

Employer May Obtain Judicial Review of California Unemployment Insurance Appeals Board Decision

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West Hollywood Community Health and Fitness Center v. California Unemployment Insurance Appeals Board, No. B248641 (December 5, 2014): A California Court of Appeal recently reversed a trial court's dismissal of a writ of mandate. The court found that an employer may obtain judicial review of a decision from the California Unemployment Insurance Appeals Board, which had found that an applicant for unemployment benefits was an employee and not an independent contractor.

Mario Serban worked as a massage therapist at West Hollywood Community Health and Fitness Center, doing business as Voda Spa. Serban left Voda Spa and applied for unemployment benefits. The Employment Development Department (EDD) sent Voda Spa a letter indicating that Serban was an employee. Thereafter, the EDD sent Voda Spa notice indicating that Serban was an employee and had good cause to leave work. Voda Spa appealed.

An administrative law judge (ALJ) concluded that Serban was an employee. In a separate opinion, the ALJ concluded that Serban had good cause to leave his work, making him eligible for unemployment benefits. The Board affirmed both findings.

Voda Spa sought administrative mandamus in the Los Angeles Superior Court pursuant to Code of Civil Procedure section 1094.5. Voda Spa sought to challenge both the decision that Serban had good cause to leave his work and the finding that he was an employee. The trial court heard the former, but granted the Board's motion to strike all allegations concerning Serban's employment status. On appeal, Voda Spa challenged only the trial court's conclusion that it could not review the Board's decision finding that Serban was an employee.

California law prohibits taxpayers from seeking a judicial order that would enjoin the collection of a tax that has not already been paid so that revenue collections can continue during litigation and public services are not interrupted. Ordinarily, a taxpayer must pay the tax before beginning a court action under the "pay first, litigate later" rule.

The court found that while Voda Spa's unemployment insurance reserve account was subject to additional charges because Serban was determined to be an employee and not an independent contractor, the charge is not a tax payment. The Board's argument to the contrary "improperly blurs the tax/benefit distinction. Because there was no assessment in this case, the pay-now, litigate-later rule is simply inapplicable."

The court agreed with *First Aid Services of San Diego, Inc. v. California Employment Development Dept.* (2005) 133 Cal.App.4th 1470, to the extent it holds that, if “the net result of the relief prayed for herein would be to restrain the collection of the tax allegedly due, the action must be treated as one having that purpose,” as that is required by *Modern Barber Colleges v. Cal. Emp. Stab. Com.* (1948) 31 Cal.2d 720. However, the court disagreed with *First Aid* to the extent it holds that mandamus may not be used to challenge an administrative determination that persons were employees rather than independent contractors even though no tax had been assessed. Thus, the appellate court reversed the lower court and directed it to deny the board’s motion to strike.

NOTE: This article was also published in the January 2015 issue of the [California eAuthority](#).

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