



## Employment Auditor's Notepad

### TIMELY PAYING FINAL WAGES: EMPLOYEES HAVE THREE YEARS TO FILE CLAIMS

Under California Labor Code section 203, if an employer does not timely pay its employees when terminated (immediately) or when they voluntarily quit (within 72 hours), the employer is subject to a penalty of daily wages until the employee is paid, up to a maximum of 30 days. The statute of limitations, or time to file a claim, under Section 203 is three years. However, for years, by claiming the failure to pay wages is an unlawful business act or practice under California's Unfair Competition law ("UCL"), employees have been using the UCL, which has a statute of limitations of four years, to expand the statute of limitations on Section 203 penalty claims.

The Supreme Court of California recently held in *Pineda v. Bank of America* that the "waiting time penalties" provided by California Labor Code Section 203 are not recoverable under the UCL, thus limiting the statute of limitations to three years.

## Commission Plans are Promises that May Not be Revocable

Employers cannot unilaterally modify the terms of a sales commission plan after an employee has already performed his end of the bargain. Recently, in *McClaskey v. California State Automobile Association*, the appellate court clarified that under certain conditions, a contract for sales commissions may become "vested" so that its benefits cannot be unilaterally reduced.

The California State Automobile Association ("CSAA") promised plaintiff McClaskey and other insurance salesmen that if they worked for the company for at least fifteen years, once they reached the age of 55, their minimum sales quotas would be reduced by 15%. After each of the plaintiffs met the conditions for this lessened sales quota benefit, CSAA rescinded this term of the plan.

First, the court held CSAA cannot rescind the commissions plan because it was unreasonable and unlawful to refuse the promised benefits after the plaintiffs had already spent fifteen years working for CSAA in anticipation of this benefit. CSAA had received everything for which it bargained, while the employees did not receive what they had been promised under the plan. Next, the court rejected the argument that an employer may do whatever it wants because the employment relationship is at-will. While CSAA was generally entitled to discharge the plaintiffs without demonstrating good cause, CSAA could not discharge them for refusing to relinquish their bargained-for right to reduced quotas.

Finally, the court held CSAA's standard sales quota plan language under which the it reserved a right to "modify" the plan at its sole discretion did not give CSAA the right to revoke a vested right from its employees.

Employers should be cautioned that promises given to their employees upon which the employees rely to their detriment may be irrevocable.

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