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COVER STORY



Alexander Drecun / Special to the Daily Journal

Plaintiffs' lawyer Matthew J. Matern said it's easier for an employer to cheat an employee if they do not put information required by law on a pay stub, a facet that has been a growing focus of litigation for employment attorneys.

Lawyers warn of pay stub litigation wave

By Matthew Blake / Daily Journal Staff Writer

California businesses and their lawyers have perennially fretted about the state's employee-friendly laws, but companies see one recent labor code amendment as beyond the pale.

In 2012 Gov. Jerry Brown amended an existing law by creating a presumption of harm each time an hourly employee's pay stub is missing any of nine required pieces of information, including total hours worked and wages earned in the pay period, the employee's rate of pay, and the employer's address and legal title.

While plaintiffs' lawyers defend the law as a check on evasive employers, the strict liability businesses face is a "technical violation" that "cause no injury to employees", according to Jennifer Barrera, policy attorney at the California Chamber of Commerce.

Instead, the suits are a "financial

windfall to plaintiff attorneys" Barrera said. A case against staffing agency Manpower Inc. settled for \$8.7 million in June, and a lawsuit targeting Verizon Wireless Inc. concluded with a \$15 million deal for plaintiffs and their lawyers.

Francis J. Ortman, an employment defense attorney at Seyfarth Shaw LLP, said he keeps seeing instances in which a "disgruntled employee will find a plaintiff employment lawyer online and come to their office" for advice on hard to prove claims including wrongful termination or missing wages.

But "rather than shoot the half-court shot" and file a lawsuit alleg-

ing a difficult to prove violation, the lawyer asks to see the worker's pay stub, and, if one of the nine items are missing, "the plaintiffs' lawyer opts for the slam dunk" and files an almost impossible to disprove pay stub claim.

Ortman represents Applied Aerospace Structures Corp. in a class action over the company's not providing its address on workers' pay stubs — a frivolous claim, he said, because every Aerospace employee works at the same Stockton location. *Geer v. Applied Aerospace Structures Corp.*, CU14-3137 (San Joaquin Super. Ct., filed July 18, 2014).

"We wanted to fight the lawsuit but it settled," Ortman said, with a hearing on final settlement approval scheduled Tuesday in front of Judge Barbara A. Kronlund. "Because of the strict liability statute, we had no defense."

Instead, Ortman negotiated an agreement for his client to pay a fraction of the maximum \$4,000 per worker penalty assessed under the law, meaning the company would shell out around \$400,000 instead of \$1.3 million. A quick settlement is a common tactic, according to employment defense lawyers, who aim to pay between 20 to 40 percent of the maximum pro-worker penalty in settlements.

For example, U.S. District Judge Jon S. Tiger approved a settlement in which Manpower will pay a class of 19,000 workers \$8.7 million, or about 30 percent of the employee's maximum potential recovery. *Willner v. Manpower Inc.*, CV11-2846 (C.D. Cal., filed June 10, 2011).

In response to these instances of litigation, the California Chamber backs Assembly Bill 1506, legislation Democratic assemblyman Roger Hernandez sponsored that gives employers 33 days to address missing wage statement claims before employees can sue. The legislation cleared the Senate labor committee last week, and might not face resistance from the plaintiffs' bar.

Mariko Yoshihara, policy director for the California Employment Lawyers Association, said CELA would not oppose legislation that narrowly address employers concerns about frivolous claims. "Certainly we do not want to punish employers for honest mistakes that cause no harm to workers," Yoshihara said.

Where business and employee side lawyers differ is whether most pay stub claims are frivolous or, instead, are the first step into uncovering serious employer violations. "It is much easier to cheat somebody if you do not put the required information on a pay stub," said Matthew J. Matern, a plaintiffs' lawyer at Matern Law Group.

Matern repeatedly shoots the close-range shot of filing a class action over missing information on wage statements. The lawyer acknowledged clients often initially complain about another violation, and then are told about the state's pay stub law.

But, "usually when we have brought these claims we have other claims as well," Matern said.

In one pending case, in which Superior Court Judge Elihu M. Berle certified a class last month, employees of manufacturing company Rock-Tenn have sued their employer for incorrect information on their pay stubs as one of a number of alleged violations that also include missing payments and missed meal and rest breaks. *Wilson v. Rock-Tenn Company*, BC488456 (L.A. Super. Ct., filed July 16, 2012).

Plaintiffs' attorney Larry W. Lee of the Diversity Law Group said he does more pay stub litigation since strict liability was amended into the law, but sees the statute as continuing to serve the purpose of "providing clarity to employees."

"When I was in high school and college and working low-level hourly jobs, I wanted to know my rate of pay, how long the pay period was. An employee should be notified what they are being paid for," Lee said.