



## One Minute Memo<sup>®</sup>

# “Total” Victory for Employers: Labor Code Section 226 Wage Statement Requirements Are Satisfied By Itemized Report Of Regular And Overtime Hours

California Labor Code Section 226 requires employers to provide employees with an “accurate itemized statement” showing the wages earned during a pay period, including the “total hours worked.” If an employer knowingly fails to comply with the requirements of Section 226, and an employee suffers injury as a result, then the employer is subject to damages of \$50 for the initial pay period, and \$100 for each pay period thereafter, up to a maximum of \$4,000 per employee. While the potential damages are capped, Section 226 provides for the recovery of attorney’s fees, making it an attractive subject for many class actions against employers.

On July 19, 2010, in *Morgan v. United Retail Incorporated*, a California Court of Appeal ruled on the following straightforward issue: Does a wage statement comply with Section 226 if it separately lists the number of regular hours and overtime hours worked by the employee, but does *not* include an additional line with the sum of those two figures? The Court of Appeal affirmed the trial court’s summary adjudication in favor of the employer, holding that such a wage statement *does* comply with the requirement under Section 226 to show the “total” hours worked.

Amber Morgan filed a class action lawsuit against her former employer United Retail Incorporated, for alleged violations of Section 226. Morgan claimed that United’s wage statements did not state the sum of the regular and overtime hours worked during a pay period, and thereby failed to adequately apprise employees of the total number of hours worked in a pay period. Morgan did not dispute the accuracy of United’s reporting of the number of regular hours and overtime hours that she had worked; rather, Morgan alleged that she had been injured by United’s failure to include a separate line on her paystub that combined the two figures to indicate the sum of the total hours worked.

In reaching its decision, the Court of Appeal pointed out that neither Section 226 itself nor the Division of Labor Standards Enforcement’s (“DLSE”) opinion letters define the phrase “total hours worked.” Accordingly, the court construed the phrase according to its plain meaning, concluding that United’s wage statements did, in fact, comply with the requirements of Section 226 because the statements enabled the employees to verify they were being paid for all hours worked. Although the court noted that it would be impermissible to require an employee to add up the daily hours shown on time cards or other

records to determine “total hours worked,” a paystub that shows the total regular hours worked and the total overtime hours worked simply requires an employee to add the two numbers together to “arrive at the sum of hours worked,” and therefore complies with Section 226. As additional support for its conclusion, the court noted that the DLSE’s website presents an example of a paystub precisely like that at issue in the United Retail case as one in compliance with Section 226.

Employers should keep in mind that Section 226 lists nine items that, when applicable, must be included on the wage statement. For example, even though this court determined it was not necessary to include a sum of total hours worked on the wage statement in this case, Section 226 does require employers to list all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each rate.

The decision, while not likely to halt the filing of class actions based on alleged Section 226 violations, does provide some measure of comfort that California’s appellate courts are now interpreting at least some aspects of Section 226 in a sensible way.

*For more information, contact the Seyfarth attorney with whom you work, or any [Labor & Employment attorney](#) on our website.*



**Breadth. Depth. Results.**

[www.seyfarth.com](http://www.seyfarth.com)