Can an Employee Release a Wage Claim? It Depends: Is there a Bona Fide Dispute?

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Labor Code section 206.5 provides that "an employer shall not require the execution of a release of a claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made. A release required or executed in violation of the provisions of this section shall be null and void as between the employer and the employee." The section also provides that requiring such a release could constitute a misdemeanor.

Based on this section, for years employers have either been unable to obtain a release from an employee for any wage claim, or have obtained such releases without any guarantee that they are enforceable.

Recently however, the Court of Appeal in *Watkins v. Wachovia Corporation* provided some clarification on when a release of a wage claim may be valid. In *Watkins*, the Plaintiff was employed by Wachovia as a sales assistant. She assisted stockbrokers with client contact and other duties. After the federal Department of Labor investigated a separate Wachovia branch office and determined that the sales assistants had been improperly classified as exempt employees, Plaintiff joined in a class action against Wachovia claiming unpaid overtime. Wachovia brought summary judgment claiming that when Plaintiff's employment was ended, she signed a release of all claims, known or unknown, specifically including wage claims, in exchange for severance pay. Plaintiff conceded that she signed the release but argued that it was unenforceable as to her overtime claim based on Labor Code section 206.5's prohibition on such releases. Wachovia responded that section 206.5 does not prohibit releases of claims subject to a "bona fide dispute." The trial court agreed and granted the summary judgment. Plaintiff appealed and the trial court's decision was affirmed.

Based on the court's decision, a release of a wage claim is valid if: 1) there is a "bona fide dispute" regarding whether or not wages are owed; 2) the employer has paid all of the undisputed wages without regard to whether the employee signs the release; and 3) the employee receives something of value in exchange for releasing the right to sue for the additional (disputed) wages.

When does a "bona fide dispute" exist?

A bona fide dispute exists when the employee and the employer have a reasonable factual basis for taking a position contrary to the other side's position. In this case, the court found that a bona fide dispute existed when Plaintiff signed the release. She claimed she worked overtime hours for which she was not paid. In the litigation, she submitted a declaration indicating that she had been told to work off the clock if she had not finished her work within her scheduled 8 hour workday. She also submitted separate time sheets she had kept while working for Wachovia that showed the overtime she had worked. Finally, she testified that she had complained to management about not being paid overtime and that one manager had told her that her brokers would have to compensate her for any overtime which they did not.

The court held that when Plaintiff signed the release of all claims at the time of her termination, a "bona fide dispute" existed because: 1) she received all wages Wachovia conceded were due based on the timesheets she submitted; 2) she believed she possessed a claim for further overtime; and 3) she voluntarily elected to receive enhanced severance benefits in exchange for releasing her claims against Wachovia. Therefore, the court ruled that the release of the wage claim was enforceable.

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