



The purpose of section of Labor Code § 293 providing for a waiting time penalty is to induce employers to pay its employees' wages promptly. (McCoy v. Superior Court (2001) 157 Cal.App.4th 225, 229.) The purpose of the penalty is not to provide for a penalty independent of the wage claim. (Id. at 230.)

"The primary intent of [section 203] is not to secure the payment of a penalty. That the overarching purpose of the statute is not to provide for a penalty is emphasized by the limit on the penalty itself. Wages continue as a penalty only until the date the back wages are paid or an action to recover them is filed, but not for more than 30 days, regardless of how long the employer waits to pay the back wages. Had the Legislature sought to impose a penalty qua penalty, it would not have capped it after such a short period of time." (Id., internal quotes and parentheses omitted.) [Note: The term "qua" is Latin meaning "in the character or capacity of." (Black's Law Dictionary [Revised 4th ed., 1968].)]

In analyzing the difference between an employee's right to wages and his or her right to a penalty in the analogous situation pertaining to the "additional hour of pay" (Labor Code §226.7), the California Supreme Court said:

"Under the amended version of section 226.7, an employee is entitled to the additional hour of pay immediately upon being forced to miss a rest or meal period. In that way, a payment owed pursuant to section 226.7 is akin to an employee's immediate entitlement to payment of wages or for overtime. (Citation omitted.) By contrast, Labor Code provisions imposing penalties state that employers are "subject to" penalties and the employee or Labor Commissioner must first take some action to enforce them. The right to a penalty, unlike section 226.7 pay, does not vest until someone has taken action to enforce it." (Murphy v. Kenneth Cole Productions, Inc. (2007) 40 Cal.4th 1094, 1108.)

In similar fashion to the "additional hour of pay", the instant court observes that Labor Code §203 does not provide that the employer is "subject to" the imposition of the waiting time penalty. Rather that section states "the wages of the employee shall continue" if the employer does not pay separation wages within 72 hours of the employee's termination. The employee is not required to do anything affirmative – "take action" – in order to be entitled to the continuing right to wages. The right to the waiting time penalty is self-executing, i.e., the employee's right to payment of the waiting time penalty arises immediately upon the satisfaction of the condition precedent, i.e. payment of the last wages due to the employee at the time of termination from employment. In that respect, because the waiting time penalty becomes immediately due and payable to the employee, the right to receive the penalty becomes a vested property right of the employee and the proper subject of restitution. (Cf. Cortez v. Purolator Air Filtration Products Co. (2000) 23 Cal.4th 163, 178 [wages which are due but unpaid are the proper subject of restitution].)

Further, the waiting time penalty under Labor Code §203 is recoverable in an UCL action because it is a penalty available under other laws of this state. Business & Professions Code §17205, provides:

"Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this state."

Under Business & Professions Code §17203, a plaintiff may seek "orders or judgments, including the appointment of a receiver . . . to prevent the use or employment by any person of any practice which constitutes unfair competition . . . or . . . to restore to any person in interest any money or property, real or personal." The provisions of the UCL do not otherwise "expressly prohibit" recovery of the penalties afforded under Labor Code §203. Therefore, the continuation wage penalties under Labor Code §203 are cumulative of the remedies stated in Business & Professions Code §17203.

The complaint is not so uncertain, ambiguous or unintelligible so as to deprive the defendant of the ability to reasonably answer the allegations of the second cause of action. It is fairly clear to the court that plaintiff seeks penalties under Labor Code §203 for the late payment of wages after the employee has separated from the company. (¶¶1, 3 and 23-25.)

Defendant shall answer the complaint within 20 days of the service of his minute order.

The clerk of the clerk is hereby ordered to serve this order.