Waiting Can Be Costly: A Primer On Paying Terminated Employees

By Matthew C. Sgnilek

The NHL and NBA playoffs are here. Nothing riles a sports fan more than a costly penalty, especially one that could easily have been avoided. Penalties are just as costly, albeit in a financial sense, to employers. One of the easiest penalties to avoid is the waiting time penalty under Labor Code section 203. Labor Code section 203 requires that all wages be paid an employee when the employee is terminated or provides at least 72-hours notice of his or her intent to resign. Wages include unused vacation or PTO benefits, but does not include unpaid expenses.

Wages also includes all earned commissions as of the date of termination. An exception to the wages due rule pertains to unearned commissions. Unearned commissions are wages that not calculable at the time of termination because a condition precedent has not been met such as waiting for receipt of a customer payment. These unearned commissions must be paid immediately after the condition precedent is satisfied.

If an employee quits without prior notice, the employer has 72-hours to provide the employee's final paycheck. Alternatively, at the employee's request, the employer may mail/overnight the final paycheck to the employee as long as the date of mailing is within 72-hours of the date of employee quitting. The 72-hour period includes weekends and holidays.

If an employee is not paid all wages due upon termination, the employer is penalized. The employer, in addition to wages due the employee, must pay the employee his or her daily rate of pay each day the employee is not paid their wages up to a maximum of thirty (30) days. Overtime will be included in the daily rate of pay for purposes of computing the waiting time penalty if overtime is regularly scheduled for the employee.

This does not mean that the wages continue for a 30-day period, but that the employee may be entitled to up to 30 actual days’ worth of wages. The 30-day period continues until the employee is paid all their wages or commences a court action. The 30-day period is calendar days, and includes weekends and holidays and any other days that the employee would not normally work. The waiting time penalty is not considered wages, *so no deductions are taken from the penalty amount.*

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