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CALIFORNIA'S WAGE STATEMENT LAW APPLIES TO INTERSTATE TRANSPORTATION WORKERS

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On February 2, 2021, the Ninth Circuit Court of Appeals issued a decision that affects all California employers that employ interstate transportation workers. In *Ward v. United Airlines*, the court held that federal law did not prevent California's wage statement law from applying to pilots and flight attendants who are based in California, spend most of their time working outside of California, and do not work a majority of the time in any one state. Specifically, the court rejected arguments based on three sources of federal law: the dormant Commerce Clause, the Airline Deregulation Act, and the Railway Labor Act.

The dormant Commerce Clause limits the states' authority to enact or enforce laws that burden interstate commerce, even in the absence of legislation by Congress. State laws that discriminate against or directly regulate interstate commerce are virtually *per se* invalid, while non-discriminatory laws that have only incidental effects on interstate commerce will generally be upheld unless the burden on interstate commerce is clearly excessive in relation to the putative local benefits. The Ninth Circuit held that California's wage statement law does not discriminate against interstate commerce, because the law applies to employers evenhandedly whether they are based inside or outside of California. It also does not result in direct regulation of interstate commerce, because it does not have the practical effect of dictating the price of goods sold out of state or tying the price of in-state products to out-of-state prices. The court also held that the burden of complying with California's wage statement law was not clearly excessive in relation to the putative local benefits, because (a) there was no evidence establishing the additional cost of complying with the law, and (b) the employer could comply with the law by issuing compliant wage statements to all pilots and flight attendants whose home-base airport is located in California, which would obviate the need to track the hours that each employee spends working in different states. The court concluded that state-by-state regulation of wage statements provided to pilots and flight attendants might increase operating costs, but the evidence did not establish that such regulation will impair the free flow of commerce across state borders or impede operation of the airline industry.

The Airline Deregulation Act of 1978 generally prohibits states from regulating the price, route, or service of an air carrier that provides air transportation. In *Ward*, the Ninth Circuit held that the Act does not preempt state laws that affect such matters in only a tenuous, remote or peripheral

manner, even if employers must factor the law into their decisions about pricing or it raises the overall cost of doing business. The court found no evidence that increased costs associated with tracking the amount of time pilots and flight attendants spend working in each state would have a "significant impact" on its prices, routes, or services. Therefore, the Act did not preempt California's wage statement law.

Finally, the Ninth Circuit held that the Railway Labor Act (RLA) did not preempt the wage statement law. The RLA establishes a mandatory dispute-resolution mechanism for resolving certain classes of labor disputes that arise in the rail and airline industries, including so-called "minor" disputes regarding the interpretation of a collective bargaining agreement (CBA) in a particular fact situation. If such a dispute is covered by the RLA, it must be resolved through the procedures established under the RLA and may not be resolved by pursuing state-law claims in court. The pilots and flight attendants in *Ward* were covered by CBAs that contained detailed provisions governing, among other things, the manner in which their pay was determined. The court in *Ward* concluded that the RLA did not apply, because the plaintiffs sought to vindicate a right created by California law, not one created by the CBAs themselves, and resolution of their claims did not require interpretation of a CBA. Instead, to assess the merits of their claims, a court would simply need to examine the wage statements they received in order to determine whether the statements complied with California's wage statement law.

Although the *Ward* case was brought by airline employees, it has ramifications for all California employers that employ interstate transportation workers. Employers of truck drivers and other interstate transportation workers should carefully review their wage statements for compliance with California law, as they will be unable to rely on the federal preemption arguments that were raised in *Ward* as defenses to wage statement claims.

Bryan Cave Leighton Paisner LLP has a team of knowledgeable lawyers and other professionals prepared to help employers review their employee policies. If you or your organization would like more information on any state-specific laws or any other employment issue, please contact an attorney in the Employment and Labor practice group.

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