supreme Court Clarifies Meaning of "Discharge" Triggering Immediate Payment of Final Wages

By Paul R. Lynd and Adam J. Peters

In a major decision in *Smith v. Superior Court (L'Oreal USA, Inc.)*, No. S129476 (July 10, 2006), the California Supreme Court considered whether to apply California's statute requiring the immediate payment of final wages to employment relationships that end because of the completion of a specific assignment or period of time for which the employee was hired. The issue before the California Supreme Court was whether such an end of employment constitutes a "discharge," triggering the obligation to pay final wages immediately, or whether a "discharge" only means a firing or layoff. Giving a broad application of the term "discharge," the Supreme Court held that a "discharge" occurs in all of these circumstances.

The decision in *Smith* means an employer must pay final wages immediately and in full whenever an employee is released after completing either a specific assignment or the specific time duration for which the employee was hired. Failure to pay final wages immediately and in full can result in waiting time penalties under California Labor Code section 203.

The unanimous decision has significant implications for employers. It means that employers must take steps to ensure that they immediately pay final wages to an employee hired for a specific assignment or fixed period of employment. The decision poses significant problems for certain types of employers, such as temporary staffing agencies and others who have employees work intermittently on short assignments.

California's Final Wage Payment Requirements

Labor Code section 201(a) provides that "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Labor Code section 203 imposes waiting time penalties upon an employer who "willfully" fails to pay final wages in accordance with Labor Code section 201(a) to an employee "who is discharged." These penalties can be substantial: Labor Code section 203 provides that wages continue at the employee's daily rate of pay until the final wages are paid, or an action to recover them is commenced, up to a maximum of 30 days.

The meaning of the term "discharge" is not defined in these statutes. It is not defined elsewhere in the Labor Code, or in any implementing regulations from the Labor Commissioner. Thus, in *Smith*, the meaning of the term "discharge" in Labor Code sections 201 and 203 was an issue of first impression

The Supreme Court's Broad Interpretation Of "Discharge"

In *Smith*, L'Oreal USA hired the plaintiff for one day to work as a hair model at a show. L'Oreal agreed to pay $500 for the one day's work. However, the plaintiff was not paid until over two months later. The plaintiff filed a class action lawsuit, and among her claims she sued for $15,000 in waiting time penalties for the alleged violation of Labor Code sections 201 and 203.

L'Oreal won summary adjudication on this claim in Los Angeles County Superior Court. There, it successfully argued that the plaintiff had not been "discharged" on these facts.

The Second District Court of Appeal in Los Angeles upheld this ruling. Relying on dictionary definitions, the court of appeal held that a "discharge" requires an affirmative act by an employer terminating an employee's otherwise on-going employment, such as a firing or a layoff. The court of appeal concluded that merely completing an assignment or agreed upon period of employment is not a "discharge."

The California Supreme Court disagreed, giving a broad reading to the term "discharge" in Labor Code sections 201 and 203. It concluded that "an employer effectuates a discharge within the contemplation of sections 201 and 203, not only when it fires an employee, but also when it releases an employee upon the employee's completion of the particular job assignment or time duration for which he or she was hired." The court based its interpretation on several factors, such as other dictionary definitions of "discharge," the legislative history of Labor Code section 201 tracing back to its origins in 1911, and the statutory construction of these Labor Code sections.

Comparing California's various provisions governing payment of final wages, the Supreme Court noted that an incongruity would result from any different conclusion. It noted that:

> Employees who fulfill their employment obligations by completing the specific assignment or duration of time for which they were hired would be exposed to economic vulnerability from delayed wage payment, while at the same time employees who are fired for good cause would be entitled to immediate payment of their earned income (§ 201) and many employees who quit without fulfilling their employment obligations would have a right to wage payment no later than 72 hours after they quit (§ 202).

Implications of the Supreme Court's Decision

The court's decision in *Smith* is consistent with the Labor Commissioner's long-standing interpretation of Labor Code sections 201 and 203. By confirming that position, it has significant implications for many employers. At the least, *Smith* requires all employers to ensure that they can immediately pay final wages in full to employees upon completion of the specific assignment or the fixed time period for which they were hired.

The decision has particular implications for temporary staffing agencies who employ individuals on temporary assignments. Similarly, other employers, such as in the entertainment industry, employ individuals who work only intermittently as needed. The *Smith* decision raises the question of whether the end of each of these assignments or temporary periods of employment constitutes a "discharge" and requires immediate payment of wages upon completion, even though the individual remains an employee and subject to recall for another assignment.

The fact that an individual is technically still an employee may be irrelevant for purposes of final pay requirements and avoiding waiting time penalties. The Labor Commissioner has taken the view that, if an employee is released from work without a specific return date within the normal pay period, the employment relationship has been terminated and final wages are due and payable immediately. The Labor Commissioner has also held that the definition of "discharge" and the requirements of Labor Code section 201 cannot be altered by agreement.

New assignments for temporary and intermittent employees are often uncertain when one assignment is completed. Taking *Smith* and the Labor Commissioner's interpretation together, they may require an employer to pay temporary or intermittent employers immediately upon completion of a fixed period of employment, or after each assignment when there is not a return date in the normal pay period. Such a requirement would put these employers in a difficult, and often impossible, position.

For some of these employers, the potential implications of *Smith* may require a legislative solution. Recognizing the realities of certain industries, the Legislature has exempted certain employers from the requirement that final wages be paid immediately to discharged employees. For example, employers in the motion picture industry may pay by the next regular payday (Labor Code § 201.5), employers in the oil drilling business have 24 hours excluding weekends and holidays (Labor Code § 201.7), and seasonal employers involved in curing, canning, or drying of perishable fruit, fish, or vegetables have 72 hours (Labor Code § 201(a)).

In 2004, the Legislature approved Assembly Bill 3018, which would have allowed some employers and employees in the live theatrical and concert entertainment industry to set alternative time limits for payment of final wages in their collective bargaining agreements. Governor Schwarzenegger vetoed the bill because he objected to meal period provisions that had been inserted into the legislation. After *Smith*, these issues likely will confront the Legislature again soon, but in a broader scope.

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