

Rediger, McHugh & Hubbert, LLP

Representing Management in Labor, Employment and Unfair Competition Litigation

LABOR AND EMPLOYMENT LAW REPORTER

Summer 2007

Firm Enjoys River Cats Game at Raley Field



Pictured left to right: Arielle Rediger, Robert Rediger, Candice Rediger, Dave DeAlba and Lori Rediger



Pictured left to right: Jennifer Lippi, Lorraine Renfro, Karen Turner and Ryan Fruchtenicht

The lawyers and staff of Rediger, McHugh & Hubbert, along with their friends and families, enjoyed a night out at Raley Field where they watched the Sacramento River Cats defeat the Albuquerque Isotopes 4-2. Additional pictures of the law firm's Summer event appear on page 5 of the newsletter.

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U. S. Supreme Court Limits Pay Discrimination Suits

By Isauro A. Villarreal

In a recent 5-4 decision, the United States Supreme Court in *Ledbetter v. Goodyear Tire & Rubber Co.* limited an employee's ability to sue for pay discrimination under Title VII of the federal Civil Rights Act. Ledbetter had worked for Goodyear from 1979 until 1998. After opting for early retirement, she sued her former employer alleging that her supervisor had engaged in sex discrimination when giving her performance evaluations. The evaluations were used to determine pay raises, which resulted in her receiving lower pay than her male colleagues.

Goodyear disputed Ledbetter's claim, arguing that it was time barred because Title VII requires that a charge of discrimination must be filed with the Equal Employment Opportunity (Continued on page 2)

Extra Pay for Missed Breaks and Meal Periods: California Supreme Court Ruling Increases Employer Exposure

By Adrian C. Uribe

The California Supreme Court recently ruled in *Murphy v. Kenneth Cole Productions* that the extra hour of pay an employer must make for violating Labor Code section 226.7, which provides that “no employer shall require any employee to work during any meal or rest period,” constitutes a “wage” subject to a three-year statute of limitations, and not a “penalty.” The plaintiff, Murphy, a store manager at the retailer’s downtown San Francisco store, worked nine to ten hours a day and through meal and rest periods to fulfill his managerial duties. After he resigned, he filed with the Labor Commissioner and was awarded payment for unpaid overtime, interest, and a waiting time penalties totaling over \$28,000.

On appeal, Murphy was allowed to add claims for missed breaks and meal periods, which Kenneth Cole argued were “penalties,” not “wages,” and thus subject to a one-year statute of limitations. Writing for the unanimous Court, Chief Justice Moreno rejected this argument, finding that the compensatory nature and legislative history of the Labor Code requires that such payments be classified as “wages” subject to the longer three-year limitations period. As a result of the decision, employees may now claim up to three years of missed breaks and meal periods and, in addition, employers may be subject to waiting time penalties for unpaid breaks and meal periods.

Summer Fellow Adrian Uribe

Adrian Cid Uribe has been placed as a Summer Fellow at Rediger, McHugh & Hubbert, LLP through the Sacramento County Bar Association’s Diversity Fellowship Program. Mr. Uribe attends UC Davis School of Law and will begin his second Year after the summer. He graduated from UCLA in 2003 with a B.A. in Sociology. Before attending law school, he worked as a middle school teacher and chess coach. Mr. Uribe is a fervent fly fisherman who enjoys floating down the American River in search of striped bass, steelhead, and salmon. He is very excited about having the opportunity to learn about labor and employment law at the firm.



Adrian Uribe

(Continued from Page 1) Commission within 180 days after the alleged discriminatory employment practice took place. The *Ledbetter* Court agreed, holding that, “A new violation does not occur, and a new charging period does not commence, upon the occurrence of subsequent nondiscriminatory acts that entail adverse effects resulting from the past discrimination.” In this case, the discrete unlawful employment practices that triggered the 180 day period were the pay decisions that resulted from the discriminatory evaluations, not the paychecks given to the plaintiff that may have reflected the prior discrimination.

The Supreme Court’s *Ledbetter* decision is a

procedural victory for employers, narrowing their liability for all pay-based discrimination claims under Title VII, including discrimination claims based on race, religion, national origin and color. The *Ledbetter* decision will also impact other federal anti-discrimination statutes that incorporate Title VII principles, such as the Americans with Disabilities Act and the Age Discrimination in Employment Act. State courts that look to Title VII decisions for guidance when interpreting their own state’s anti-discrimination statutes may also be persuaded to apply the *Ledbetter* decision to require that charges brought under their state’s laws be filed timely with their state’s antidiscrimination agency.

Proposed Regulations Regarding Travel Expense Reimbursement: What You Will Need to Know to Comply

By Karen L. Turner

On February 7, 2007, the California Department of Labor Standards Enforcement (DLSE) held a public hearing on proposed regulations regarding travel expense reimbursement policies. DLSE’s stated purpose in promulgating these new regulations is to clarify an employer’s obligation under Labor Code section 2802 to reimburse an employee for “all necessary or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer...” In its Initial Statement of Reasons for the proposed regulations, the DLSE noted “there is a dearth of case law regarding how employers must comply with this statute, what must be reimbursed to employees by employers, at what rate employees must have their travel and mileage expenses reimbursed, and whether additional compensation will satisfy the requirements of Section 2802.”

If adopted, the proposed regulations will require employers to reimburse its employees for expenses as follows:

Travel Expenses. Employers will have three reimbursement options: (1) pay actual costs employees incur for travel including meals, incidental expenses, and lodging; (2) use the Internal Revenue Services’ standard meal and incidental expense allowance method; or (3) pay a lump sum per diem at the rate set by the IRS for the location to which the employee must travel. An employer must notify each employee who is required to travel overnight for work in writing and in advance of the date of travel of any travel policy

regarding reimbursement at the per diem rate. If the employer fails to so notify the employee, the employer must reimburse the employee for all actual expenses incurred by the employee.

Mileage Reimbursement. The IRS mileage allowance (currently 48.5 cents per mile) is a reasonable rate for mileage expense reimbursement. If the employer believes that the actual expenses the employee incurred are lower than the IRS mileage allowance, the employer must show such through written expense records. Likewise, if the employee believes that his or her actual expenses are greater than the IRS mileage allowance, he or she must show such through the records.

Recordkeeping Requirements. An employer must keep written records regarding requests for per diem travel expense and mileage reimbursement at the place of employment or a central location within the State of California for at least three years.

Attorneys’ Fees. An employee who bring a claim for reimbursement to the Labor Commissioner is entitled to recover his or her attorneys’ fees.

Miscellaneous. There are several other requirements within the proposed regulations with which employers must comply including timing of reimbursement, provision of an itemized statement for reimbursement, and who bears the expenses for maintenance of a personal or company vehicle. Whether the proposed regulations become effective or not, employers should review their travel reimbursement and mileage policies to ensure that such comply with the law.

Announcements

Robert L. Rediger negotiated a successor collective bargaining agreement with the Amalgamated Transit Union Local 256 on behalf of a provider of paratransit services in Sacramento that maintained the employer’s ability to manage and run an efficient operation while providing fair wages and benefits to employees.

Visit our website at sacramentolaborlaw.com

Recent Developments

Federal Minimum Wage Will Increase Over Next Two Years

On May 25, 2007, President Bush signed legislation that will increase the current federal minimum wage from \$5.15 to \$5.85 per hour on July 24, 2007, to \$6.55 per hour on July 24, 2008, and to \$7.25 per hour on July 24, 2009. The last increase in the federal minimum wage was in 1997. California's minimum wage is currently set at \$7.25 per hour and will increase to \$8.00 on January 1, 2008.

Undocumented Employees May Sue Employer Under California Wage and Hour Law

On March 14, 2007, a California Court of Appeal in *Reyes v. Van Elk* reversed the judgment of a lower court that had granted an employer's motion for summary judgment. The employer had argued that undocumented workers were precluded by the Federal Immigration Law from suing for the employer's alleged failure to pay them prevailing wages under California law. The *Reyes* Court held that the prevailing wage laws established a "minimum wage," that the California Labor Code provides protection to "all individuals regardless of immigration status," and that federal law did not preclude the plaintiffs from being able to raise their claims.

Supreme Court Rules that Companions Employed by Agencies Are Exempt from Overtime under FLSA

On June 11, 2007, the Supreme Court unanimously ruled in *Long Island Care at Home Ltd. v. Coke* that home health aides and other companions employed by third parties are not eligible for overtime compensation under federal law. The Court rejected the challenge to a United States Department of Labor ("DOL") regulation brought by a former home-health care attendant in New York and funded by the Service Employees International Union. The Court found that the DOL's interpretation of the regulation was within the scope of its rulemaking authority delegated by Congress under the Fair Labor Standards Act ("FLSA") and thus the regulation was binding.

Employer May Not Deny Use of Sick Leave Only to an Employee Who is Injured on the Job

On April 19, 2007, a California Court of Appeal in *Anderson v. Workers' Compensation Appeals Board* held that the City of Santa Barbara violated Labor Code section 132a when it required an employee who had been injured on the job to use only his accrued vacation time, and not his available sick leave, to attend medical appointments to care for his industrial injuries. Noting that the anti-discrimination provisions of section 132a are not limited to protecting only enumerated rights, the *Anderson* Court held that once the City elected to provide sick leave benefits, it could not prohibit an employee from using such to attend medical appointments for industrial-related injuries.

Employer's Failure to Post FMLA/CFRA Notice Requires Reversal of Judgment In Its Favor

On May 10, 2007, a California Court of Appeal in *Vaust v. California Portland Cement Company* reversed a lower court's grant of summary judgment in favor of an employer in a case where an employee had alleged that he was denied a medical-related leave of absence as required by law. The *Vaust* Court held that the employer's failure to satisfy its obligation to inform employees of their rights to take an FMLA/CRFA leave of absence precluded the employer from arguing that the employee was "insubordinate" in failing to return from said leave. Since the employer failed to satisfy its obligation to provide notice to its employees of their rights to take the CFRA/FMLA leave of absence, the employee's verbal notice to the employer of a need for such was sufficient.

"Economic Reality Test" Applied to Determine Whether a Worker is Entitled to Unemployment Benefits

On May 14, 2007, a California Court of Appeal in *Air Couriers International v. Employment Development Department* held that drivers for a delivery company were employees, not independent contractors, and upheld the assessment of unpaid income taxes and payroll taxes on an employer that had failed to categorize its workers correctly. Without mentioning the regulations promulgated by the EDD that address the distinction between employees and independent contractors, the *Air Carriers* Court held that the trial judge was correct in applying the "economic reality test," as opposed to the "control test," to find that the workers were "employees" entitled to unemployment benefits.

Employee May Not Be Discharged for Complaining That Workplace Was Unsafe

On May 24, 2007, a California Court of Appeal in *Franklin v. Monadnock Co.* reversed the order of a trial judge dismissing a Complaint wherein the plaintiff had alleged that he was discharged from his employment because he had complained to his employer and to the police about threats and assaults made to him by a co-worker. The *Franklin* Court held that the plaintiff could state a cause of action for wrongful termination in violation of public policy because various California statutes require an employer to provide a safe work environment for employees and the public has an interest in a crime-free workplace. If the allegations made by the plaintiff in his Complaint were proved to be true, his discharge would be unlawful under California law.



Michelle Goldberg, Evan Goldberg and Nicolas Goldberg



Jeff Owensby and Annette Lorenzi



Law Clerks Isauro Villarreal and Adrian Uribe



Aubrey Hubbert and Collette Howell

ANTI-HARASSMENT TRAINING

Employers in California that regularly employ 50 or more employees anywhere in the U.S. have a legal responsibility to provide two hours of anti-harassment training to their supervisors and managers. Assembly Bill 1825 requires covered employers to provide such training "to all new supervisory employees within six months of their assumption of a supervisory position."

We are offering our clients two options to comply with the requirements of AB 1825:

OPTION A - We will offer anti-harassment training at our law firm located in downtown Sacramento on September 7, 2007 from 1:00 to 3:00 p.m. at a total cost (including parking and materials) of \$100.00 per attendee.

OPTION B - We will present the two hour training at your Sacramento facility or at our law firm, on a convenient date at a total cost (including materials for all attendees) of \$600.00.

To schedule an anti-harassment training session, call Sara at (916) 442-0033 or email us at info@rmlaw.net.

Upcoming Events

August 2, 2007—Lorman Education Services will present a seminar in Sacramento entitled “Best Practices in ADA, FMLA and Workers Compensation in California.” Robert L. Rediger will join other speakers at the one day seminar and open the program with a lecture on “Accommodating Employees by Granting Leaves of Absence.” Contact Tobey J. Guntner with Lorman at (715) 833-3940 ext. 1243 for more information.

September 7, 2007—Sterling Education Services will present a seminar entitled “Employment Law Update in California” in Sacramento. Robert L. Rediger will open the day long seminar with “Wage and Hour Update” and “Leaves of Absences Required by Law in California.” Contact Marilyn Davis with Sterling at (715) 855-0498 for more information.

October 24, 2007—Lorman Education Services will present a one day seminar in Sacramento entitled “The Family and Medical Leave Act.” Robert L. Rediger will begin the program by providing an overview of the numerous reasons an employee may be “excused” from working as scheduled in California. Contact Tobey J. Guntner at Lorman at (715) 833-3940 ext. 1243 for more information.

November 13, 2007—Lorman Education Services will present a one day seminar in Sacramento entitled “Employment Law from A to Z.” Robert L. Rediger will join other speakers and lecture on “Leaves of Absences Required by Law in California” and “Employee Discipline and Discharge.” Contact Tobey J. Guntner at Lorman at (715) 833-3940 ext. 1243 for more information.

Attendees who identify themselves as a client of Rediger, McHugh & Hubbert when registering for any of the seminars listed above will receive a discount off the registration price from Lorman and/or Sterling.

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