

Wick Phillips Secures Appellate Victory for California Employers in Case of First Impression

DALLAS, Texas, February 16, 2016 – In a case of first impression, the U.S. Court of Appeals for the Ninth Circuit has affirmed a decision denying a former temporary worker’s bid to obtain potentially tens of thousands of dollars in back pay because he was required to bring his own hammer to work.

In paragraph 9 of several California wage orders, the requirements for “uniforms and equipment” include supplying hand tools employees need to do their jobs. An exception exists for workers earning at least twice the California minimum wage. In this recent case, the Plaintiff, on a temporary assignment, claims he was told to bring his own hammer and measuring tape to work. According to the California Division of Labor Standards Enforcement, the remedy in this circumstance is reimbursement of the cost of the tools. According to court documents, the Plaintiff, however, argued that the DLSE’s remedy was incorrect, and that he should instead be retroactively treated as falling within the “twice the minimum wage” exception, and recover the difference between what he actually earned and double minimum wage for all hours worked. He sought to recover not only for himself, but for every employee and temporary worker who used their own tools at the company, anywhere in California, over a four-year period.



**Marcia Nelson
Jackson**

After removing the case to federal court, the employer moved to dismiss the wage-related claims on the ground that Plaintiff’s theory was unfounded under any existing interpretation of California law. The District Court agreed. The Plaintiff then dismissed his remaining claims in order to test his novel legal theory – a matter of first impression – to the Ninth Circuit Court of Appeals.

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“The Plaintiff argued for an interpretation of the law that would have confused back pay and expense reimbursement. It would have also worked as a huge penalty. We don’t think that was the legislature’s intent,” says [Marcia Nelson Jackson](#), a partner in the labor and employment group at Wick Phillips and lead counsel on the case. “We are glad that the court was able to clarify this issue for employers going forward and agreed with the common sense approach taken by the DLSE, which is consistent both with California law and the legislative history.”

[Bryan Wick](#), co-founder of Wick Phillips, adds “We are fortunate to have clients willing to stand behind their rights and talented attorneys who can successfully navigate the complexities of California labor and employment law. The right outcome in this case was particularly important, not only for our client, but for all California employers, so we are thrilled with the result.”

Wick Phillips is a full-service business law firm serving clients across Texas and the U.S. The partners of the firm have all joined Wick Phillips after gaining experience at large law firms, bringing a wealth of knowledge and insight with them to our clients. Founded in 2004, the firm has grown to more than 50 attorneys with offices in Dallas, Fort Worth and Austin. The attorneys of Wick Phillips provide practical and efficient legal services to business clients in commercial litigation and appeals, insurance coverage, real estate, corporate, corporate advisory, labor and employment, bankruptcy, creditor’s rights and estate planning, intellectual property, and tax. For more information visit www.wickphillips.com.

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