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## **Individuals Beware! California's Fair Days Pay Act Imposes Personal Liability on Individuals for Wage and Hour Violations**

By: Lisa Parrish<sup>1</sup>

The agency theory of liability in the employment context takes on new meaning with the induction of California Senate Bill 588 (the "Bill"), known colloquially as California's "Fair Days Pay Act". As a result of the Bill, the corporate form no longer provides immunity from personal liability for individuals who (through their companies) commit wage and hour violations. While the Bill went into effect on January 1, 2016, the implications are still yet to be fully determined.

### **Who does this law apply to?**

Before the Fair Day's Pay Act was promulgated in 2016, California courts generally rejected all claims attempting to hold managers, officers, and directors personally liable in wage and hour violations that occur in businesses operating in California. However, with the enactment of A Fair Day's Pay Act, personal liability is expanded for Labor Code violations to owners, directors, officers and managing agents of employers.<sup>2</sup>

### **How does this law apply?**

Labor Code § 558.1 imposes liability for any owner, director, officer, or managing agent who knew or should have known they were committing the following:

1. Unpaid minimum wages;
2. Unpaid overtime wages, including miscalculations of the regular rate;
3. Waiting time penalties if all wages are not timely paid at the end of employment;
4. Providing wage statements that do not meet all nine of the requirements of Labor Code § 226;
5. Rest and meal period premiums for missed or unavailable breaks; and
6. Unreimbursed business expenses.

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<sup>2</sup> Cal. Lab. Code § 558.1

The Courts have discretion to determine if and how personal liability extends to individuals. The reach of the Courts in this regard is yet to be determined.

Legislators wanted to send a strong message to employers to prevent wage theft and “discourage business owners from rolling up their operations and walking away from their debts to workers and starting a new company.”<sup>3</sup>

### **Who enforces this law and how is it enforced?**

Employees can seek remedies for Labor Code violations by filing an administrative claim with the Labor Commissioner.<sup>4</sup> The Bill gives the Labor Commission authority and the tools to investigate, hold hearings, and recover penalties from employers and individuals who are held personally liable.<sup>5</sup>

Additionally, the Labor Commissioner has the means to enforce a judgment using any available methods that are currently available to a creditor. This can include, liens on property, levies on business assets, and other means.

This sets up a cautionary tale. If an employer fails to pay a final judgment for wage and hour violations, it will be prohibited from doing business in California unless it first obtains a surety bond.<sup>6</sup> If the employer continues to conduct business in California, it is subject to a \$2,500 penalty, plus \$100 each day in violation and a stop order.<sup>7</sup> Finally, an employer, owner, director, officer, or managing agent of the employer who fail to obey a stop order, may be penalized *criminally* through a misdemeanor.<sup>8</sup>

### **How are you protected from personal liability?**

While this Bill may open the door for personal liability against individuals of a company, those individuals should be protected from personal liability if they do not have knowledge that they are violating the law and are performing their job duties.

Individuals may also be shielded through indemnification by their employer. The California’s Labor Code and Corporations Code mandates corporations to indemnify employees and corporate agents for expenses. This may include legal expenses.

Regardless, employers should take care to prevent wage and hour violations through internal audits by external sources, such as experienced outside counsel, as well as adequately train

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<sup>3</sup> April 20, 2015 Senate Judiciary Committee Bill Analysis.

<sup>4</sup> Employees can also file a private lawsuit against the employer or individual acting on the employer’s behalf.

<sup>5</sup> Cal. Lab. Code §§ 96.8, 98, 238.1.

<sup>6</sup> Cal. Lab. Code § 238(a).

<sup>7</sup> Cal. Lab. Code § 238 (f).

<sup>8</sup> Cal. Lab. Code § 238.1.

directors, officers, and managers to be cognizant of wage and hour laws in order to properly shield themselves from personal liability in California.

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