employment in the industry exposes the employee.'" In other words, it isn't remuneration but potential coverage to prevent a loss. *Estrada v. City of Los Angeles* (California Court of Appeal, 2nd District, 7/24/13).

Bottom line

This is good news for the city of Los Angeles and any other municipality that has enacted a law stating that volunteers aren't considered employees. It's important to keep in mind, however, that this case deals specifically with a public entity, and the circumstances for volunteers in private entities are different.

If individuals volunteer at your business, be aware of the laws concerning what qualifies a person as a volunteer rather than an employee and your legal obligations as a private (not public) employer. Don't take it for granted that you will be treated the same way as the LAPD.

The author can be reached at Ford & Harrison LLP in Los Angeles, ksullivan@fordharrison.com. ✤

LITIGATION

A court in a bind: Should it change its mind?

by Garrett Jensen

A court makes a very important ruling in your case by solely relying on another case. But soon after the ruling, the supporting case gets stricken from the books. Does the court have the power to change its ruling, and will it do so? Stay tuned to find out.

What's the law on reconsideration of prior court orders?

California Code of Civil Procedure Section 1008 provides that within 10 days after service of a court order, a party may make an application to the court that made the order requesting it to reconsider the matter and modify, amend, or revoke the prior order. The application must be based on new or different facts, circumstances, or law.

Section 1008 further provides that if a court at any time determines that there has been a change of law that warrants it to reconsider a prior order it entered, it may do so and enter a different order.

Adjust my pay!

Three of Farmers Insurance's claims adjusters, including Audrey Wilson, filed a class action against the company alleging it violated the California Labor Code by misclassifying its claims adjusters as exempt employees. Wilson argued that a class of claims adjusters should be certified because all of Farmers' adjusters performed a finite and uniform grouping of job duties, allowing the court to determine whether all of the claims adjusters were exempt administrative employees.

In response, Farmers contended that class certification was inappropriate since the job duties performed by the claims adjusters varied and the claims adjusters were properly classified as exempt employees under the administrative exemption. The company argued that the trial court would have to examine each individual to determine whether the job duties she performed would qualify her for the exemption.

Putting all eggs in one basket

Before the hearing on Wilson's request for class certification, the California Court of Appeal issued a published opinion (*Harris v. Superior Court*) holding that a class of claims adjusters working for Liberty Mutual Insurance Company was appropriately certified and the claims adjusters weren't exempt.

Wilson relied heavily on the *Harris* decision, arguing that it was directly on point and should control the court's decision regarding her request for class certification. Farmers contended that the trial court shouldn't rely on the *Harris* decision since it conflicted with other California Court of Appeal opinions. The trial court found Wilson's argument more persuasive and relied exclusively on the *Harris* decision, reasoning that because that ruling controlled the decision, the court was severely confined in terms of any independent legal analysis.

Nineteen days after the court's decision, the California Supreme Court ordered that the *Harris* opinion not be officially published, which means it can't be relied on as legal precedent. As a result of that order, the opinion could no longer be cited to or relied on by a court or a party in any action.

In light of the supreme court's order and the trial court's sole reliance on the *Harris* decision for its ruling on Wilson's request for class certification, Farmers filed an application requesting that the trial court reconsider its order. The trial court denied its request since its application was made more than 10 days after the court's order and because the court determined there hadn't been a change in law to allow it to reconsider its prior order. Farmers then sought relief from the appellate court.

Legal justification goes up in smoke

The appellate court determined that the entire legal justification for the trial court's certification order disappeared when the *Harris* opinion was ordered not to be published. When a court decision is made on the basis of an opinion that later is ordered not to be published, the law justifying that decision has changed.

In support of its decision, the appellate court looked at three factors for determining whether a court should exercise its discretion in reconsidering a prior order: (1) the importance of the change of law, (2) the timing of the request for reconsideration, and (3) the circumstances of the case.

In reviewing the first factor, the appellate court found that the *Harris* ruling provided the sole legal authority for the trial court's order certifying the class. In its prior ruling, the trial court commented that to do anything other than follow the *Harris* decision in ruling on Wilson's request for class certification would be the equivalent of trial court insubordination. However, since the *Harris* ruling was no longer good law, the appellate court found that the sole legal basis for the trial court's decision had disappeared.

As for the second and third factors, the appellate court determined that Farmers had promptly requested reconsideration two days after the *Harris* decision was ordered not to be published, and there was no prejudice (harm) since nothing had been done in the case in reliance on the court's prior order certifying the class. Therefore, the appellate court ruled that Farmers' request for reconsideration should be granted and the trial court should reconsider its order granting Wilson's request for class certification. *Farmers Insurance Exchange v. Superior Court* (Audrey Wilson) (California's 2nd Appellate District, 7/23/13).

Bottom line

Farmers was able to obtain a favorable ruling from the appellate court by keeping abreast of developments in the law and quickly bringing the California Supreme Court's decision to the trial court's attention.

The broader takeaway from this case is the importance of staying current with changes to the law, whether it be the passage of a new law or a recent decision from an appellate court. In doing so, companies and their counsel and HR professionals can be better prepared to update their employment policies, practices, and procedures to stay in compliance with the law and minimize the risks of having to litigate matters in court.

The author can be reached at Carothers DiSante & Freudenberger LLP in Irvine, gjensen@cdflaborlaw.com. ✤

HEALTHCARE REFORM

Has ACA mandate prompted shift to part-time work? Yes and no

If you've opened a newspaper or its online equivalent in the past six months, you've likely read about employers that are cutting workers' hours and shifting full-time staff to part-time schedules to circumvent the looming health insurance mandate of the Affordable Care Act (ACA). Depending on the source, you may be told that this shift is a significant problem for workers and employers alike and that it offers strong evidence of the many flaws in the ACA. Or you may read that these shifts to part-time schedules are actually quite limited and that they have been blown out of proportion by critics of the Act (with a little help from zealous journalists).

Unsurprisingly, there are statistics and survey results to support both sides of the argument. According to data from the U.S. Bureau of Labor Statistics (BLS), the number of workers holding full-time positions declined by 240,000 in June. Meanwhile, the number of part-time workers increased by 360,000—continuing a three-month period of consistent part-time worker increase. But these numbers tell us only of general trends. They say nothing of the intent behind the shifts or even if the decline in full-time positions is remotely correlated with the increase in part-time hires.

Certainly, there is plenty of anecdotal evidence of employers that confirm they have shifted full-time workers to part-time schedules—with hours restricted to 29 or fewer per week—with the specific intent of avoiding the ACA mandate or reducing total penalties under the "pay" portion of the "play or pay" provisions. Most commonly in the food service industry, several notable employers, including Papa John's and Subway, have announced such policies, while others—Olive Garden and Red Lobster, for example—adopted but later abandoned the reduced-hour policies.

Survey says . . .

One survey by consulting firm Mercer reports that 12% of employers surveyed planned to cut staff hours to avoid the mandate. Another survey by the International Foundation of Employee Benefit Plans found that nearly 16% of employers were reducing hours to avoid or reduce costs under the ACA mandate, while another one