



Christina Humphrey Law

March 2, 2020

California Labor & Workforce Development Agency
Attn: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
Filed online at dir.ca.gov

Re: *Brandon Griego v. Wal-Mart Stores, Inc. et. al*

Dear PAGA Administrator:

Pursuant to *Labor Code* 2699.3, please accept this as notice that Brandon Griego (“Plaintiff”) alleges that Wal-Mart Stores, Inc. (“Defendant”) violated, and continues to violate, provisions of the California Labor Code including, but not limited to, Labor Code §§ 201-203, 203.1, 204, 221-223 226, 227.3, 510, 558, 1194, 1194.2, 1197, and 2699.

Wal-Mart Stores, Inc. (and/or Wal-Mart, Inc.) and Wal-Mart Associates, Inc. (Wal-Mart or Defendant) is a national retailer with locations throughout California. Wal-Mart employed Plaintiff Griego as an hourly non-exempt associate from August 31, 2019, to October 8, 2019, and he seeks to represent all former hourly non-exempt associates (“Aggrieved Employees”). Wal-Mart terminated Plaintiff Griego on October 8, 2019. Upon information and belief, Plaintiff was not paid all wages owed upon termination of employment, including but not limited to vacation and vacation-equivalent (“PTO”) wages. Furthermore, the check that Wal-Mart issued Plaintiff Griego on October 8, 2019, in the amount of \$548.29 was reversed one day after he deposited it, causing a negative balance in his bank account. Finally, on October 15, 2019, six (6) days later the check was re-presented by the bank and cleared.

Wal-Mart institutes a policy and practice of failing to pay all regular wages, vacation and vacation-equivalent wages, and other types of wages upon termination. In addition, as a matter of policy and/or practice, Defendants failed to maintain sufficient funds to pay wages and failed to properly deliver all wages owed to their employees by withholding and maintaining an internal fund for undelivered and/or uncashed wages in violation of California law. At all times relevant hereto, and as a matter of policy and/or practice, Defendants failed to reimburse employees for bounced check or overdraft or bank fees incurred as a result of their failure to deliver all wages owed to their employees in violation of Labor Code section 203.1.

Failure to Pay All Wages Owed Upon Termination

Defendant classified Plaintiff and other Aggrieved Employees as non-exempt and paid them on an hourly basis. As a matter of policy and/or practice, Defendant routinely failed to pay Plaintiff and Aggrieved Employees all regular wages, vacation and vacation-equivalent wages, overtime, and other types of wages upon termination of employment, in violation of Labor Code sections 221-223, 510, 558, 1194, 1194.2, 1197, and the Relevant Wage Order.

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Failure to Pay All Wages Timely Upon Termination

Wal-Mart did not compensate Plaintiff or Aggrieved Employees as required by sections 201 through 203 of the Labor Code, nor did Wal-Mart compensate Plaintiff or Aggrieved Employees as required by section 227.3 of the Labor Code.

Furthermore, Wal-Mart issued checks from insufficient funds which caused Plaintiff and Aggrieved Employees to incur overdrafts and/or service charges as a result of funds being returned and/or rejected.

At all times relevant hereto, Labor Code § 201 has required an employer that discharges an employee to pay compensation due and owing to said employee immediately upon discharge. Labor Code Sections 202 requires an employer to pay an employee who quits any compensation due and owing to said employee within seventy-two (72) hours of an employee's resignation. Labor Code Section 203 provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as required under Sections 201 and 202, then the employer is liable for waiting time penalties in the form of continued compensation for up to thirty (30) work days.

At all relevant times herein, section 227.3 of the California Labor Code has stated: [W]henever a contract of employment or employer policy provides for paid vacation, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served..."

Finally, at all times relevant hereto, Labor Code §203.1 provides that "[i]f an employer pays an employee in the regular course of employment or in accordance with Section 201, 201.3, 201.5, 201.7, or 202 any wages or fringe benefits, or both, by check, draft or voucher, which check, draft or voucher is subsequently refused payment because the employer or maker has no account with the bank, institution, or person on which the instrument is drawn, or has insufficient funds in the account upon which the instrument is drawn at the time of its presentation, so long as the same is presented within 30 days of receipt by the employee of the check, draft or voucher, those wages or fringe benefits, or both, shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced. However, those wages and fringe benefits shall not continue for more than 30 days and this penalty shall not apply if the employer can establish to the satisfaction of the Labor Commissioner or an appropriate court of law that the violation of this section was unintentional...."

Wal-Mart violated these code provisions through its policies and practices discussed above.

Failure to Provide Accurate Final Wage Statements

Wal-Mart further failed to provide Plaintiff and the Aggrieved Employees pay stubs that contain all of the information required by section 226 of the Labor Code. Section 226 states:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying them employee's wages, or separately when wages are paid by personal check or case, an accurate itemized statements in writing shoeing (1) gross wages earned, (2) total hours worked by the employee, except for any employees whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 of any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, except that by January 1, 2009, only the last four digits of his or her social security number may be shown on the itemized statement, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Plaintiff's Statement of Final Pay shows that Wal-Mart failed to designate on certain wages statements the information required by Cal. Lab. Code Section 226(a), such as the inclusive dates of the period for which the employee is paid. Further, Plaintiff's statement of Final Pay shows that the wage statement lists Wal-Mart Associates, Inc., on the wage statement, rather than Plaintiff's employer, Wal-Mart Stores, Inc.

As a result of the violations of numerous provisions of California law, the Plaintiff and other Aggrieved Employees are entitled to civil penalties allowed by law pursuant to CA Labor Code §§ 203, 226(e), 226.3, 226.7, 256, 558, 1174.5, 1194, 1194.2(a), 2699; CA Civil Code 3287(b); and the Relevant Wage Order, and any other applicable civil penalties allowed by law.

Plaintiff respectfully requests that the LWDA notify this office within sixty (60) days if it wishes to investigate this matter further. A copy is being sent via certified mail, return receipt, to Defendant. Should you have any questions or concerns or require additional information, please do not hesitate to contact the undersigned.

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LWDA

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Thank you for your time and consideration.

Sincerely,



Christina A. Humphrey
Christina Humphrey Law, P.C.

Peter M. Hart
Law Offices of Peter M. Hart

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