

## **California Restricts an Employers Ability to Recover Attorney's Fees**

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Prior to the enactment of Senate Bill 462, California law (Labor Code §218.5) required a court to award attorneys' fees and costs to the prevailing party in any action brought for the nonpayment of wages, fringe benefits, or health and welfare pension fund contributions. Thus, if an employer were to successfully defeat an employee's action to recover unpaid wages, the employer would generally be entitled to recover its attorney's fees from the employee.

On August 26, 2013, Governor Jerry Brown signed Senate Bill 462 (sponsored by the California Employment Lawyers Association) amending Labor Code §218.5 to provide that when the prevailing party "is not an employee, attorney's fees and costs shall be awarded pursuant to this section only if the court finds that the employee brought the court action in bad faith." Thus, under the new law, in order to get attorneys' fees against the losing employee, the employer will not only have to prevail in the case, but the employer will also have to demonstrate the employee filed the lawsuit in bad faith (e.g., the claims were frivolous or brought solely to embarrass or harass the employer).

The new law does not apply to an action brought by the Labor Commissioner, certain sureties issuing bonds under the Business and Professions Code, or to certain actions to enforce a mechanics lien. It should also be noted that even before Senate Bill 462 was passed, Labor Code §218.5 did not apply to claims for which attorney's fees are recoverable under Labor Code §1194 (e.g., claims to recover minimum wage or overtime compensation) and the Supreme Court of California ruled last year (*Kirby v. Immoos Fire Protection, Inc.*, 53 Cal. 4th 1244 (2012)) that Labor Code §218.5 does not apply to claims brought for unpaid meal and rest breaks.

You can read the full text of the new law here: [http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb\\_0451-0500/sb\\_462\\_bill\\_20130813\\_enrolled.pdf](http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_0451-0500/sb_462_bill_20130813_enrolled.pdf)

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