

California Court of Appeal Confirms that Punitive Damages are Unavailable for Wage and Hour Claims

by Michael Kun and Kathryn McGuigan

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Confirming what many had long believed, the California Court of Appeal in *Brewer v. Premier Golf Properties*, Case No. D050686 (December 3, 2008), awarded a significant victory to employers, holding that punitive damages are not recoverable for wage and hour claims when liability is premised on the employer's violation of the Labor Code.

This decision should operate to reduce the potential exposure not only in single-plaintiff cases, but in many of the wage and hour class actions that are so prevalent in California, providing employers in those cases with additional grounds to move to strike punitive damage requests.

Case Overview

Christine Brewer, a waitress at the Cottonwood Golf Course restaurant, sued her employer for age discrimination, meal and rest break violations and other Labor Code violations. At trial, the jury found in favor of the golf course on the age discrimination claim, but returned special verdicts in favor of Brewer on the Labor Code violations. The jury awarded Brewer more than \$26,000 for her unpaid wages and statutory damages, as well as \$195,000 in punitive damages based solely on the Labor Code violations, finding the golf course had acted with fraud, oppression and malice toward Brewer. The golf course appealed.

The Court of Appeal reversed the punitive damages award, finding that under the "new right-exclusive remedy" doctrine and the general principles that bar punitive damages awards, punitive damages are not recoverable for an employer's violation of the California Labor Code statutes regulating meal and rest breaks, pay stubs and minimum wage laws.

Under the "new right-exclusive remedy" doctrine, where the California Labor Code created new rights and obligations not previously existing under common law, the remedy provided in the statute is exclusive of all others unless the statutory remedy is inadequate. Because the statutes governing meal and rest breaks, pay stubs and minimum wage created new rights that did not previously exist in the common law, the Court held that the penalties and other relief provided for in the statutes were the exclusive remedies for any violations. Thus,

punitive damages cannot be awarded for those violations.

Even if the remedies provided by the statutes were not the exclusive remedies for the new rights, the Court explained that punitive damages are still not available because punitive damages are ordinarily limited to an action for breach of an obligation not arising from a contract. Because Brewer's claims arose out an implied employment contract, a breach of an obligation of the contract would permit contractual damages, but not tort damages, such as punitive damages. Therefore, punitive damages are unavailable.

What This Means For Employers

This decision clarifies the remedies available for California Labor Code violations and makes clear that punitive damages are not available. In this way, potential exposure in these cases is reduced.

The impact of this decision will be felt most strongly in the wage and hour class actions that have become so prevalent in California. Plaintiffs' counsel frequently include requests for punitive damages in those complaints, often as leverage to increase potential settlements. The decision in *Brewer* should operate to remove punitive damages from consideration in many of these cases, reducing the potential exposure and providing defendants with additional grounds to move to strike punitive damage requests.

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