

Wage and Hour Compliance Should Be Top of Mind for Employers; California Court of Appeal Held Individuals May Be Personally Liable For Civil Penalties



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A recent opinion authored by a California Court of Appeal highlights the importance of wage and hour compliance for companies with employees in California and in particular the owners, officers, and directors of these companies.

In *Atempa v. Pedrazzani*, a California Court of Appeal held that a business owner or corporate officer in California can be **personally liable** for civil penalties awarded to employees for a business's failure to pay proper wages, even if the owner or corporate officer is not an alter ego of the business and there is no basis to pierce the corporate veil.

Defendant Paolo Pedrazzani was the owner, president, secretary, and director of Pama, Inc., which did business as an Italian restaurant called Via Italia Trattoria. Two employees sued Pama, Inc. and Pedrazzani for failure to pay overtime wages and failure to pay minimum and regular wages. A bench trial ended in the employees' favor. The trial court ruled that Pedrazzani and Pama, Inc., were jointly and severally liable for civil penalties for overtime and minimum wage violations. The trial court awarded the employees attorneys' fees.

The trial court found that the civil penalties and attorneys' fees awarded were recoverable from Pedrazzani. Pama, Inc., had subsequently filed for bankruptcy. On appeal, Pedrazzani argued that he could not be liable for these amounts awarded because he was not the corporate employer responsible for paying employees' wages and could not be held personally liable absent evidence allowing for the piercing of the corporate veil.

Rejecting Pedrazzani's argument, the Court of Appeal relied on language of the applicable California statutes: Cal. Labor Code § 558 (West 2018) and Cal. Labor Code § 1197.1 (West 2018). Section 558(a) subjects "[a]ny employer or other person acting on behalf of an employer" to civil penalties for overtime violations. Similarly, section 1197.1(a) subjects "[a]ny employer or other person acting either individually or as an officer, agent, or employee of another person" to civil penalties for minimum wage violations. The Court of Appeal held that Pedrazzani was responsible as an "other person" who caused the overtime pay and minimum wage violations.

Sections 558 and 1197.1 only authorize the government to recover civil penalties, but the employees relied on California's Private Attorneys General Act ("PAGA"), which permits an "aggrieved employee" to recover civil penalties on behalf of himself and other current or former employees. Cal. Labor Code § 2699

(West 2018). The Court of Appeals affirmed the awards of civil penalties and attorney fees against Pedrazzani pursuant to PAGA.

Owners, officers, and directors of companies with employees in California must pay particular attention to wage and hour compliance to avoid being held personally liable for wage and hour violations. Companies should also confirm insurance protection for these individuals for this potential new personal liability created by simply being an owner, officer, director or other person responsible for a business's payroll.

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