

## California Court of Appeal Declines to Apply Heightened Penalties to Wage Statement Violations

The California Court of Appeal recently held that an employer whose wage statements did not comply with section 226 of the California Labor Code was not subject to the heightened penalties imposed on employers who fail to provide wage statements or keep required records. In *Gunther v. Alaska Airlines, Inc.*, 72 Cal. App. 5th 334 (2021), a group of California-based Alaska Airlines flight attendants filed a lawsuit against their employer under California's Private Attorneys General Act (PAGA), alleging that their wage statements did not comply with section 226. After a bench trial, the court held that Alaska Airlines' wage statements did not include certain required information under section 226, including (a) the total hours worked by the employee, (b) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, and (c) the corresponding rate of pay for each. Relying on the Court of Appeal's decision in *Raines v. Coastal Pacific Food Distributors*, 23 Cal. App. 5th 667 (2018), which held that heightened penalties under section 226.3 of the California Labor Code applied to "all violations of section 226," the trial court assessed over \$25 million in heightened penalties against Alaska Airlines under section 226.3. *Id.* at 675. Section 226.3 provides for heightened penalties where "the employer fails to provide the employee a wage deduction statement or fails to keep [required] records." On appeal, Alaska Airlines successfully argued that the trial court erred in awarding heightened penalties under section 226.3 because Alaska Airlines had *not* failed to provide wage statements or otherwise kept inadequate records. The Court of Appeal agreed and declined to follow *Raines*' holding, reversing the trial court's award and remanding with instructions to apply default civil penalties under PAGA. Although the Court of Appeal's decision in *Gunther* is a positive outcome for employers, it also creates confusion as to the penalties for violating section 226, as there are now two recent California Court of Appeal decisions that directly contradict each other.

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