



# ***Blair v. Dole Food Company* Provides Insight on Wage Statement Requirements**

04.18.2017 | By **Veronica M. Gray, John T. Kennedy**

On February 15, 2017, the California Court of Appeal in *Blair v. Dole Food Company, Inc.* clarified existing law regarding what information must be included on employee wage statements.

Labor Code section 226, subdivision (a) requires employers to include specific information on their employees' wage statements. Among other things, employers must (1) identify the employee by listing either the last four digits of the employee's social security number or a unique employee identification number, and (2) list all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

In *Blair*, the Court of Appeal addressed whether: (1) employers may use a unique employee number generated by a third party payroll service provider in lieu of internal employee numbers or the last four digits of a social security number, and (2) the wage statements of **exempt employees** must state the hourly rate of vacation pay and/or paid time off when vacation wages are paid out.

## **Third Party Payroll Numbers**

With respect to the use of an employee number generated by a third party payroll service provider, the court held that using such a number satisfies the requirements of Labor Code section 226. Upon hiring, Dole assigned each employee a unique employee number for internal use, which was used for internal purposes, payroll and to access employee records, etc. However, Dole's third party payroll service, ADP, also assigned each employee a different unique identification number reflecting his or her tax profile. Significantly, both numbers were unique to each employee. The plaintiff contended that Dole failed to properly identify its employees when only the ADP unique number appeared on employee wage statements instead of Dole's internal employee number.

In analyzing section 226, the Court concluded: Nothing in section 226, subdivision (a)(7) prohibits an employer's use of a unique personal ID or file number, so long as the number chosen consistently appears on the employee's wage statement. The label attached to the number is not material. As such, the Court held that Dole did not violate Labor Code section 226, subdivision (a)(7).

### **Hourly Rate of Exempt Employees on Wage Statements**

The plaintiff also claimed that Dole violated Labor Code section 226, subdivisions (a)(2) and (a)(9), when it failed to identify accurate pay rates of exempt, salaried employees when they were paid vacation, flex time off, or paid time off wages. Labor Code section 226, subdivision (a)(2) requires an employer to include on an employee's wage statement: (2) total hours worked . . . , *except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime.*

Importantly, the plaintiff was exempt throughout her employment with Dole. The Court reasoned that [if] the number of hours worked need not be itemized on an exempt employee's wage statement, there is no 'applicable hourly rate' for an employer to furnish. Accordingly, the Court held that employers are not required to identify an hourly rate of vacation and/or paid time off on wage statements for exempt employees when such wages are paid.

### **Best Practices**

While this is an unpublished decision, it provides insight into how at least one Court of Appeal interprets the requirements of Labor Code section 226. Moreover, this decision underscores and reminds employers of the importance of complying with the requirements of Labor Code sections 226, 226.2, and 246(i). Labor Code section 226(a) requires nine specific pieces of information to be included on every wage statement for each employee. Labor Code section 226.2 requires information regarding compensable rest and recovery periods for employees paid by piece rate. Labor Code section 246(i) requires written notice of the amount of available paid sick leave on the employee's earning statement or a separate writing provided with the employee's payment of wages. Failure to comply with the requirements of Labor Code section 226, is not only a misdemeanor, but also carries a penalty of \$50 for the first violation, and \$100 per pay period for each subsequent violation up to a total of \$4,000 per employee. The Private Attorneys General Act provides for additional penalties. If a class action and/or representative Private Attorneys General Act action is filed, the penalties assessed can be significant.

### **How Nossaman Can Help**

Nossaman can assist employers in reviewing/auditing employers' current wage and hour policies and procedures to ensure compliance. Nossaman provides client-focused, high caliber legal services that exceed our clients' expectations while staying within their legal budgets. Our employment attorneys provide litigation, counseling, advice, and training services to private and public companies and public entities throughout California, as well as meeting their out-of-state-needs. The scope of our representation runs the full gamut from prosecuting misappropriation of trade secrets to defending wrongful termination claims (discrimination/harassment/public policy) and wage and hour class actions. We have also been on the front line of e-discovery, privacy rights, cybersecurity, data breach and workplace violence. We stay on top of emerging employment issues and are well prepared to counsel our clients on how to address and control related issues.