

Ninth Circuit Court of Appeals Provides Critical Guidance on Events Triggering Waiting Time Penalties

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In [*Harstein v. Hyatt Corp.*](#), the Ninth Circuit Court of Appeals held that Hyatt Corporation (“Hyatt”) violated California law, which requires the payment of all wages at separation, when one of its hotels failed to pay employees their accrued vacation pay after furloughing them in the early days of the COVID-19 pandemic.

In March 2020, the director of human resources for the Hyatt Regency Huntington Beach told employees that they “will be furloughed/temporarily laid off from their employment on March 24, 2020,” and expressed hope that the hotel’s business would return to normal in eight to twelve weeks. The director of human resources noted the hotel would continue employees’ health benefits through April and May 2020, and pay accrued vacation time out at employees’ request, even though Hyatt was “not separating anyone’s employment at [that] time.” In June 2020, Hyatt sent another letter informing employees that the furlough would become a layoff, and effective June 27, 2020, the employee’s employment with Hyatt would cease. Hyatt also informed its employees that they would receive all of their accrued, but unused vacation, and floating holiday pay, per California law.

Karen Harstein filed a class action complaint and a claim under the Private Attorneys' General Act ("PAGA") against Hyatt in the early months of the COVID-19 pandemic in Los Angeles County Superior Court. Hyatt removed the case to federal court. Her primary theory of liability was that Hyatt failed to pay its employees all wages upon discharge, thus entitling her and the putative class to waiting time penalties under California Labor Code § 203. She later added a claim against Hyatt for failure to pay overtime correctly based on the theory that Hyatt did not include the value of complimentary hotel rooms in calculating employees' regular rate of pay when calculating overtime. The district court certified classes composed of (1) employees who were terminated and not paid for vested vacation time/floating holidays at termination and (2) non-exempt employees who worked overtime and earned complimentary hotel rooms, which were not included in the employees' regular rate of pay. The district court granted Hyatt's motion for summary judgment (and denied Harstein's partial motion for summary judgment), holding the employees' furlough in March 2020 was not a discharge entitling employees to their final wages per California Labor Code § 201, and that the value of the complimentary hotel rooms need not be included in employees' regular rate of pay.

The Ninth Circuit partially reversed the district court on the issue of whether the March 2020 furlough constituted a discharge. The Ninth Circuit recognized that under California Labor Code § 201, employers must promptly pay employees their earned but unpaid wages at separation — including accrued, but unused, vacation time. If an employer fails to make this payment, it could be liable to the employee for waiting time penalties under Labor Code § 203. Hyatt did not dispute that it owed employees their accrued but unpaid vacation pay at the time their employment was terminated, only *when* the termination occurred. Because Labor Code § 201 does not define when a discharge occurs, the Ninth Circuit turned

to the California Division of Standards Enforcement (“DLSE”) for guidance. In a DLSE Opinion Letter from 1996, the DLSE answered an employer’s question “regarding the obligation of an employer to pay wages due at the time of a ‘temporary layoff.’” The DLSE explained that “if an employee is laid off without a specific return date within the normal pay period, the wages earned to and including the lay off date are due and payable in accordance with Section 201.” Given the DLSE’s letter is consistent with the public policy of Labor Code § 201 to “protect workers” and the DLSE’s expertise in wage and hour law, the Ninth Circuit adopted the DLSE’s interpretation of Section 201. Accordingly, because Hyatt did not provide a specific return date within the normal pay period when it furloughed its employees in March 2020, it was required to pay out all wages at termination under Labor Code § 201 at that time.

Nevertheless, the Ninth Circuit remanded the case back to the district court to determine in the first instance whether Hyatt had a “good faith dispute” to pay employees’ their vacation pay. Under Labor Code § 203, an employer need not pay waiting time penalties when it had a “good faith” dispute regarding whether payment of final wages was due. Since the district court granted summary judgment on the issue of Labor Code § 201 liability, it did not consider whether Hyatt had a good faith defense. Accordingly, the matter was remanded for the district court to consider Hyatt’s “good faith” defense in the first instance.

The Ninth Circuit further held that Hyatt did not need to include the value of complimentary hotel rooms in employees’ regular rate of pay for the purpose of calculating overtime. Initially, the Court rejected the district court’s conclusion that the hotel rooms were “gifts” that were excludable from the regular rate of pay. Nevertheless, the Court held that the hotel rooms were excludable

from the regular rate of pay because they are “other similar payments” that do not vary with the number of hours the employee works.

Key Takeaways

Harstein highlights important lessons for California employers. First, *Harstein* continues a trend in recognizing that the COVID-19 pandemic did not offer a wholesale exception around California’s Labor Code. See, e.g., *Thai v. Int’l Bus. Machines Corp.*, 93 Cal. App. 5th 364 (2003). Second, *Harstein* educates employers that if they are putting off their workforce for an indeterminate amount of time, they must pay all wages owed, though in this case, Hyatt may be able to establish its “good faith” defense because the law was still unclear as to the legal effect of temporary furloughs as of March.

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