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Kenneth M. Jones, Esq.

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The California Supreme Court Holds That Prevailing Parties in Meal and Rest Break Actions Are Not Entitled to Recover Attorney's Fees

By Kenneth M. Jones

In the wake of the California Supreme Court's recent decision in *Brinker Restaurant Corp. v. Superior Court*, in which the court concluded that an employer satisfies its duty to provide meal and rest breaks to its employees when it relieves its employees of all job duties, the Court issued [Kirby v. Immoos Fire Protection, Inc.](#), 2012 WL 1470313 (Cal. Apr. 30, 2012), which addressed the award of attorney's fees in actions brought pursuant to Section 226.7, which requires employers to provide non-exempt employees with meal and rest breaks according to the terms of regulations issued by the California Industrial Welfare Commission. The court in *Kirby* concluded neither a prevailing plaintiff employee nor a prevailing defendant employer is entitled to an award of attorney's fees based on sections 1194 and 218.5 of the state Labor Code.

Plaintiffs worked for a contractor, Immoos Fire Protection, Inc. ("IFP"). They filed suit against IFP, alleging that it violated various wage and hour laws and the unfair competition law by (among other things) failing to provide meal and rest breaks to its employees in accordance with Section 226.7. Plaintiffs also alleged that various builders unlawfully entered into contracts with IFP knowing that the contracts did not provide sufficient

funds for IFP to meet its obligations under the California wage laws. After settling with the builder defendants, the plaintiffs dismissed all claims against all parties, including IFP, with prejudice.

Having had the claims against it outrightly dismissed, IFP thereafter sought recovery of its attorney's fees from the plaintiffs under Labor Code Section 218.5. Section 218.5 provides that in an action for nonpayment of employee benefits, including wages, fringe benefits, or health and welfare or pension fund contributions, a court shall award reasonable attorney's fees and costs to the prevailing party if requested. The trial court ordered the plaintiffs to pay \$49,846 in attorney's fees to IFP.

The Court of Appeal affirmed the trial court, finding that an award of fees was proper under Section 218.5 because the plaintiffs sought payment of "additional wages" for missed rest periods. The Court of Appeal rejected the argument by plaintiffs that, because at least some of the other claimed violations of the Labor Code fell under Section 1194 (excepting Section 226.7), "the entire action was shielded from an award of fees under Section 218.5." Section 1194 provides in relevant part: "... 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."

The primary issue considered by the Supreme Court was whether Section 218.5 or Section 1194 applied to meal and rest break violations pursued under Section 226.7. The Court quickly disposed of the plaintiffs' argument that Section 1194's prevailing-plaintiff fee-shifting provision was applicable to Section 226.7 claims because Section 1194 pertains to payment of minimum wages and overtime. The Court held that Section 1194 applies to claims for unpaid minimum wages and unpaid overtime, and nothing else. Accordingly, employees who prevail on a claim for missed meal and rest breaks in violation of Section 226.7 are not entitled to an award of attorney's fees under Section 1194.

The Court then considered the applicability of Section 218.5's prevailing party fee-shifting provision. The Court focused on the requirement of Section 218.5 that the claims it covers must be for "the nonpayment of wages." The Court held that the root of a meal/rest break claim is "the non-provision of meal or rest periods," not for "nonpayment of wages." Thus, the Court reasoned, while the remedy for violation of Section 226.7 is a one-hour wage payment, it was not the basis for liability. The Court determined that Section 218.5 was not intended to apply to meal and rest break claims, and concluded that Section 226.7 claims must "be governed by the default American rule that each side must cover its own attorney's fees."

While the Court's ruling in *Kirby* is a victory for California employers, it must be noted that the Court did not address whether attorney's fees are recoverable for Section 226.7

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violations under the California Labor Code Private Attorneys General statute, Labor Code Section 2698 *et seq.* ("PAGA"), which may cover meal and rest break violations. PAGA permits "aggrieved employees" to recover a portion of civil penalties in court that could have been awarded in administrative claims before the State Labor Commissioner. PAGA also provides for attorney's fees in favor of the employee.

In addition to PAGA, in practice, most claims for violations of Section 226.7 include a variety of other claimed violations of the Labor Code for which attorney's fees may be awarded to the plaintiff. The Court did not decide to what extent, if any, its ruling affects the amount of attorney's fees recoverable for actions claiming violation of Section 226.7 and other Labor Code violations that include claims to which the one-way fee shifting statute (Section 1194) applies.

Accordingly, while *Kirby* is favorable to California employers, it is not the final word on attorney's fees in relation to meal and rest break lawsuits. Employers should be aware that other statutes authorizing attorney's fees awards may still apply to Section 226.7, such as actions brought under PAGA or Section 1194.

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