

L a b o r & E m p l o y m e n t
A L E R T

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CALIFORNIA SUPREME COURT BROADENS RIGHT TO PAYMENT OF WAGES UPON TERMINATION

Multi-state and multi-national employers have long chafed under California's statutory directive to pay discharged employees their final wages on the date of discharge. Particularly where an employee must be dismissed immediately, or where few are employed in California, out-of-state employers complain that this rule imposes unreasonable burdens, and even requires employees to be carried on the payroll until a final paycheck can be prepared.

The statute, California Labor Code section 201(a), reads: "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." It is supplemented by section 203, which imposes "waiting time" penalties on an employer that willfully fails to tender final pay on the date of discharge. These penalties can create liability for the employee's daily wages accrued from the date of discharge until date of payment or commencement of an action to recover the unpaid wages, capped at thirty days. Neither the California Labor Code nor the regulations promulgated by the Labor Commissioner define "discharge". While the meaning of "discharge" in the employment setting is reasonably clear, its meaning under

Section 201(a) had not been interpreted by the California courts.

In *Smith v. Super. Ct.*, Cal., No. S129476, 7/10/06, the California Supreme Court reviewed the claim of a hair model hired by L'Oreal for a one-day show. Under their contract L'Oreal agreed to pay the model, Smith a fee of \$500 for one day of modeling. L'Oreal did not help itself by failing to pay her for 60 days, and Smith sued for violation of Section 201(a) on behalf of a class of L'Oreal models who were not paid on the day of completion of their modeling assignments for L'Oreal at shows. A trial court agreed with L'Oreal that the job assignment did not result in a "discharge" as required under the statute and granted its motion for summary adjudication. An appeals court affirmed that ruling based upon the dictionary and commonsense definitions of "discharge". The commonly-held understanding of that term, the appellate court said, required an affirmative act of the employer to cut short the period of employment. Completion of an assignment or expiration of an agreed-upon employment period as in the case of L'Oreal's models fell outside the discharge concept.

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A unanimous California Supreme Court disagreed. It concluded under Section 201(a) that an employer “discharges” an employee “not only when it fires [her], but also when it releases an employee upon the employee's completion of the particular job assignment or time duration for which he or she was hired.” The court said that its expansive reading of “discharge” was said to be based on competing dictionary definitions, legislative history and principles of statutory construction. Employing one such rule of construction, the Court observed that the reading of Section 201(a) adopted by the lower courts created an incongruity: employees fired for cause were entitled to be paid more promptly than employees who had not been bad actors. However, by applying this rationale the Court arguably violated a more fundamental rule of statutory construction - that where a statute is clear on its face, no parsing of legislative history or application of other rules of construction is either necessary or appropriate.

Under *Smith*, employees discharged involuntarily and those whose assignments have been completed or come to an end all must receive their final pay on the effective date of their termination in order to avoid a substantial risk of penalties. This will complicate matters for employers that hire temporary and/or project-based staff who work in California, each of which must be considered to have been discharged and given final paychecks on their last scheduled day of work in order to avoid the risk of assessment of penalties.

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This document is a basic summary of legal issues. It should not be relied upon as an authoritative statement of the law. You should obtain detailed legal advice before taking legal action.