Wage and hour class actions are alive and well in California

John Zaimes *is a partner at Mayer Brown LLP. He can be reached at jzaimes@mayerbrown.com.*

Noah B. Steinsapir *is an associate with Mayer Brown LLP. He can be reached at nsteinsapir@mayerbrown.com.*

In the landmark decision, Brinker Restaurant Corp. v. Superior Court, 53 Cal. 4th 1004 (2012), the state Supreme Court held that employers need to provide meal and rest breaks, but employers do not have to police their employees and ensure that they actually take their breaks. Many commentators thought that the Brinker decision might be the death knell for California wage and hour class actions.

However, since October, the 2nd District Court of Appeal has reversed three trial court orders that had denied class certification in the wage and hour context: (1) Benton et al. v. Telecom Network Specialists, 220 Cal. App. 4th 701 (Oct. 16, 2013), (2) Jones et al. v. Farmers Insurance Exchange, 2013 DJDAR 15494 (Nov. 26, 2013), and (3) Martinez et al. v. Joe's Crab Shack Holdings, 2013 DJDAR 15744 (Dec. 4, 2013). These three cases serve as valuable reminders to employers that they must regularly review their employment policies and ensure that they are compliant with current California law. The cases also suggest that wage and hour actions are still alive and well in California.

Benton

In Benton, plaintiff filed a wage and hour class action against Telecom Network Specialists (TNS), alleging that TNS had not adopted any policy that notified employees of their right to take meal and rest breaks. Approximately 85 percent of TNS technicians were hired through third-party staffing companies, while the remainder were hired directly. Although TNS had no meal and rest period policies, the third-party staffing companies had varying policies. Furthermore, some of the work locations contained wage and hour posters advising employees to take meal and rest breaks.

The trial court had denied certification on the ground that common issues predominated, since: (1) The third-party staffing companies that provided workers to TNS had a variety of different policies in place concerning breaks; (2) the employees often acted as their own bosses at work locations alone and were "at liberty" to take a meal or rest break if they desired; and (3) numerous employees had submitted declarations stating that they did in fact take meal and rest breaks.

The 2nd District, Division 7, reversed the trial court's ruling, holding that evidence that some employees worked under conditions that permitted them to take breaks was not a sufficient basis for denying certification and that the trial court was required to focus on whether the allegation that TNS violated wage and hour requirements by failing to adopt a meal and rest period policy was susceptible to common proof: "the employer's liability arises by adopting a uniform policy that violates the wage and hour laws. Whether or not the employee was able to take the required break goes to damages, and the fact that individual employees may have different damages does not require denial of the class certification motion."

The court further held that TNS could not escape liability simply because a putative class member was co-employed by a staffing agency that had adopted a lawful meal and rest break policy. Rather, it ruled that it is the affirmative duty of every employer to authorize and provide legally required meal and rest breaks.

Questions and Comments

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Jones

In Jones, plaintiff alleged that Farmers required its claims representatives to work at home prior to the start of each work day. Farmers had implemented a computer program called ServicePower, which provided employees like plaintiff with their daily assignments and had issued a memorandum to all of its employees stating that they might be required to perform certain unpaid tasks. These tasks included taking a few minutes to sync the computer, obtaining assignments/driving directions before getting in the car, and driving to the first appointment.

Based on this policy, plaintiff filed a motion for class certification supported by 51 declarations that asserted that Farmers' policy required employees to perform various unpaid tasks in the morning before arriving at the location of their first assignment. However, the trial court denied certification because: (a) The parties disputed what tasks were required to be performed before the beginning of the shift; and (b) Farmers' evidence showed that it did not always deny requests for overtime to complete some tasks and that plaintiffs therefore had "not demonstrated that defendant has a classwide policy of refusing to pay overtime."

The 2nd District, Division 3, again disagreed and found that the trial court erred because it based its denial of class certification on its belief that the class determination would require individual damage determinations, which is an inappropriate basis. The Court of Appeal further determined that Farmers' purported policy of denying compensation for pre-shift work presented a common question amenable to class treatment, regardless of the individual damage determinations.

Martinez

In Martinez, plaintiff filed a complaint seeking to represent a group of salaried managerial employees whom he alleged were entitled to overtime. The trial court denied plaintiff's motion for class certification because the court would be required to make individual determinations concerning whether each manager spent more than 50 percent of his or her time performing nonexempt tasks. The 2nd District, Division 7 again, disagreed, stating that under Brinker "class-wide relief remains the preferred method of resolving wage and hour claims, even those in which the facts appear to present difficult issues of proof." Relying primarily on Sav-on Drug Stores, Inc. v. Superior Court, 34 Cal. 4th 319 (2004), the Court of Appeal admonished the trial court to not rely on the individual issues presented by different managers, but to focus its analysis "on the policies and practices of the employer and the effect those policies and practices have on the putative class." It also directed the trial court to create sub-classes, given that there were different levels of management and certain managers were more likely to be nonexempt than others.

These three cases serve as important reminders to employers to carefully review their employment policies and to ensure that they are compliant with state and federal law. For example, employers should adopt their own meal and rest break policies and not simply rely on other sources to establish the existence of policies. Employers should also be careful when assigning work to non-exempt employees while at home or otherwise contacting employees when they are not working.

The cases also demonstrate that the primary focus for determining class certification may be the existence of a uniform policy, not whether certain employees were able to take meal breaks, whether certain employees could request and receive payment for off-the-clock work or whether certain employees were properly classified. Therefore, submitting declarations demonstrating that some employees received proper meal/rest breaks or some employees were properly classified as exempt, may not be sufficient to defeat class certification in the face of a noncompliant or nonexistent policy.

John Zaimes *is a partner at Mayer Brown LLP. He can be reached at jzaimes@mayerbrown.com.*

Noah B. Steinsapir *is an associate with Mayer Brown LLP. He can be reached at nsteinsapir@mayerbrown.com.*

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