

California Workplace Law Blog

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Kirby v. Immoos: California Supreme Court Holds Prevailing Parties Not Entitled To Attorney's Fees in Meal And Rest Break Lawsuits

In a partial victory for employers, the California Supreme Court recently held in *Kirby v. Immoos Fire Protection, Inc.*, S185827 (Cal. Apr. 30, 2012) that employees and employers may not recover their attorney's fees if they prevail in a lawsuit for meal or rest break payments under Labor Code § 226.7.

The Court analyzed the relevant statutory language and legislative history for Labor Code § 1194 and 218.5, the two statutes governing the award of attorneys fees for prevailing parties. It noted that Labor Code § 1194 was a “one-way fee-shifting statute” authorizing an award of attorney’s fees only to employees who prevail on their minimum wage or overtime claims. Labor Code § 218.5 is a “two-way fee-shifting statute” permitting an award of fees to either employees or employers who prevail on an action for the “nonpayment of wages.” Notably, the Court held that a claim alleging a failure to provide meal or rest breaks merely alleged the “nonprovision of meal and rest periods” rather than the “nonpayment of wages” necessary for an award under Labor Code § 218.5. Thus, an employer who successfully defends against a Labor Code § 226.7 claim will not be entitled to attorney’s fees. Similarly, an employee who prevails on his/her meal and rest break claims will also be denied attorney’s fees. It remains to be seen whether the Kirby decision will stem the wave of meal and rest break class action lawsuits filed in recent years.

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