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## SUPREME COURT HOLDS THAT OFFICERS, DIRECTORS AND SHAREHOLDERS ARE NOT PERSONALLY LIABLE FOR UNPAID WAGES OR OVERTIME

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Despite a long history of liberal interpretation of protective employment legislation, the California Supreme Court held that individual officers, directors and shareholders of a corporation have no personal liability to the corporation's employees for unpaid overtime. See *Reynolds v. Bement* (2005) 36 Cal.4th 1075.

The *Reynolds v. Bement* case concerned a corporate defendant, Earl Scheib, Inc., which had over 50 automobile paint shops in California. The Plaintiff was employed by Earl Scheib as a shop manager. Plaintiff sued his corporate employer for failure to pay overtime wages and included as defendants in the case 8 shareholders and the President of the corporation, Christian Bement. At the trial level, the Court sustained the demurrers of the shareholders and officer for failure to state a Labor Code Section 1194 cause of action against the defendant individuals. The Court made its decision based on the well established common law maxim that corporate agents acting within the course and scope of their agency are not personally liable for the corporate employer's failure to pay its employees' wages. (See *Oppenheimer v. Robinson* (1957) 150 Cal. App. 2d 420.) Citing the case of *United States Liab. Ins. Co. v Haidinger-Hayes, Inc.*, (1970), the Court reaffirmed, "[d]irectors or officers of a corporation do not incur personal liability for torts of the corporation merely by reason of their official position."

Following the *Reynolds* case, the California Appellate Court held in *Bradstreet v. Wong* (2008) 161 Cal.App.4th 1440, that individual owners, officers and managers of three closely-held corporations could **not** be held personally liable for the corporation's failure to pay owed wages to employees or for related California Labor Code violations. In the *Bradstreet* case, the Department of Labor sued the owners and officers of three small garment factories for failure to pay its employees. Because of the DOL lawsuit, the corporations were unable to obtain loans and were forced to file for bankruptcy protection. The California Labor Commissioner paid the employees from a fund maintained for the purpose of paying garment industry workers. The Labor Commissioner then filed suit against the individual owners and officers of the three failed corporations seeking unpaid wages, liquidated damages for unpaid minimum wages and overtime, unpaid vacation pay, penalties for bad payroll checks, and wait time penalties under Labor Code Section 203, 204 and 210.

As the legal basis for imposing personal liability on the defendants, the Labor Commissioner relied exclusively on the Industrial Welfare Commission Wage Order applicable to the garment industry that defines an "employer" as "Any person as defined in Section 18 of the Labor Code, who directly or indirectly, or through an agent or other person, employs or exercises control over the wages, hours, or working conditions of any person." (Cal. Code Regs. Title 8 Section 1010).



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The *Bradstreet* Court followed the holding the *Reynolds* case stating,

Our Supreme Court held that the IWC definition did not apply to hold corporate control figures liable for the failure of the corporation to pay overtime, and affirmed. The court first noted that the plain terms of the IWC employer definition did not "expressly impose liability under section 1194 on individual corporate agents." Since neither section 510 nor section 1194 defines the terms "employer" or "employee," the applicable rule of statutory interpretation is that these terms should be construed in accordance with the common law, unless the Legislature clearly and unequivocally indicated otherwise. (36 Cal.4th at pp. 1086-1087.) "Under the common law, corporate agents acting within the scope of their agency are not personally liable for the corporate employer's failure to pay its employees' wages . . . regardless of whether the corporation's failure to pay such wages, in particular circumstances, breaches only its employment contract or also breaches a tort duty of care." (*Id.* at p. 1087, citations omitted.)

Whether a lawsuit is brought by either employees or the state Labor Commissioner, the holdings in *Reynolds* and *Bradstreet* establish that individual directors, officers, shareholders and managers of companies generally will not be held liable for claims related to unpaid wages under Labor Code sections 1193.6 (actions by the Commissioner) and 1194 (actions by employees).

Since *Bradstreet* was decided in August 2008, there have been no other cases in California which have addressed the specific issue of personal liability of owners and officers for unpaid wages and overtime, except those seeking to impose civil penalties arising under the Private Attorney General Act (PAGA – Labor Code Section 2698). Under PAGA, an employee may sue an employer to impose civil penalties under Labor Code 558 which states that “any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty.”

The civil penalty imposed by Section 558 is \$50 or \$100 for each underpaid employee for each pay period in which he/she was underpaid in addition to an amount sufficient to recover underpaid wages. The penalty is paid to the Labor Commissioner which then pays it over to the affected employee.

Although the PAGA does not define the term “employer,” three cases since the *Reynolds* holding have addressed whether or not a corporate agent can be held liable for civil penalties under Section 588 and PAGA. All three courts found that an owner or officer could be found liable for civil penalties under Section 588. See *Ochoa-Hernandez v. Cjadars Foods, Inc.*, (N.D. 5-18-2009).



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In *Jose Ontiveros v. Robert Zamora* (E.D. Cal. Han 20, 2009), the Court found that although the individual defendant could not be held liable for the corporation's alleged wage and hour violations on the basis of his status alone, the claims could be maintained against him because the Plaintiff had adequately pled that the individual defendant "caused" the wage and hour violations. Similarly, a California Superior Court found that individual defendants who were corporate officers were not immune from liability under PAGA and Section 558 where the Plaintiff alleged specific actions taken by the individual defendants that caused labor code provisions to be violated. *Mendoza v. M.A.T. & Sons Landscape, Inc.* (San Joaquin, Dec. 8, 2008).

### **SUMMARY AND CONCLUSION**

Given the clear and unassailable holdings in the *Reynolds* and *Bradstreet* cases, it is tempting to believe that the trial courts will now protect the corporate shareholders and officers from the constant blitz of employee claims for unpaid wages and labor code violations, but this would be a mistake. Our office just spent a year defending a corporate shareholder and officer in the San Francisco Superior Court on this very issue. In that case, our firm filed four (4) separate demurrers against the complaint on this issue. The law and motion judge assigned to our case upheld each of our demurrers, but granted Plaintiff leave to amend in each instance to allege with greater particularity facts supporting an alter-ego theory. We took from this experience the distinct impression that the California trial courts will assist employees in making alter-ego claims against corporate owners and officers as a way of mitigating the effects of the *Reynolds* and *Bradstreet* decisions. Therefore, it is highly advisable that corporate employers continue to maintain rigorous corporate formalities in order to insulate shareholders, officers and directors from personal liability on wage and hour claims.

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*The information provided herein is not intended as legal advice and should not be acted upon. If you have additional questions about this subject matter or would like to consult with an attorney, please call Jennifer J. Hagan or James Hagan at The Hagan Law Firm (650) 322-8498; [www.Haganlaw.com](http://www.Haganlaw.com).*