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### California Supreme Court Holds No Attorneys' Fees for Prevailing Parties in Meal and Rest Break Suits

The California Supreme Court recently issued a decision addressing the right of a prevailing party to recover attorneys' fees in actions for missed meal periods or rest breaks. The case, *Kirby v. Immoos Fire Protection, Inc.*, No. S185827 (April 30, 2012), resolves an interesting issue on the interplay between two fee-shifting statutes.

The first of these fee-shifting statutes, Labor Code section 218.5, provides for the award of attorneys' fees to a prevailing party in "any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions." This is a two-way fee-shifting provision (*i.e.* fees can be awarded to a prevailing plaintiff *or* a prevailing defendant). However, section 218.5 by its terms does not apply to actions for which attorneys' fees are recoverable under Labor Code section 1194. Section 1194 provides that employees who prevail in any action for unpaid "legal minimum wage or . . . legal overtime compensation" are entitled to recover their fees. This is a one-way fee-shifting provision (*i.e.* only a prevailing plaintiff may recover fees).

In *Kirby*, the California Supreme Court addressed the following issues: 1) whether an action for missed rest breaks under Labor Code section 226.7 is an action for unpaid legal minimum wage or overtime such that the one-way fee-shifting provision of section 1194 applies; and 2) if section 1194 does not apply, whether an action for missed rest breaks is an action for "nonpayment of wages" thereby entitling either prevailing party to recover attorneys' fees under section 218.5's two-way fee-shifting provision.

In a rather straightforward analysis, the Court first concluded that an action under section 226.7 for missed rest breaks is not an action for unpaid legal minimum wage or overtime compensation. Accordingly, the section 1194 one-way fee-shifting provision does not apply. As the Court explained, a claim for legal minimum wage is simply a claim that the employer failed to pay the required minimum wage for all hours worked. Reviewing the history of section 1194 and related statutes, the Court rejected the plaintiff's argument that "legal minimum wage" should be interpreted to mean any compensation requirement for failure to meet minimum labor standards, *e.g.*, the premium pay owed for the failure to provide rest breaks.

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The Court next addressed whether attorneys' fees could be recovered under section 218.5. Somewhat surprisingly, the Court held that they could not. As many employers are aware, the Court held several years ago that the one hour of premium pay due under section 226.7 for the failure to provide meal periods or rest breaks was akin to a "wage." In an attempt to reconcile this decision with the language of section 218.5, the Court in *Kirby* held that an action for missed rest breaks is an action for "nonprovision" of the rest break. As the Court explained, although the remedy is one hour of premium pay, the gravamen of the underlying action is not nonpayment of wages (as required for recovery of fees under section 218.5) but is simply for failure to provide the break. Thus, in a rest break action, neither party is entitled to recover attorneys' fees.

Although *Kirby* is a rather technical decision, it may prove useful to employers. In particular, plaintiffs' attorneys may now think twice before bringing these types of claims for fear that they may not be able to recover their fees.

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