

2/26/07 8:55 AM

## California: Violation of paycheck rules may expose employers to stiff penalties

By Devra S. Hermosilla

Employers with California employees must comply with California Labor Code §212.

This formerly little-noticed statute, which governs the form of paychecks, is now the basis for a pending federal class action lawsuit, *Fleming v. Dollar Tree Stores, Inc.*

The plaintiffs are a class of California employees who allege that Dollar Tree paid their wages with paychecks drawn on an out-of-state bank with no in-state address for presentation and that no provision had been made for negotiating the paycheck within California. As a result, they claim they incurred check-cashing fees and had holds placed on their paychecks. The plaintiffs are seeking more than \$10 million in penalties.

Section 212 requires that employee paychecks be: (1) negotiable, (2) payable in cash, (3) on demand, (4) without discount and (5) at some established place of business in the state. The name and address of the business at which checks are payable must appear on the instrument; and the place of business must have been prepared, by the deposit of funds, the establishment of credit or by some arrangement or understanding, to pay the money called for by the paycheck.

Penalties of \$100 per employee for each pay period may be assessed for initial violations; penalties for subsequent violations increase to \$200 per employee for each pay period, subject to a four-year statute of limitations.

Dollar Tree unsuccessfully moved for dismissal. In denying the motion, the court stated that the plaintiffs had articulated a cause of action for violation of Section 212. The court also held that Section 212 is not unconstitutional and is not pre-empted by federal law.

In the wake of the *Fleming* decision, employers with California employees should review their payroll practices to make certain that they are in compliance with Section 212.

*Devra S. Hermosilla* is an attorney with Bullard Smith Jernstedt Wilson in Portland, Ore. © 2007 Bullard Smith Jernstedt Wilson. All rights reserved.

### Related resource:

[Payroll Toolkit](#).

*Editor's Note: This article should not be construed as legal advice.*

For recent developments in other states, visit [State Workplace Law News](#) on SHRM Online.



### Society for Human Resource Management

1800 Duke Street • Alexandria, Virginia 22314 USA

**Phone US Only:** (800) 283-SHRM

**Phone International:** +1 (703) 548-3440

**TTY/TDD** (703) 548-6999

**Fax** (703) 535-6490

**Questions?** [Contact SHRM](#)

**Careers** [Careers @ SHRM](#)

Copyright © 2007, Society for Human Resource Management  
[SHRM Privacy Statement](#) | [Your California Privacy Rights Terms](#) under which this service is provided to you.