



California Wage/Hour Update

## Labor Commissioner Hearings Cannot Be Waived By Arbitration Agreements

By Bruce Larson

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The Labor Code gives aggrieved employees the right to file a claim for unpaid wages and other similar violations with the Division of Labor Standards Enforcement. These claims are decided by a deputy labor commissioner in an administrative hearing, sometimes called a "Berman" hearing. The process is more streamlined than a proceeding in court, and is "designed to provide a speedy, informal, and affordable method of resolving wage claims." If either party does not agree with the deputy labor commissioner's decision, they can appeal to the superior court in a process called a "trial de novo."

The California Supreme Court recently ruled on whether a binding arbitration agreement can require employees to waive their rights to this administrative hearing. The Supreme Court answered this question in the negative, holding that an "Employee's statutory right to seek a Berman hearing, with all the possible protections that follow from it, is itself an unwaivable right that an employee cannot be compelled to relinquish as a condition of employment." *Sonic-Calabasas v. Moreno*.

But the Court did not find that having a Berman hearing was incompatible with a binding arbitration agreement which covers "all disputes that may arise out of the employment context," nor that the agreement was unenforceable. Instead, the decision held that, while the administrative hearings should still proceed before the deputy labor commissioner, the trial de novo could take place before an arbitrator rather than in superior court.

Thus, as the court stated, "the Berman hearing was merely preliminary to, rather than preemptive of, binding arbitration." After the Berman hearing is

complete, the parties can proceed in arbitration, assuming a valid arbitration agreement is in place.

As a result of this ruling, employers who have employees sign pre-dispute arbitration agreements should review their agreements to ensure that they do not ask employees to waive their right to a Berman hearing. Similarly, the arbitration agreement should state that reviews of Berman hearings are covered by the agreement.

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