

One Minute Memo®



California Supreme Court Says Retiring Employees Must Be Paid Promptly

By Michael Wahlander and David Kadue

Seyfarth Synopsis: Under Labor Code section 202, California employers must pay all wages to an employee who “quits” within 72 hours, unless the employee has given 72 hours’ notice of the intent to quit, in which case the wages are due at the time the employee quits. Employers that fail to pay timely are subject to waiting-time penalties (up to 30 working days of wages) under Labor Code section 203.

In *McLean v. State of California*, the California Supreme Court has addressed whether an employee who “retires” is an employee who “quits.” *McLean* holds that employees who retire qualify as employees who quit and thus are entitled to prompt payment of termination wages under Section 202.

The Facts

Janis McClean worked for the California Department of Justice as a deputy attorney general. On November 16, 2010, she retired from state employment. That was also her last day of work.

Shortly after her retirement, she sued for a violation of Section 202. She alleged that California did not pay all her wages owed upon her last day of employment or within 72 hours of her last day. She also claimed that the State did not deposit her unused vacation time into her retirement plans and did not transfer her previously deferred wages to her. McClean sought to represent “all employees employed by the State of California who resigned or retired from their employment.”

The State, in a demurrer, argued that Section 202 does not apply to employees who “retire” as opposed to employees who “quit.” The trial court sustained the demurrer without leave to amend and McClean appealed.

The Court of Appeal reversed and held that employees who “retire” are employees who have quit their employment for purposes of Section 202. The State successfully petitioned for review to the California Supreme Court.

The Supreme Court Decision

The California Supreme Court unanimously affirmed the Court of Appeal. The Supreme Court held that an employee who “retires” is an employee who “quits.” Although the decision does not specifically address the 72-hour rule, the Supreme Court appears to assume that a retiring employee will provide such notice. As a result, employers who do not pay retiring employees all wages owed upon termination can be subject to waiting-time penalties under Section 203. The Supreme Court gave several reasons to support this interpretation.

First, a court must interpret Labor Code provisions in favor of protecting the employee. Because the Labor Code and the DLSE regulations do not define the term “quit,” a court must consider the ordinary meaning of the word. Under the dictionary definition, to “quit” is “to stop doing a thing; to cease” and, in the employment context, “to leave one’s employment.” With this definition in mind, the Supreme Court concluded that a retiring employee is one who is quitting.

The State resisted that interpretation by arguing that the term “retire” means something more than “quit,” because retirement connotes that the employee will not work again. The Supreme Court rejected that argument, as the term “quit” encompasses any employee who is making a voluntary departure, regardless of the employee’s motivation.

The Supreme Court confirmed its interpretation by reviewing the legislative purpose of Section 202. Section 202, which discusses payment deadlines for employees who quit, aims to promote prompt payment of wages on termination. The Supreme Court’s interpretation was consistent with that purpose. Section 202 does not suggest any intent to create a category of employees—retirees—who would be exempt from the purpose of promoting prompt payment of wages due upon termination.

The State made other arguments against this interpretation, mainly geared towards amendments to the Labor Code discussing how to pay certain wages to State employees. The State argued that the Legislature, by including special deferred payment rules in Section 202(c) that apply “when an employee quits, retires, or disability retires,” indicated a distinction between retirement and quitting.

The Supreme Court rejected this argument for a number of reasons. First, the Supreme Court said that the Legislature, instead of excluding retirees from the definition of quitting employees, may have simply intended to remove any doubt that state governmental retirees may elect to defer certain qualifying payments (accrued leave), consistent with Section 202(c). Next, the Supreme Court reasoned that including the language referenced by the State actually supported the conclusion that retirees are employees who “quit,” in that the amendments referenced by the State intended to clarify how the prompt-payment provisions applied to state governmental employees and to provide guidance on how to pay particular kinds of wages that are specific to those employees. Lastly, the Supreme Court again referred to the purposes of the prompt-payment provisions: timely payment of wages to employees is indispensable to the public welfare.

What *McLean* Means for Employers

While arising in the context of public employment, *McLean* is not limited to government employers. While *McClellan*’s result may have seemed apparent (a retiring employee, quite obviously, is an employee who is quitting employment), *McClellan*’s holding provides an important reminder for all California employers. Employers should have in place a process that ensures prompt payment of final wages (including accrued but unused vacation pay) to all terminating employees, whether they are dismissed, they quit, or they retire. Failure to comply with the rules governing prompt payment of all wages due upon termination can result in the imposition of stiff penalties.

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