

New California Law Limits Successful Employers' Right to Recover Fees and Costs in Wage Cases

By Mark S. Askanas

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California Governor Jerry Brown has signed legislation ([S.B. 462](#)) amending the California Labor Code to limit employers' ability to recover attorney's fees and costs in actions for nonpayment of wages. Previously, California case law left open the possibility that Labor Code Section 218.5 permits the prevailing party, either the employee or employer, to recover fees and costs. Effective January 1, 2014, employers may recover their defense costs only if they prove that an employee brought the action in "bad faith."

The California Employment Lawyers Association sponsored the legislation in response to *Kirby v. Immoos Fire Protection*, 53 Cal. 4th 1244 (Cal. 2012). In *Kirby*, the California Supreme Court held that an employer could not recover attorney's fees in meal and rest period penalties case because such penalties were not wages. *Kirby* indicated that, had the claims involved wages, however, the employer could have recovered its defense costs under Section 218.5. To prevent unsuccessful employees from paying their employer's defense costs, S.B. 462 amended Section 218.5 to add the bad faith requirement.

Although the legislation does not define "bad faith," this generally is a high evidentiary standard requiring proof of some type of intentional wrongdoing or malice on the part of the employee bringing the claim. Therefore, it will be more difficult for employers to recover their defense costs even if they successfully defend against a wage claim.

To minimize the chances of wage claims, employers should regularly review and audit their policies and practices with employment counsel to ensure their compensation systems are in compliance with California law. If you have any questions about this or other workplace developments or need assistance, please contact the Jackson Lewis attorney with whom you regularly work.

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