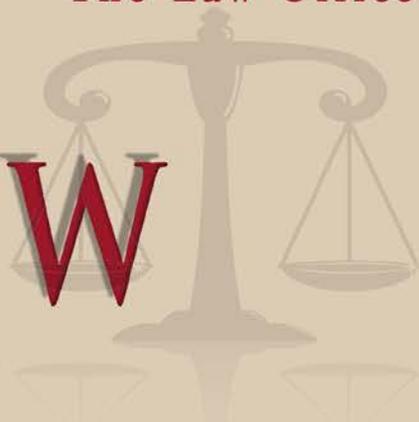


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The Employment Law Newsletter

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Cases To Watch

- Duchan v. LA Unified School District
- Lawson v. Z.B., N.A.
- OTO, LLC. v. Kho

Pros & Cons of Pursuing Wage Claims Before the CA Labor Commissioner

By Ryan J. Carlson

Employers fail, refuse or neglect to pay their employees far too frequently. As a result, employees are often forced to utilize legal processes to recover monies that they are rightfully owed. However, in many of these cases it is not worth the time, stress, effort, and money to initiate a lawsuit to collect those wages because the amount in controversy is simply too low. A misconception among many is that the only way to recoup these unpaid wages is to sue the employer. While resort to the court system is most definitely one of the means by which a claim for unpaid wages can sometimes be pursued, generally speaking it is neither the most efficient nor the most convenient way to do so – at least not in California.

Of the potential options available to an aggrieved employee, the one we are concerned with for purposes of this article, as its name suggests, is pursuing a claim before the Labor Commissioner. The Office of the California Labor Commissioner, also known as the Division of Labor Standards Enforcement (“DLSE”) or more simply, the Labor Board, is an administrative agency organized under the umbrella of the California Department of Industrial Relations (“DIR”). According to their website, the Labor Commissioner’s mission is “to ensure a just day’s pay in every workplace in the State and to promote economic justice through robust enforcement of labor laws.” To that end, it provides a multitude of forums for the investigation and/or adjudication of many labor-related issues such as workplace retaliation, substandard working conditions and worker misclassification, just to name a few. (For more information on the DIR or DLSE, check out www.dir.ca.gov)

Not surprisingly, an employee’s claim for unpaid wages is one of the labor related issues the DLSE has the authority to adjudicate. By submitting a complaint to the DLSE, an employee who proves his/her case can obtain a judgment that has the same full force and effect as a judgment handed down by a court of law. For employees with relatively minor claims for unpaid wages (i.e. around \$25,000 or less), this provides a very quick and appealing

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alternative to having to go to court. However, as with any form of legal proceeding, there are both advantages and disadvantages that accompany one's election to take this route. Before elaborating on those pros and cons, here is a very quick rundown of how a Labor Board claim plays out in practice.

Step #1 – Filing the initial complaint. Just like every form of legal proceeding, the first step in the process is to file a complaint setting forth the reasons one believes he/she has been injured or damaged by, in this case, his/her employer's actions. This involves filling out a form provided by the DLSE online or at one of their many offices around the state. Depending on the type of wages you are seeking, you may also be required to submit other documentation like paystubs or your employment contract. The DLSE staff members are often kind enough to assist you with any questions you may have and there are ample informational brochures available to help guide you through the process.

Step #2 – Pre-hearing Settlement Conference. Shortly after a complaint is filed, the parties will receive notice that the claim has been set for a settlement conference. This voluntary process gives the parties an opportunity to resolve the matter together with the help of the experienced Deputy Labor Commissioner assigned to the case. In addition to being facilitated by someone who is well-versed in the area of labor and employment law, it enables the parties to end their dispute at a very early stage, thus allowing both to move on with their lives. While neither party is technically required to attend the settlement conference, it is a highly useful procedure and should be utilized in just about every case.

Step #3 – The Hearing. If the parties are unable to reconcile their differences during the settlement conference, the matter proceeds to a hearing before a DLSE hearing officer. This is the mandatory and more formal part of the process. During the hearing, both parties are entitled to present evidence and call witnesses in support of their claims or defenses and both are entitled to representation (typically, but not always, by an attorney). The hearing officer usually directs the process by asking very pointed questions based on the information provided in the plaintiff-employee's complaint and the defendant-employer's answer, if one was filed. The answers to these questions, which must be provided under penalty of perjury, ultimately become evidence upon which the case is or may be decided. After the evidence is presented and argument offered, and after the parties have a chance to provide closing remarks, the hearing officer takes the matter under submission and the hearing is adjourned. No decision is made at this point.

Step #4 – The Order, Decision or Award. Within ten days after the hearing, the Labor Commissioner issues their "Order, Decision or Award" ("ODA"). This is when and how the parties learn how the case was decided. With respect to a wage claim, the ODA typically takes one of two forms: if the employer prevails, a decision in favor of the employer is issued and the employer is not required to pay anything; if the employee proves that s/he is owed unpaid wages, the employer is ordered to pay an award equal to the amount of wages the employee established was owed. In most cases, an award of interest on the unpaid wages is also included. The ODA then becomes final unless either party files an appeal within ten days (fifteen days if the ODA was mailed to the parties).



If, within ten days, the employer pays any award it is ordered to pay pursuant to the ODA, no judgment is entered in superior court and the matter concludes. However, if no payment is received within that ten-day window and no appeal is filed, a judgment is entered with the superior court and a certificate of lien against the employer is filed in the County Recorder's or Clerk's office.

Step #5 – The Appeal (if necessary). A party who is not satisfied with the ODA may appeal it within ten (or fifteen) days if they so choose. As we will discuss in greater detail below, appeals of ODAs should be approached with caution because they may have unintended consequences and are conducted much differently than the Labor Board proceedings. If an appeal is filed, the claim is sent to the local superior court and essentially becomes a very abbreviated and fast-tracked lawsuit that culminates in what is called a trial de novo. Unlike Steps #1-3, this process and the trial de novo are governed by the California Evidence Code and the Code of Civil Procedure, which are both very complex sources of law. For this reason alone, it is at this point that both parties should seriously consider retaining counsel if they have not done so already (and incorporated employers are actually required to be represented by an attorney).

The trial de novo itself is conducted before a judge as opposed to a jury and, aside from its brevity, is generally similar to most other types of trials in superior court. After being presented with the same evidence and argument that the parties offered at the Labor Board hearing, the judge issues his/her decision in favor of one of the parties and that determination is considered binding and final (unless the unsuccessful party wishes to file another appeal, but the process involved at that point is far beyond the scope of this newsletter).

Assuming no appeal is filed, this entire process generally takes anywhere from 3-8 months and may take even less time if the parties cooperate and conduct themselves in good faith. So, now that we have provided a very general overview of the proceedings, let's discuss the pros and cons thereof.

Pro #1 – Expediency. Without a doubt, the biggest advantage of turning to the Labor Board to resolve a wage claim is how quickly the matter is typically decided. Whereas a lawsuit filed in superior court may last 1-2 years or more, claims before the Labor Board, as alluded to above, are typically resolved within a few months or less. While all of this assumes no appeal is filed in either case, there is simply not as much "litigation" involved with a wage claim as compared to an actual lawsuit. This translates to achieving a much quicker result. Moreover, even if an ODA is appealed, the appellate process is generally far quicker than that of a final judgment rendered in superior court.

Pro #2 – Efficiency. Another appealing aspect of pursuing a wage claim is the cost, or lack thereof, associated with doing so. There is no fee to file a claim before the Labor Board. On the other hand, the filing fee alone to file a lawsuit in superior court costs hundreds of dollars, and that is on top of any other costs associated with litigation (for example, the cost of taking a deposition or retaining an expert). It is also very common for parties to represent themselves throughout the process. As a result, paying an attorney is not necessary and that means more money in the employee's pocket at the end of the day. The



efficiency of pursuing a Labor Board claim naturally makes it a more appealing avenue when the amount of wages at stake is not that substantial.

Pro #3 – Ease. Finally, the process of pursuing a wage claim before the Labor Board is much easier than going to court. The Labor Commissioner makes it this way on purpose so aggrieved employees with relatively minor claims for unpaid wages are not discouraged from collecting that which is rightfully theirs. In fact, it is so easy that laypeople do not even really need an attorney if they just read and follow the rules very carefully. Even if a party does elect to hire an attorney, which in some cases is very wise, the time and effort they spend working with that attorney will be far less as compared to the time and effort required in connection with a lawsuit because the issues are far less numerous and the process is not as involved.

On that note, while parties can ask the Labor Commissioner to subpoena certain documents or witnesses to support their wage claim or defense, there is no discovery (the fact-finding phase of a lawsuit) to deal with like there is in litigation. This means no burdensome and frightening depositions or pages-long interrogatories to worry about. There is no opportunity for either party to file motions (a written request to the court) that just drag the process out. Furthermore, the deadlines governing many case-related events are much shorter than they would be in superior court. All in all, getting from A to Z with a wage claim is far easier than with a lawsuit. Perhaps most importantly, this all translates to far less unnecessary stress along the way.

Con #1 – Claims and damages are limited. Pursuing a wage claim before the Labor Board is more expedient, more efficient and much easier than going to Court, but doing so limits the issues that can be resolved and the damages that can be awarded. While the Labor Commissioner does have the authority to order the payment of unpaid wages, it does not have the authority to issue other forms of relief based on other types of wrongs. By way of example, the Labor Commissioner cannot issue an award of emotional distress damages based on the employer's failure to accommodate an employee's disability or illness. As a result, an employee who has been out of work because of his/her employer's failure to accommodate him/her, and who has therefore lost wages, cannot seek from the Labor Board an award of both those unpaid wages and their emotional distress damages stemming from the employer's wrongdoing. The employee in that case must instead resort to filing a lawsuit. This is an important factor to consider when the conduct that resulted in the loss of wages is more serious than simply refusing or failing to pay them.

Con #2 – No formal rules governing the procedure. As alluded to above, the proceedings conducted by the Labor Commissioner are not governed by rules of evidence or civil procedure. While the hearing officer presiding over the case does have discretion to weigh and consider certain evidence as s/he deems fit, s/he can nonetheless rely upon evidence that would otherwise be inadmissible in a court of law. Thus, objections made by either party are essentially ignored. Though this factor affects both sides equally, it does allow for substantial leeway with respect to the facts that can support a party's position. Having said that, this factor does become somewhat less of a concern if/when an ODA is ultimately appealed and tried de novo before a superior court judge.

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Con #2.5 – Potential award of attorney’s fees in select cases. When the ODA is appealed, the law is very clear that the successful party is entitled to an award of reasonable attorney’s fees incurred in connection with the handling of the claim. This rule applies regardless of whether the appealing party is the employer or employee. However, an employee is considered the successful party as long as the court awards an amount greater than zero on appeal. Conversely, an employer is deemed the successful party, and therefore entitled to attorney’s fees, only if the ODA is reduced to zero. This means that an employee can appeal an ODA issued in their favor and still be awarded reasonable attorney’s fees on appeal even if the court lowers the employee’s original award to an amount equal to or greater than \$0.01. Thus, parties wishing to file an appeal should consider very strongly the likelihood that the ODA will be reduced to \$0.00.

While this rule may seem entirely unfair and far more favorable to employees, it is the Legislature’s way of discouraging frivolous appeals. Unfortunately for employers, it does not exactly address such frivolous appeals by employees in favor of whom an ODA was issued. Nevertheless, pursuing and appealing an unsuccessful wage claim may result in very expensive, unintended consequences.

All in all, in cases where there is relatively little (i.e. <\$25,000) at stake, the pros of pursuing a wage claim before the Labor Commission generally outweigh the cons. However, regardless of the amount in controversy, consulting with an attorney to discuss your options is always wise. With their extensive knowledge and expertise, an attorney can help weigh the pros and cons discussed above and, more importantly, provide counseling on how to set forth the best case or defense regardless of the forum in which it is presented. There is also something to be said about showing the Labor Commissioner you are taking the matter seriously by having a trained professional appear on your behalf, and this applies regardless of the amount in question.

Our office has extensive experience handling matters before the DLSE on behalf of both employers and employees alike. If you have any questions about any of the information above or wish to obtain counsel for a pending claim, do not hesitate to contact us. We look forward to hopefully helping you resolve those matters as expediently, efficiently and easily as possible.

