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Public Policy Protects An Employee From Termination For Making A Good Faith But Mistaken Claim To Overtime

This week, a California Court of Appeal found that the plaintiff employee was entitled to a full trial on his wrongful termination claim, concluding that California public policy in favor of the employer's duty to pay overtime wages protects an employee from termination for a mistaken but good faith claim to overtime wages.

As the facts are set out in the Court's opinion, and with the advantage of hindsight, one can speculate that both the employee and the Company believed they were doing the right thing. The plaintiff, Manuel Barbosa, started working at IMPCO as a carburetor assembler. At the time of his termination, he worked as a "cell leader" supervising up to eight other carburetor assemblers.

Barbosa testified that two of the employees in his cell told him they were missing two hours of overtime. After he talked with them, Barbosa thought he also was missing two hours of overtime. Barbosa talked to the Payroll Administrator and she directed him to get approval for the overtime from his supervisor.

Barbosa spoke to his supervisor and told him that he and the other employees in his cell were each missing two hours of overtime. The supervisor said he would approve the missing hours because he "just trusted [Barbosa's] call at that time."

The Payroll Administrator got the supervisor's verbal approval and paid all the employees in Barbosa's cell for two extra hours of overtime. The Payroll Administrator nevertheless thought that something was amiss. The Company had had occasional problems with the prior time clock system, but a new system had been installed the month before and it had been working correctly with no complaints. So the Payroll Administrator spoke to the Human Resources Manager, who ran the report from the scans at the security entrance gate and compared that report with the timecard report. The gate report showed that Barbosa and the others could not have worked the overtime that Barbosa claimed.

Barbosa was called to a meeting with his supervisor, the Payroll Administrator, the Human Resources Manager, and the Operations Manager. After being shown the gate report, Barbosa said that he must have been confused and that he was relying on what the other employees had told him.

When Barbosa got the paycheck that included the extra overtime, he went to the Payroll Department and offered to pay the money back. The Payroll Administrator told him she could

not change anything and sent him to Human Resources, where he again offered to pay the money back. Subsequently, Barbosa was terminated, being told that he was being terminated for cheating the Company. The Payroll Administrator testified that Barbosa was terminated for falsifying time records.

Barbosa conceded he was mistaken about his claim to unpaid overtime but contended that his claim was based on a reasonable good faith belief that he was entitled to it. He argued that he presented sufficient evidence to support his claim and the jury should be able to decide whether his claim was made in good faith and whether IMPCO terminated him for making that claim or for falsifying timecards. The Court agreed.

The lesson from this case for employers is that an employee's good faith but mistaken belief is protected from employer retaliation in the whistle blowing context. An employee need not prove actual violation of law. The employee may have a viable claim if the employer fired him or her for reporting "reasonably based suspicions" of illegal activity. As long as the employee makes the complaint in good faith, it does not matter for purposes of a wrongful termination action whether the employee identifies an actual violation of law. When an employee exercises his or her statutory right to overtime wages out of a reasonable belief that he or she is entitled to it, notwithstanding the later discovery that he or she is wrong, the employee cannot be fired in retaliation for making the claim.

How a jury ultimately decides this particular case remains to be seen. The lesson for employers is to carefully evaluate any termination in light of the Court's guidance to avoid having to go to trial in the first place.