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Public Entities Are Exempt from Certain Provisions of California's Labor Code

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An on-going debate regarding whether certain provisions of California's Labor Code apply to public entities may be a bit closer to resolution. The Labor Code clearly applies to private employers. In some areas, however, it is silent as to its application to public employers. Fortunately, the California Court of Appeal recently shed some light on this issue. In Johnson v. Arvin-Edison Water Storage District, the Court held that California's Labor Code provisions governing daily overtime, meal periods, and payment of wages upon separation of employment do not apply to water storage districts.

Labor Code Sections 510 and 512

The federal Fair Labor Standards Act ("FLSA") and its wage and hour provisions apply to both private and public employers. However, the FLSA requires employers to compensate employees only for overtime in excess of 40 hours per workweek. There are no provisions for daily overtime.

California's Labor Code and Industrial Welfare Commission ("IWC") Wage Orders require covered employers to pay both daily and weekly overtime. Specifically, Labor Code section 510 requires employers to compensate any employee who works more than eight hours in one workday and more than 40 hours in any one

workweek at a rate of one and one-half times the employee's regular rate of pay. Employers must also pay this premium rate to employees for the first eight hours worked on the seventh consecutive day of work in a workweek. In addition, employers must compensate any employee who works more than 12 hours in one day (and over eight hours on the seventh day) at twice the employee's regular rate of pay.

The FLSA also does not require employers to provide employees with meal periods. By contrast, Labor Code section 512 requires covered employers to provide an employee who works more than five hours per day with a 30-minute unpaid, duty-free meal period. An employer must provide a second 30-minute meal period to any employee who works more than 10 hours per day. Neither Labor Code section 510 nor section 512 state whether its provisions apply to public entities.

Labor Code Sections 201, 202 and 203

California law also regulates the payment of wages upon an employee's separation of employment. Under Labor Code section 201, an employer must pay an employee all wages due to the employee at the time the employer terminates the employee. Similarly, under Labor Code section 202, an employer must pay an employee who

resigns his or her employment all wages due on the last day of employment, or no later than 72 hours if the employee quits without notice. If the employer fails to pay an employee's wages upon termination or resignation, the employer may be liable under section 203 for waiting time penalties of up to 30 days of wages.

Labor Code section 220(b) expressly excludes employees directly employed by any "county, incorporated city, or town or other municipal corporation" from the coverage of sections 201, 202, and 203

California's IWC Wage Orders Regulating Specific Industry Wages and Hours

Another source of wage-hour law in California is the IWC's wage orders. The wage orders are divided by industries and employee occupations. For example, Wage Order No. 2 applies to the personal service industry and Wage Order No. 5 applies to the public housekeeping industry.

A number of the wage orders include provisions for meal periods and overtime that correspond with California's statutory provisions. However, many of the wage orders expressly exempt public entities from their overtime and meal and rest break provisions.

The Johnson Decision and the Applicability of California's Wage and Hour Rules

In Johnson, an employee filed a class action lawsuit against the Arvin-Edison Water Storage District claiming the District failed to pay him and other employees overtime and provide meal periods in accordance with the IWC's wage orders and the Labor Code. Johnson argued the District was required to comply with the Labor Code's wage and hour provisions because there was no specific exemption for public employers. Johnson also argued the IWC's wage order applicable to "miscellaneous" employees applied to the District.

Applicability of Labor Code Section 510 and 512 – Overtime and Meal Periods

In rejecting Johnson's arguments regarding the overtime and meal periods rules, the Court determined that the Labor Code does not apply to public entities unless they are specifically included in the language of a particular section. The Court explained that sections 510 and 512 of the Labor Code are found under division 2, part 2 of chapter 1. Section 555 of the Labor Code is located under this same section and it expressly states that it applies to public entities. Therefore, the Court reasoned, the Legislature only intended for the Labor Code to apply to public entities where they are expressly included in the statutory language.

The Court also found that assuming the application of Labor Code sections 510 and 512 to public entities without specific authority to do so would infringe upon their sovereign governmental powers. According to the Court, the Labor Code infringes on a public entity's sovereign powers if "the statute affects the entity's governmental

purposes and functions." The District functions through its employees. It has the power to set employees' compensation.

Therefore, the Court determined application of the Labor Code sections at issue would infringe upon the District's power to set compensation.

Applicability of the IWC's Wage Orders

While several of the IWC's wage orders specifically exempt public entities from most of their provisions, Wage Order No. 17, which is applicable to "Miscellaneous Employees," does not include this exemption.

Accordingly, Johnson argued the Water Storage District was required to comply with Wage Order No. 17.

Wage Order No. 17 covers "[a]ny industry or occupation not previously covered by, and all employees not specifically exempted in, the Commission's wage orders in effect in 1997, or otherwise exempted by law." The Court found this classification of employees did not encompass employees who worked for the District. The Court relied on the IWC's explanation that Wage Order No. 17 applied only to "new" industries that could not be classified under any of the other wage orders. Water districts, of course, are not "new."

In addition, the Division of Labor Standards Enforcement, the agency that enforces the wage orders, has yet to identify any occupation that meets the definition of "miscellaneous." Therefore, the Court declined to apply Wage Order No. 17 to the District.

Applicability of Labor Code Sections 201, 202, and 203 – Payment of Wages

The Court also ruled that the District was exempt from Labor

Code provisions regulating the payment of wages upon separation of employment, and the waiting time penalties for failing to comply with these provisions. Although the District did not qualify under Labor Code Section 220(b)'s exemption for a county or incorporated city or town, the Court found the District was exempt as a "municipal corporation."

The Court noted that water districts have been considered municipal corporations in other contexts. Additionally, a "municipal corporation" is one with certain political duties it must exercise on behalf of the state. The District is responsible to store and distribute water. In addition, the District is governed by an elected board of directors, is subject to open meeting laws, and its records are subject to public disclosure. Therefore, the Court ruled held that the District performs an essential governmental function for the public, and qualified as a "municipal corporation" under Labor Code section 220(b).

Charter Counties Need Not Comply With California's Meal Period Requirements

The Johnson case is one of several recent decisions addressing the applicability of California's wage and hour provisions to public entities. In 2008, the Court of Appeal decided two cases in which it considered whether certain California's wage and hour laws apply to charter counties.

In Curcini v. County of Alameda, the Court of Appeal refused to apply Labor Code sections 510 (overtime), 512 (meal periods), 226.7 (premium pay for missed meal period), and 1194 (remedy for amount of unpaid wages and interest, etc.) to Alameda County. Similarly in Dimon v. County of Los Angeles, the Court found that California's meal period

rules were inapplicable to Los Angeles County. The courts in both cases relied on the fact that charter counties have the constitutional power to regulate their employees' compensation. Because such matters as overtime and meal and rest periods are factored into an employee's compensation, the charter counties' own rules – not California's Labor Code provisions – applied.

Applicability of California's Wage and Hour Provisions to Other Types of Public Entities

The court in Johnson seemed to suggest that all public entities are exempt from Labor Code section 510 and 512 because they are not expressly included. However, it is unclear whether and to what extent the Johnson decision will apply to other public entities. For example, Wage Order No. 17 applies to “new” industries. While water storage districts may not be considered “new,” there are public entities that provide services in burgeoning industries such as green power. Employees in these industries could be exempt from other wage orders but fall within Wage Order No. 17.

In addition, the Johnson decision turned on the District's status as a “municipal corporation.” Entities that are not classified as a county, incorporated city, or town or other municipal corporation may be covered by the statutes addressed in the case.

Public sector employers should work closely with their employment counsel to determine the applicability of Johnson to their organizations and take appropriate steps to ensure compliance with California's wage-hour rules to the extent they apply.

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